

# Sometimes Breaking the Law Isn't a Crime

by Mike Prokosch and Angela Orlando

"They crossed the border illegally," we hear. "They have no right to be here. They're criminals. Round them up and ship them back. And while we're at it, let's punish anyone who helps them too."

This way of talking makes the immigration dilemma harder to solve. Undocumented immigrants and U.S. natives share many values and interests: we want to work, raise our families, and improve our lives. With such common ground we should be able to find common solutions that work for everyone. But we can't get there if we label undocumented immigrants law-breakers. Either you're for the law or you're for the law-breakers.

Yes, laws must be upheld and respected. But, laws are not perfect. They come out of a particular society at a particular time. When times change, people change the law.

Not so long ago, it was legal to torture people to death to see whether they were witches or not. We don't do that anymore. It was also legal to enslave people from Africa, split up their families, sell mothers here and children there. Slaves and their allies the Abolitionists spoke, wrote, marched, and broke the law by escaping or hiding slaves. It took almost a century but the country finally abolished slavery.

But black people still weren't free. New laws excluded them from the rights and jobs that white people had. Rosa Parks is a heroine now, but in 1955 she was a law-breaker when she refused to give up her seat on a bus. Again, it took many years and thousands of people—speaking, marching, and breaking the law—to create laws that were just.

Not all laws deserve our respect and obedience. Laws must be challenged when they violate the basic rights and dignity of every human being. We are not advocating that people break all

laws. We are urging people to reflect on the wisdom and morality of our current immigration laws.

Looking at laws that determine who gets into the U.S. are a good place to start. Today's immigration policies make it very hard to get into this country legally. Lots of people say that all immigrants should "wait in line" like everyone else. "Everyone would stand in line if there *was* a line, if there was a system," says Kelly Finchan, President, Irish Lobby for Immigration Reform. If you're poor and low skilled or if you don't have a relative who is a legal resident or a U.S. citizen, your chances of coming here legally are very slim. And even if you do, you may have to wait 10 or more years to get a visa.

Assuming you don't have a relative here, your other option is to get a work visa. According to a 2005 report by the Immigration Policy Center, there are five kinds of work visas that lead to permanent residency. Of those five, only one type of visa is for workers in "occupations that require less than two years of higher education, training or experience." Only 5,000 of those visas are given out per year. Standing in this kind of line could take a lifetime. There are 16 types of temporary immigrant visas—allowing people to come work in the U.S. but not to get residency. Only two types of these are available for workers with little or no formal training. The reality for Mexican workers, and many others from poor nations, is that very few visas are available—the "proper channels" just don't exist for them.

On the one hand, we want their labor. Our economy has a demand for low-skilled labor that can't be met with current immigration policy. On the other hand, we don't want to give poor, unskilled immigrants the chance for permanent residency. Undocumented immigrants—fleeing unimaginable poverty, risking their lives, and often

leaving their families behind—walk across the border because they don't have other options. Just what kind of crime is it to find employment so you can feed your family?

Immigrants' rights supporters are not advocating that anyone who wants to come to the U.S. should have the right to enter. They are advocating that all human beings be treated fairly and without discrimination—no matter what their income, skill, or education level. Right now that's just not the case. We must stand up to laws that keep the privilege of immigration in the hands of few.

---

*Angela Orlando is the editor of The Change Agent.*

*Mike Prokosch leads workshops on globalization, immigration, and the U.S. economy for unions and community organizations. He works at the Labor Extension Program at the University of Massachusetts Lowell.*

### What the Law Says

Living in the United States without government permission is a violation of U.S. civil laws, not criminal laws. A civil offense is generally not considered as serious as a criminal offense and the consequences are different. A criminal offense is something that results in a punishment such as being sent to jail because of what you did. The offense of living in the U.S. without permission is similar to not filing income taxes or speeding because it is a civil law violation. For example, if you speed you may pay a fine, but typically you don't go to a criminal court, you are not tried by a jury, you don't get sentenced to jail, you don't have a record, and you are not considered a danger to society. Undocumented immigrants who got to the U.S. by crossing the border without detection or by overstaying their visa can be put in detention as part of the deportation process, but this is not a punishment for a crime the way a jail sentence is—it is only to make sure they attend their deportation hearing.



*Immigrants marching in March 2006*

Jonathan Michosh

Sneaking across the border is currently a criminal misdemeanor that can result in six months in prison. Some elected officials would like to make it a felony to live in the United States without authorization. What is the difference? A misdemeanor as opposed to a felony is typically a lesser crime like negligent driving (hitting a building, for example). A felony is typically more serious, for example burglary or murder. Often a felony has to be punished by at least one year in jail.