

Repealing IRCA *Legislative Package*

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Executive Summary

IRCA works contrary to its goals

- *Although IRCA was a good-faith effort to address real problems, this experiment has failed to achieve its goals of lowering the immigration rate and improving working conditions. IRCA has caused our nation more harm than good.*
- *IRCA increased the flow of undocumented workers and created an underclass of workers that have no rights.*
- *IRCA eliminates good jobs and lowers the wages for all workers.*

IRCA hurts families, communities and businesses

- *IRCA engenders discrimination, undermines civil liberties, and weakens democracy.*
- *IRCA hurts families and communities*
- *IRCA hurts all law-abiding, legitimate businesses but especially small businesses.*
- *IRCA undermines Homeland Security.*

IRCA perpetuates our sad legacy of slavery

- *IRCA has inherited slave-like characteristics from the laws of slavery and involuntary servitude*
- *The Supreme Court's limitation of rights for all workers relies on IRCA.*

Repeal, not enforcement

- *Stricter-enforcement of IRCA would exacerbate all the negative consequences it created.*
- *Repeal IRCA is a step towards an open and civil society.*

BACKGROUND

IRCA Works Contrary to its Goals

1. Although IRCA was a good-faith effort to address real problems, its effects have been contrary to its goals of reducing undocumented immigration and protecting U.S. workers. IRCA has caused our nation more harm than good.

In 1986, undocumented workers were seen as a threat to the U.S. because they supposedly drove down wages and labor standards and took jobs that would otherwise be filled by authorized workers. Congress's main objective in passing IRCA was to "close the back door on illegal immigration so that the front door on legal immigration may remain open." Congress hoped that limiting undocumented immigration would safeguard well-paying jobs to be filled largely by minorities, and secure the national borders. IRCA's provisions have largely failed to achieve any of these goals, and in many instances they have aggravated the very problems they were supposed to alleviate.

2. IRCA has increased the flow of undocumented workers and created an underclass of workers that have no rights.

The employer sanctions and employees documentation provisions of IRCA were supposed to provide strong disincentives for employers to hire undocumented workers, but these measures have failed. Since the passage of IRCA in 1986, the flow of undocumented workers into the United State has increased. For example, from 1980 to 1984, an average of 40,000 undocumented workers from Mexico entered the U.S. per year. From 2000 to 2004, undocumented workers from Mexico that entered the U.S. rose to 485,000 per year.¹

IRCA criminalizes undocumented workers and forces them underground. It gives unscrupulous employers an incentive to prefer undocumented to documented workers, as undocumented workers are more susceptible to exploitation than documented workers. The undocumented can be employed for less money in worse conditions than the documented. They have no choice but to accept these conditions because of the methods IRCA employs to put them outside the rule of law. IRCA makes any lasting labor law enforcement impossible. Thus, IRCA creates an environment for American businesses to demand more undocumented workers in order to compete with one another for survival and maximize their profits.

¹ Source: Pew Hispanic Center estimates based on March 2004 Current Population Survey (Passel 2005).

3. IRCA eliminates good jobs and lowers the wages for all workers

- IRCA divides workers into documented and undocumented, denying the right to work to the 12 million undocumented already working in this country, as well as those who come in the future. Consequently, employers can easily pit one group against another, making workers more vulnerable to exploitation. Even though they are aware of abuse, they are less likely to speak out. Therefore, IRCA makes labor and safety regulation enforcement impossible. Because of that, some of the employers subcontract and outsource some of the good paying jobs to this underground and unregulated economy and make the good jobs disappear.
- The risk of hiring undocumented workers imposes a 'tax' on employers that results in a lower wage for undocumented workers. In return, this 'tax' lowers the wages of other workers within these industries.
- Employer sanctions also discourage law-abiding, legitimate employers from hiring foreign-looking workers. It forces foreign-looking legal workers into competition with undocumented workers, therefore increasing the labor supply in low wage industries and lowering wages and conditions for all workers.
- IRCA does not just hurt lower-wage industries. In low-wage industries, wages are so low that documented immigrant workers are not able to survive in those jobs. This causes many documented immigrants to compete with native-born workers for the jobs in higher wage industries. The increased competition and divisions among workers push wages downward and result in fewer jobs for citizen workers

IRCA Hurts Families, Communities and Businesses

4. IRCA engenders discrimination, undermines civil liberties, and weakens democracy.

Employer sanctions make law-abiding, legitimate employers more hesitant to hire workers who might be undocumented. A national study by the federal GAO found that IRCA engendered discrimination against authorized workers who come from the same countries and speak with the same accents as undocumented workers. This outcome undermines Congress's original goal of protecting minority workers. Discrimination would be exacerbated by extreme enforcement of employer sanctions since employers would be even more hesitant to hire "foreign-looking" job applicants.

IRCA's emphasis on documentation requirements chills participation in society, exercising civil rights, and observation of the law as the undocumented become more fearful of detection. One recent example is a delivery person in New York who was stuck in an elevator for three days without help. As soon as he was rescued, he disappeared into hiding. He was even afraid to file a complaint against the wrongdoing of the landlord or the government.

5. IRCA hurts families and communities.

IRCA not only criminalizes workers, it criminalizes entire communities. It has set a foundation for other regressive laws that deny basic human rights to children, mothers and families. For example, to make up for lower wages, workers have to work longer hours, placing tremendous stress on their families. The time spent working as well as the fear of discovery prevent these parents and spouses from fully participating in their communities. To make matters worse, IRCA creates divisions *within* communities by dividing documented from undocumented workers. Even those who provide work or housing to undocumented immigrants who make an honest living are considered to be harboring criminals, and thus become criminals themselves. IRCA thus weakens the social fabric of our society.

6. IRCA hurts all law-abiding, legitimate businesses but especially small businesses.

All law-abiding, legitimate businesses have an interest in a level playing field, but employer sanctions will always be selectively enforced. Some industries will have the political clout to block enforcement of IRCA, while other unscrupulous businesses will successfully flout the law in a system where there will never be enough resources for total enforcement. Small, law-abiding entrepreneurs without political clout must bear increased costs, putting them at a competitive disadvantage and distorting the free market.

IRCA unfairly puts law-abiding businesses at a disadvantage because they pay a higher percentage of their revenues to comply with IRCA as well as labor laws and tax obligations. The costs of processing the paperwork required by IRCA and the risks associated with hiring workers who appear undocumented hurt small, legitimate businesses more.

Law-abiding businesses must also compete against large companies that have and will continue to find ways to avoid liability for violating IRCA, such as hiring subcontractors (usually small businesses) to enjoy the cost-savings of hiring undocumented workers. On-the-ground reports suggest that some companies will refer day-laborers with 'funny' papers to subcontractors who do not check immigration status. These subcontractors presumably account for the risk of violating IRCA by lowering wages. IRCA also forces small business to compete with each other in a "race-to-the-bottom," each underbidding the other on the backs of the easy exploitation IRCA created.

7. IRCA undermines Homeland Security.

IRCA promotes human smugglers, trafficking, sweatshops, money laundering, and expands an underground economy outside the rule of law. IRCA undermines Homeland Security by discouraging undocumented workers from reporting criminal activity. By pushing undocumented workers into unregulated industries and underground economies, IRCA helps obscure all the above criminal activities. IRCA

makes undocumented immigrants scared to report crimes to law enforcement officers for fear of deportation. Under-reporting leaves undocumented workers and their families easy targets for criminal activity and encourages the growth of organized crime and other ongoing criminal activities. Criminal organizations find easy prey in undocumented communities and undermine rule of law in cities and regions at large. This state-induced lawlessness opens a hole in our national defense by providing a home within the U.S. for those who seek to undermine it and discouraging exactly those residents most able to discover such national security threats from reporting their critical knowledge.

IRCA Perpetuates Our Sad Legacy of Slavery

8. IRCA has inherited slave-like characteristics from the laws of slavery and involuntary servitude.

IRCA perpetuates the shameful legacy of slavery in the U.S. Its characteristics continue a pattern of labor law going back to peonage and slavery. Before the Civil War, the Constitution and the Fugitive Slave Acts enforced slavery by putting government power on the side of the “master.” Once slavery was abolished, various systems of debt-peonage and sharecropping kept the newly freed slaves, as well as poor whites and recent immigrants, in what the Supreme Court eventually called “an everturning wheel of servitude.” The government used its power to keep workers from changing employers, protesting conditions of their labor, and escaping the underclass in which they lived. These laws were eventually overturned as violating the Thirteenth Amendment of the United States Constitution.

IRCA revives characteristics of past slave laws in that it *takes away workers’ rights to make a living and allows employers to wield government power against workers*. IRCA denies undocumented workers the right to freely sell their labor, giving their employers unchecked power to impose illegal wages and working conditions. IRCA gives employers law enforcement power to check immigration status without any accountability. When undocumented workers demand better treatment, employers can threaten an ICE (Immigration Customs Enforcement) work-site raid and the workers’ deportation. IRCA thereby allows employers to push wages below fair market levels and use state power to stop workers from protesting inhumane labor conditions.

9. The Supreme Court's limitation of rights for all workers relies on IRCA.

In 2002, the Supreme Court ruled in *Hoffman Plastic Compounds, Inc. v. NLRB* that employers did not have to give backpay to undocumented workers who were illegally fired for protected concerted or union activities. On the surface, *Hoffman* has given employers in the short term more scope to abuse undocumented workers as they have no way to enforce labor law. But in reality, by denying these rights to some workers it divides all workers and undermines everyone’s right to organize. The Supreme Court based its decision on what it perceived as Congress’s intent in passing IRCA. Repealing

employer sanctions would eliminate this justification for allowing employers to withhold backpay. IRCA also set the stage for other regressive laws such as the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), the 2005 Real ID Act and Proposition 200 in Arizona.

Repeal, Not Enforcement

10. Stricter enforcement of IRCA would exacerbate all the negative consequences it created.

Stricter enforcement of IRCA will make most employers more dependent on an expanded underground and unregulated economy to survive. Strengthened employer sanctions would push undocumented workers further underground. An even greater threat of raids would give employers even more leverage over employees, further distorting market wages and intensifying the divide between documented and undocumented workers. Working people would need to work longer hours, taking more time away from their families and making everyone's lives more miserable. Stronger enforcement of IRCA would expand the underclass of laborers, and bring more undocumented workers to the U.S., making all workers more vulnerable to exploitation.

11. Repealing IRCA is a step towards an open and civil society.

Repealing IRCA will eliminate the underclass of labor, reduce the flow of undocumented workers, enable the enforcement of labor and safety standards and improve the living and working conditions of all workers. Furthermore, repealing IRCA will promote civil liberties, strengthen democracy, protect law-abiding businesses, and curtail human smuggling and trafficking. Most importantly, it will improve our homeland security, allowing us to live safely and have some control of our lives.

DRAFT BILL TEXT TO REPEAL EMPLOYER SANCTIONS

109TH CONGRESS

1ST SESSION

July 14, 2005

An Act to amend the Immigration and Nationality Act to deter illegal immigration, protect United States workers, promote fair business practices, and improve homeland security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

This Act may be cited as the "Economic Democracy and Security Act of 2005."

SECTION 2. FINDINGS.

The Congress finds and declares the following:

- (1) The employer sanctions provisions of the Immigration Reform and Control Act of 1986, as amended, ("IRCA") were intended to deter illegal immigration and protect domestic wages but instead increase illegal immigration, entrench an underclass of undocumented workers without rights, and lower the wages and working conditions of U.S. citizens.
- (2) The employer sanctions provisions of IRCA harm law-abiding businesses that suffer from unfair competition with outlaw firms, which hire undocumented workers so as to avoid liability for the firms' violations of labor, employment, health and safety, tax, and other laws.
- (3) The employer sanctions provisions of IRCA undermine public safety and national security by preventing undocumented workers from reporting criminal and other illegal activity that they witness or suffer.
- (4) The employer sanctions provisions of IRCA engender discrimination, divide communities, discourage the full participation in civic life of millions of families, and weaken democracy.
- (5) The employer sanctions provisions of IRCA deny millions of immigrants the right to earn a living and grant undue power to their employers, in the tradition of laws approving slavery, involuntary servitude, and other grossly coercive employment conditions.
- (6) To deter illegal immigration, protect the wages and working conditions of American workers, promote fair business competition, enhance civil rights and democratic participation, and improve public safety and national security, the failed employer

sanctions experiment must be set aside and replaced with sanctions on those employers who hire and exploit undocumented immigrants.

SECTION. 3. REPEAL AND REPLACEMENT OF EMPLOYER SANCTIONS PROVISIONS.

Section 274A of the Immigration and Nationality Act (8 U.S.C. § 1324a) is amended

- (a) by striking subsections (a), (b), (d), (e), (f), (h)(1), and (h)(3);
- (b) by redesignating subsection (c) as subsection (a);
- (c) by striking “under subsection (e)” from subsection (g) and redesignating subsection (g) as subsection (b);
- (d) by striking “(other than through licensing and similar laws)” from subsection (h)(2) and redesignating subsection (h)(2) as subsection (c), entitled “Preemption”; and
- (e) by inserting after subsection (c) the following:

“(d) EMPLOYER SANCTIONS. The protections, obligations, penalties, remedies, and other provisions of federal labor and employment statutes, including but not limited to the National Labor Relations Act, Title VII of the Civil Rights Act of 1964, Fair Labor Standards Act, Family and Medical Leave Act, Age Discrimination in Employment Act, and Americans with Disabilities Act, as amended, are fully applicable to employers who hire or employ undocumented workers, and to each covered employee, without regard to the immigration status of such employee. An employer who violates the provisions of a federal labor or employment statute with regard to its undocumented employee shall be liable for damages or other remedies under such statute to the same extent as it would be liable to any other employee, regardless of the immigration status of the employee.”

SECTION 4. HIRING DOES NOT CONSTITUTE HARBORING.

Section 274 of the Immigration and Nationality Act (8 U.S.C. § 1324) is amended—

- (a) by striking subsection (a)(3); and
- (b) by inserting after subsection (a)(2)

“(a)(3) *Provided, however,* That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.”

SECTION 5. AUTHORIZATION OF APPROPRIATIONS FOR TARGETED ENFORCEMENT.

There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for targeted enforcement activities of the Wage and Hour Division and the Occupational Safety and Health Administration in industries with a high incidence of undocumented workers.

SECTION 6. EFFECTIVE DATE.

The provisions of this Act shall take effect on January 1, 2006.