

# IMMIGRATION OVERLOAD

By Sharma Hammond and Mike Hethmon

**T**he fact that the federal government has failed to diligently enforce immigration laws is now virtually beyond dispute. Just as obvious is that this failure has encouraged a tidal wave of illegal immigration into California. Congress remains in gridlock on immigration policy, creating a governing crisis of historic proportions.

Power abhors a vacuum. Since the Sept. 11 attacks, some states have independently enacted legislation to deter illegal immigration and limit its corrupting effects at the state and local levels. In other states, multicultural ideologies and expanding foreign populations have brought sustained pressure to redefine the barbarians as good Romans.

As the population of unassimilated and increasingly radicalized illegal aliens reaches historically high levels in California, the social contract between citizens and their elected representatives is increasingly under attack. For the large majority of Californians, whose most valuable assets are their legal interests, rights and privileges as citizen-shareholders, the threat is profound.

The demographic wave of illegal settlers has a particularly adverse effect in the judicial branches. Doctrines of equal protection, preemption and even standing, developed over generations in the domestic legal context, never anticipated that illegal aliens would constitute anything other than a small, politically insignificant class.

**The exercise of a California citizen's fundamental right to public records is harmed whenever government-bestowed anonymity encourages the unlawful employment of aliens.**

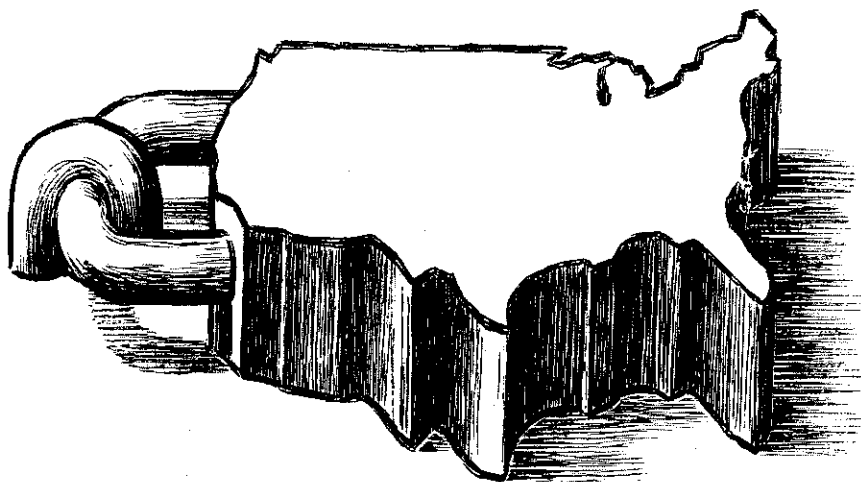
As a result, in 2007 we see a dangerous lack of legal groups who will represent the interests of U.S. citizens. Our group, the Immigration Reform Law Institute, is one such organization. IRLI is an almost unique public interest law firm, devoted exclusively to protecting the rights and interests of U.S. citizens in immigration-related matters.

Recently, IRLI accepted representation of a California citizen in a matter involving four anonymous plaintiffs who registered under the City of Vista's ordinance to "lawfully" hire day laborers. *Does v. City of Vista*, 37-2007-54200-CU-MC-NC, (San Diego Super. Ct., filed 2007).

The city's own experts indicate that the vast majority of day laborers are illegal aliens and unauthorized to work in the United States. In the 9th Circuit, federal precedent clearly indicates that the federal employment verification process must be completed before work commences in cases where employment will last three days or less.

In this disturbing case, a California citizen was denied access to registration certificates issued by the city, on the ground that anonymous plaintiffs have an alleged privacy interest in their names, phone numbers and addresses. IRLI took an interest in this case because the exercise of a California citizen's fundamental right to public records is harmed whenever government-bestowed anonymity encourages the unlawful employment of aliens. Individuals should not be able to assert a privacy interest based solely on fear of public disapproval of their evasion of federal immigration laws.

Unauthenticated by the city, on the ground that anonymous plaintiffs have an alleged privacy interest in their names, phone numbers and addresses. IRLI took an interest in this case because the exercise of a California citizen's fundamental right to public records is harmed whenever government-bestowed anonymity encourages the unlawful employment of aliens. Individuals should not be able to assert a privacy interest based solely on fear of public disapproval of their evasion of federal immigration laws.



An estimated 2.2 million illegal aliens have settled in California. This figure excludes at least a million other formerly illegal immigrants who have benefited from various amnesty programs since 1986. The latest census data indicates that California's illegal immigrant population is costing taxpayers more than \$10.5 billion per year for education, medical care and incarceration, a staggering transfer of property and privileges from middle class citizens to scowflaw foreigners.

Proponents of illegal immigration evoke the myth that "illegal immigrants only do the jobs that Americans won't do." In fact, U.S. citizens lose their jobs because employers would rather exploit unauthorized aliens by paying them a poverty wage, well aware that the illegal alien will not complain about substandard working conditions or low pay. These practices constitute unlawful discrimination.

Unauthorized alien employment is the primary engine for the "race to the bottom" experienced by working-class Californians over the past generation. When an employer hires an unauthorized alien, he pays this person a lower wage than he would a U.S. worker. As a result, employers hiring American citizens must cut wages to compete. The employers seek maximized profits through transferring the social

cost of cheap labor onto the California taxpayer.

The California Legislature continues to promote discriminatory displacement of citizen workers and native communities by introducing laws that make it easier for illegal immigrants to reside in this state. For example, AB 976, signed into law by Gov. Schwarzenegger on Oct. 11, would prohibit cities and counties from requiring landlords to check the citizenship status of their tenants. AB 976 conflicts with federal law expressly prohibiting restrictions on local government data collection on immigration status. This legislation is intended to enrich apartment owners who rent dilapidated housing to illegal aliens.

In May, the City of Oakland enacted an ordinance that the city will be a refuge from federal law enforcement for illegal aliens. San Francisco then introduced a more radical measure to provide identification cards to illegal alien residents. U.S. citizens must comply with our laws, but growing numbers of city officials believe they can exempt illegal aliens from the same standard.

These defiant local practices raise due process and equal protection concerns. At least one federal appellate court has likened them to the "massive resistance" policies of Old South segregationist gov-

ernments against federal civil rights laws. Not only do these laws do violence to basic doctrines of equal protection, they unconstitutionally preempt federal immigration law, which prohibits states from regulating immigration through local laws that assist aliens in defiance of their immigration status.

Congress has been gridlocked on immigration enforcement for a generation. The ability of the executive branch to efficiently administer the law has continued to decline, the so-called plenary power doctrine (allowing broad legislative and executive discretion in immigration policy) notwithstanding. In this power vacuum, the immigration bar and the judiciary have become the de facto legislatures and policy managers over all aspects of immigration law.

Acceptance of immigration lawlessness in Washington and Sacramento, especially among the bench and bar, has made legal protection for citizens a matter of the utmost importance. The outcomes of IRLI's lawsuits and local enforcement initiatives will have a profound effect on governance in California, despite our limited resources.

Sharma Hammond and Mike Hethmon are attorneys with the Immigration Reform Law Institute, a public interest firm in Washington, D.C.