



Workers' Rights on ICE: What California Can Do to Stop Retaliation and Advance Immigrant Workers' Rights

California State Assembly Labor Committee
*Is California Doing Enough To Protect Immigrant Workers
from Retaliation?*

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The Face of Unfair Retaliation: Immigrant Workers

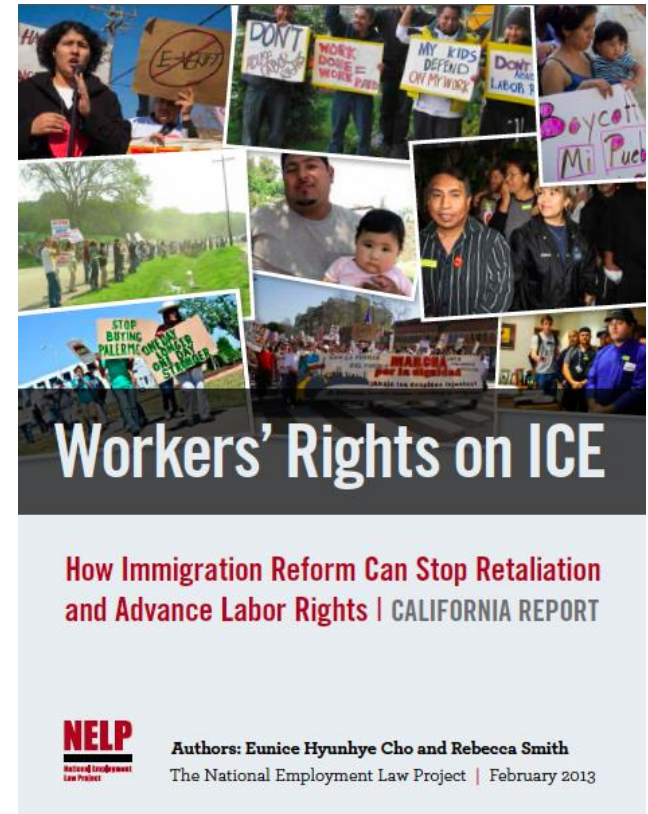


Winnetka, CA (2013)

After day laborer Hector Nolasco, requested his full day's pay, his employer falsely reported him to the police. Nolasco was arrested, put in jail, and faces an immigration hold. He is still in custody.

Profile of Immigrant Workers in California

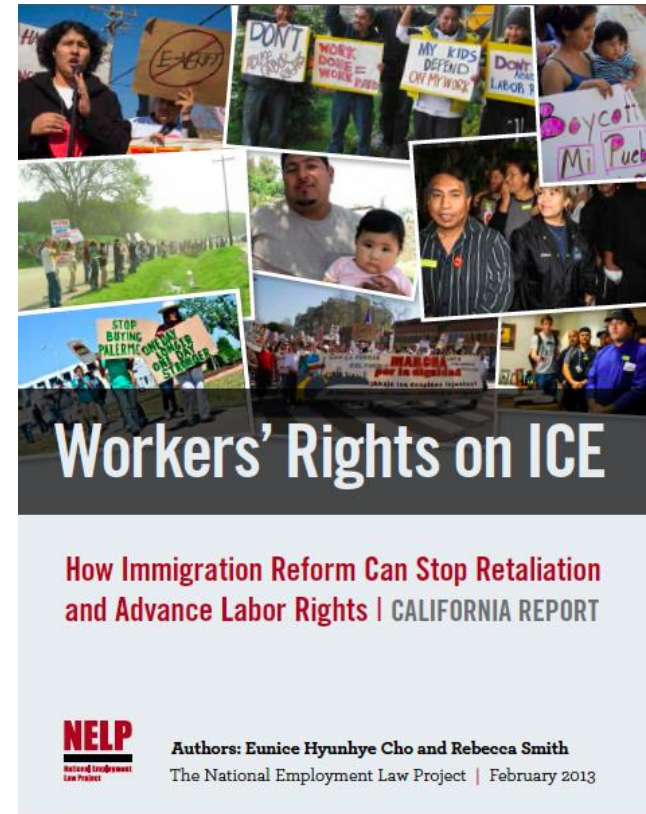
- 10 million immigrants live in California
- Estimated 2.6 million people, or 7% of Californians, are undocumented
- **1 in 10 workers in California is undocumented** (1.85 million workers)



Source: Pew Hispanic Center, *Unauthorized Immigrant Population: National and State Trends* (2011)

Profile of Immigrant Workers in California

- Low-wage immigrant workers in agriculture, construction, manufacturing, service industries
- **76%** of undocumented workers surveyed **worked off the clock without pay; 85% did not receive overtime**
- 29% of CA workers killed in industrial accidents are immigrants



Source: Public Policy Institute of California, *At Issue: Illegal Immigration* (2011); Ruth Milkman et al., *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low Wage Workers* (2010); AFL-CIO, *Immigrant Workers at Risk: The Urgent Need for Improved Workplace Safety and Health Policies and Programs* (2005)

California Protections for Immigrant Workers

California SB 1818:

“immigration status is irrelevant” for
**“purposes of enforcing state labor and
employment laws”**

—Cal. Lab. Code § 1171.5; Cal. Civ. Code § 3339; Cal. Gov. Code § 7285;
Cal. Health & Safety Code § 24000.

Retaliation Against Immigrant Workers

- 1) Employers **call local police, leading to deportation proceedings**, due to expansion of immigration enforcement at local level.
- 2) Employers threaten to or **call ICE directly**.
- 3) Employers “self-audit” by **re-verifying workforce during labor dispute**.
- 4) Employers use **E-Verify** in retaliatory fashion.

The Face of Unfair Retaliation: Immigrant Workers



Garden Grove, CA (2012)

After Jose Ucelo Gonzalez, a day laborer, requested his day's pay, his employer refused, and **filed a false police report for robbery**, leading to his arrest. An ICE hold was placed on Gonzalez, which led to deportation proceedings.



San Jose, CA (2013)

After California Labor Commissioner found that an **employer owed an immigrant worker over \$50,000 for unpaid wages**, employer visited the worker's home multiple times, harassed him, and **threatened to call ICE.**

The Face of Unfair Retaliation: Immigrant Workers

- Expansion of immigration enforcement allows **employers to call police** and falsely accuse workers of crimes, **leading to deportation proceedings.**
- Immigrant workers end up in ICE custody and deportation proceedings due to immigration holds under **Secure Communities.**
- ICE deported **90,092 Californians** between 2008-2012 under Secure Communities; **56 %** had no prior criminal record, or very minor offenses.

Retaliation Against Immigrant Workers



San Francisco Bay Area (2012)

Employer announces that it will join the voluntary E-Verify program after workers try to organize a union.



Pomona, CA (2011)

Workers who try to organize a union are **fired after employer decides to “re-verify”** their work authorization documents.

Retaliation Against Immigrant Workers

Employers threatened
to call ICE in:

- **50% of organizing campaigns** with majority undocumented workers
- 41% of organizing campaigns with majority recent immigrants



Source: Michael Wishnie, *The Border Crossed Us: Current Issues in Immigrant Labor*, 28 NYU Rev. L. & Soc. Change 389, 391 (2004).
Based on survey between 1999-2003. Photo: David Bacon.

Retaliation Against Immigrant Workers

- Employers **improperly conduct I-9 self-audits** after employees file workplace-based complaints or in midst of labor dispute.
- Employers **misuse enrollment in E-Verify** to intimidate or retaliate against workers.

[AB 1236]

OMB No. 1615-0047 Expires 08/31/12
Department of Homeland Security
U.S. Citizenship and Immigration Services
Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the document has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fine for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A permanent resident of the United States (see instructions)
- A lawful permanent resident (Alien # _____)
- An alien authorized to work (Alien # or Admission # _____ until expiration date, if applicable - month/day/year)

Employer's Signature _____ Date (month/day/year) _____

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature _____ Print Name _____
Address (Street Name and Number, City, State, Zip Code) _____ Date (month/day/year) _____

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

Document #	List A	OR	List B	AND	List C
Document title:					
Issuing authority:					
Document #:					
Expiration Date (if any):					
Document #:					
Expiration Date (if any):					

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative _____ Print Name _____ Title _____
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) _____ Date (month/day/year) _____

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable) _____ B. Date of Birth (month/day/year) (if applicable) _____

C. If employer's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title	Document #	Expiration Date (if any)
_____	_____	_____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative _____ Date (month/day/year) _____

Form I-9 (Rev. 08/07/09) Y Page 4

Next Steps: How Can California Protect Immigrant Workers from Unfair Retaliation?

Legislative Action:

- Strengthen California's **protections against employer retaliation.**
- **Increase resources** for state labor agencies to fight employer retaliation.
- Pass the **TRUST Act.**
- **Prohibit threats** to report a worker's immigration status.



Next Steps: How Can California Protect Immigrant Workers from Unfair Retaliation?

Administrative Action:

- Strengthen CA DFEH and CA DLSE **U visa certification protocol**.
- Establish a **strike force** to fight employer retaliation.
- Reinforce the **firewall between immigration and labor law** enforcement.

