

Handout 1.5 - What Part of “Illegal” Don’t You Understand?

It sounds very simple but there is actually a great deal of confusion around the term “illegal immigrant.” Being in the country without documentation is actually a civil offense, much like exceeding the speed limit while driving. If you’re going 50 mph in an 35 mph zone, you are breaking the law, but does that make you an “illegal driver”?

Due to the dysfunction of the current U.S. immigration system as explained in the previous sections, family members face years of separation and workers face years of waiting before they can find employment to support their families. In both cases, the situation is untenable, especially when there are young, dependant children involved. For that reason, many people choose to enter or remain in the country without documentation.

Much of the discussion around illegal immigration has centered around the idea of people sneaking across the border. The media portrays people with ladders climbing over barbed-wire fences or tunneling under them. The images convey a sense of criminal activity. Indeed, over half of the estimated 11 million people currently in the country without documentation entered clandestinely. However, almost half – an estimated 45% - entered the country legally and then overstayed their visas[1]. These are workers who, as stated in the previous section, leave their sponsoring employers in order to escape exploitation. They are students who have come to the U.S. for college or graduate school and then found love and work here. They are family members visiting their loved ones on tourist visas who then cannot bear to part. In short, the vast majority of “illegal immigrants” are people like you and me, not criminals.

But they are breaking the law. Doesn’t that make them criminals by definition?

Not necessarily. Unless they are committing some other activity at the same time that actually is criminal – such as smuggling or identity fraud – even those who are climbing over fences are not committing a crime. Legally speaking, being in the country without documentation is a civil offense. What “illegal immigrants” are “guilty” of is not having the necessary paperwork.

Assistant Homeland Security Secretary John Morton is currently head of Immigration and Customs Enforcement (ICE). As he stated in a Feb 2010 interview, “The immigration laws are civil in nature.... For example, if you enter the country on a visa and you overstay your visa, that is a civil but not a criminal offense. There is some overlap. Sometimes you are here unlawfully and you’re also guilty of a crime. But it is not one to one.” He added, “Generally speaking, if you’re being deported and you’re being detained for it, it’s for a civil infraction and not a criminal one.”[2]

The same view was upheld by Homeland Security Secretary, Janet Napolitano in a CNN interview.[3]

In fact, deportation or removal proceedings are conducted in civil court, not criminal court, and the punishment is deportation, not imprisonment. Undocumented immigrants found to be in violation of immigration laws are officially detained only while our immigration system decides whether they have a right to stay in the United States.

Many U.S.Americans mistakenly believe that all undocumented immigrants are by definition criminals, which is understandable. First, there are the images of the militarized border that connote crossing as an illegal activity. Secondly, we continually hear the term illegal immigration, illegal immigrant, illegal, illegal.... Third, while detained undocumented immigrants are officially held in **non-criminal** custody, due to overcrowding and privatization, over half of the immigrants in detention now are physically housed in private prisons or county jails. (More about this in week five.) All of these things combined create the sense that undocumented immigrants are criminals. It's no wonder that people are confused!

It is for this reason that many people and organizations, including the UUA, advocate the use of the term "undocumented immigrant" over "illegal immigrant."

References

1. <http://www.npr.org/templates/story/story.php?storyId=5485917>
2. <http://pajamasmedia.com/blog/illegal-aliens-are-not-criminals/>
3. <http://transcripts.cnn.com/TRANSCRIPTS/0904/19/sotu.01.html>