DEFENDING THE RIGHTS OF THE UNDOCUMENTED: A CHALLENGE TO THE CIVIL RIGHTS MOVEMENT AND LOCAL GOVERNMENTS

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The passage of the the Immigration Reform and Control Act of 1986[1] and the practices of the INS have forced the civil rights movement to take up the defense of the undocumented and to look to local governments to play an important role in that defense. Those of us who profess to protect civil rights cannot afford once again to discriminate against some arbitrarily selected group of persons living in the United States in order to protect other, somehow "more deserving" or "true" Americans. The civil rights movement can ill afford to treat undocumented persons as it treated Japanese Americans during World War II. Similarly, it cannot regret its error only when too many years have passed to rectify the problem.

In 1942, President Franklin Roosevelt signed Executive Order 9066,[2] which resulted in the forced incarceration of 110,000 Japanese-Americans, seventy percent of whom were United States citizens. Held without charges or trials for three years,[3] these Japanese-Americans lost billions of dollars in property, and thousands of lives were shattered for decades.[4] This wholesale violation of civil rights, while shocking and degrading, did not shock the social conscience of a society that had legalized racism and that shared a legacy of both state-practiced and state-approved violence to enforce that racism.

Succumbing to the racist "wartime necessity" arguments advanced by General John Dewitt and the Justice Department,[5] the national office of the American Civil Liberties Union ("ACLU") vacillated on whether to represent

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1. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified in scattered sections of 8 U.S.C.) [hereinafter IRCA].

2. Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942). Issued in 1942, "Executive Order 9066 ... gave to the Secretary of War and the military commanders to whom he delegated authority, the power to exclude any persons from designated areas in order to secure national defense objectives against sabotage and espionage ... Most of the evacuees were reduced to abandoning their homes and livelihoods and to being transported by the government to relocation centers' in desolate interior regions of the west." COMM. ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS 97TH CONG., 1ST SESS., PERSONAL JUSTICE DENIED 49 (1982) (report to Congress on domestic internment during World War II) [hereinafter COMMISSION REPORT].

3. *Id.*

4. *See id.* at 11, 110-11.

5. *See* Korematsu v. United States, 584 F. Supp. 1406 (N.D. Cal. 1984) (petition for writ of error *coram nobis*). *See also* COMMISSION REPORT, *supra* note 2, at 66.

those arrested under the curfew and internment laws, among them Fred Korematsu. The ACLU decided against challenging Executive Order 9066, a decision that forced the Northern California affiliate of the ACLU, representing Korematsu, to break away from the national organization for nearly thirty years.[6] Many civil rights lawyers of the 1930's, some of them involved in labor organizing and in work against race discrimination, refused to oppose the forced evacuation.[7] Consequently, Fred Korematsu,[8] Min Yasui,[9] and Gordon Hirabayashi[10] stood nearly alone before the United States Supreme Court, supported only by a handful of civil libertarians and church activists.[11]

For three decades the public, including the Japanese-American community, remained relatively silent, quieted by the failure of the civil rights community to challenge this harsh, blatant act of racism. Not until the movement for racial equality had gained momentum could the conscience of the general public at least partially repudiate the concentration camps.[12]

Thirty or forty years is much too long to wait to learn these lessons. The civil rights movement can ill afford to make the same mistake when the rights of unpopular people must be protected. The civil rights movement must begin to take up more actively the defense of the undocumented. Local governments must play an important role in that defense.

For those who espouse civil rights and who advocate social change through the law, the defense of the undocumented will pose serious challenges,

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6. P. IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES 128-38, 254-61 (1983).

7. Professor Irons notes: "Leaders of the American Civil Liberties Union bear much of the blame for the outcome of the Japanese-American cases .... In challenging the legal basis of the criminal charges filed in [*Hirabayashi* and *Korematsu*], the ACLU lawyers initially attacked the constitutionality of the presidential order that authorized the internment program .... [R]esearch in the files of the ACLU and its West Coast branches disclosed that personal and partisan loyalty to Franklin D. Roosevelt, who signed this order, led the ACLU's national board to bar such a constitutional challenge in subsequent appeals. This policy decision, which triggered a fierce internal battle within the ACLU, crippled the effective presentation of these appeals to the Supreme Court." *Id.* at ix.

The National Lawyers Guild recently acknowledged its failure to challenge Exec. Order No. 9066:

> In the Guild's wide-ranging struggle against racial discrimination during the war years, there was one sad and glaring "omission." The organization did nothing to protest the illegal internment of thousands of Japanese Americans that occurred immediately after Pearl Harbor. Guild members on the West Coast later fought many battles to prevent the wholesale "legal" theft of real property from Japanese-American internees, but the Guild's initial failure to protest the long and brutal assault on an entire community was undoubtedly the organization's "least glorious moment."

NAT. LAWYERS GUILD FOUND., A HISTORY OF THE NATIONAL LAWYERS GUILD 1937-1987 18 (1987) (50th Anniversary Convention Booklet)(quotations added).

8. Korematsu v. United States, 323 U.S. 214 (1944).

9. Yasui v. United States, 320 U.S. 115 (1943).

10. Hirabayashi v. United States, 320 U.S. 81 (1943).

11. The American Friends Service Committee, its affiliate organizations and other church groups were among the few organizations that spoke out against the forced internment. P. IRONS, *supra* note 6, at 90.

12. *See generally* COMMISSION REPORT, *supra* note 2.

pitting those advocates against a public and government more than willing to deny millions of individuals basic democratic and civil rights.[13] Those who advocate on behalf of undocumented immigrants ally themselves with a sector of American society that is often black or Hispanic, that speaks no English, that has little money, and that works in the worst possible conditions. These people live in fear of deportation, afraid to assert what rights they have. We blame them for every social ill: pollution, unemployment, overpopulation, disease and terrorism.[14]

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13. For example, Legal Services Corporation ("LSC") regulations bar the use of its funds in the representation of undocumented people. 45 C.F.R. § 1626.3 (1988). The federal government denies Aid to Families with Dependent Children ("AFDC") to the undocumented. 42 U.S.C. § 602(a)(33) (1982). In California, undocumented people, unless granted work authorization by the INS, are considered "unavailable for work" and, therefore, ineligible for unemployment insurance benefits. Cal. Unemployment Ins. Code § 1253 (West 1986); Alonso v. State of California, 50 Cal. 3d 242, 123 Cal. Rptr. 536 (1975), *cert. denied*, 425 U.S. 903 (1976).

Unemployment insurance is not a public benefit. The Reagan Administration's Department of Housing and Urban Developement ("HUD") attempted to exclude undocumented immigrants over 18 years old—and in effect their families—from public housing and from public housing assistance. 24 C.F.R. §§ 200, 215, 235, 236, 247, 812, 880-84, 886, 912 (1988). *See also* McGrew, *The Alien Rule: No More Room at the Inn*, 15 NATIONAL LAWYERS GUILD IMMIGRATION NEWSLETTER 3 (May-June 1986).

Litigation is pending challenging these regulations. *See Yolano-Donnelly Tenant Association v. Pierce*, No. CIV S-86-0846 MLS (E.D. Cal. July, —1986). On January 13, 1988, the Office of the Secretary of HUD in a final rule withdrew its final rule of April 1, 1986, the subject of the litigation in *Yolano*. 53 Fed. Reg. 842 (1988). "The April 1986 ruling never has been made effective because of litigation and Congressional action." *Id.* A preliminary injunction was issued against the April 1, 1986 rule in *Yolano*. *Id.* at 845.

It appears, however, that new restrictions on the rights of undocumented aliens and their families will be promulgated as regulations in the near future to implement Section 214 of the Housing and Community Development Act of 1980. Section 214, as amended, prohibits the Secretary from making financial assistance available under the United States Housing Act of 1937 (Public and Indian Housing and Section 8 Housing Assistance), sections 235 and 236 of the National Housing Act (Homeownership and Interest Reduction programs, respectively,) or section 101 of the Housing and Urban Development Act of 1965 (Rent Supplement), for the benefit of an alien who is not a lawful permanent resident of the United States or an alien whose unlawful residence since before January 1, 1982, has been adjusted to that of a lawful temporary resident (under Section 245A of the Immigration and Nationality Act). 42 U.S.C. § 1436a (1982 & Supp. IV 1986).

Section 214 was originally enacted in 1980. The 1980 statute prohibited HUD from providing housing assistance to "nonimmigrant student-aliens." HUD implemented the statute by issuing regulations providing that, in the covered programs, nonimmigrant student-aliens were ineligible for assistance. A definition of "nonimmigrant student-aliens" was added to all the appropriate program regulations. When section 214 was revised by Congress in 1981, nonimmigrant student-aliens no longer were specifically mentioned. Instead of naming one category of aliens who were not to receive assistance, the revised statute provides that no aliens except those listed in the statute (as lawful permanent residents) were to be eligible for assistance. *Id.* Nonimmigrant student-aliens are not included in any of the eligible categories and, therefore, are ineligible under the statute for assistance. When effective regulations are issued to implement section 214, as amended, the statutory prohibition against the Secretary providing assistance for ineligible categories will be implemented.

14. *See generally* CENTRAL OFFICE, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE ALIEN TERRORIST AND UNDESIRABLES: A CONTINGENCY PLAN (1986) [hereinafter CONTINGENCY PLAN]. *See* Statement of Althea Simmons, National Association for the Advancement of Colored People, before the Subcomm. on Immigration of

In 1987, in a joint effort with the FBI and the Los Angeles Police Department, the INS arrested eight Palestinian men and one Kenyan woman at gunpoint in their homes. The police and federal agents interrogated and shackled the defendants, placed them in isolation cells in a maximum security prison outside of Los Angeles and threatened them with deportation. The authorities brought no charges against them but nevertheless detained them for two weeks. Their supposed offense was distribution of pro-Palestinian literature, literature available on campuses and in bookstores.[15]

To facilitate this and other types of repressive action across the country, the INS has sought the cooperation of local governments. For example, the INS recently constructed a major prison in isolated Oakdale, Louisiana for the detention of suspected terrorists. The INS solicited the local government's support for this prison by promising that the facility's presence would create jobs for the depressed area.[16] This illustration suggests that the federal government's response to the immigration issue will be anything but open-minded.

Nevertheless, in response to activists from the civil rights movement, churches, labor organizations, minority groups, and the immigrant and refugee community, various state and local governments have stepped forward to challenge the INS's xenophobia and to establish a more humanitarian approach to the plight of the undocumented.[17] Carrying out his commitment to make Chicago a city that actively supports civil rights, the late Mayor Harold Washington issued the first Executive Order in the nation granting full benefits, opportunities and services to all residents of Chicago, regardless of immigration status.[18] The Order prohibits all city employees and departments from assisting in the investigation of the residency status of any person or disseminating such information unless required to do so by legal process.[19]

Due to active pressure by community groups, similiar guidelines were subsequently issued by the Mayor of New York City, Ed Koch;[20] the City

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the Senate Judiciary Comm. (June 18, 1985), *reprinted in* 62 INTERPRETER RELEASES 590 (1985) [hereinafter Statement of Althea Simmons]. *See also* Statement of Dr. M.Rupert Cutler, Environmental Fund, before the Subcomm. on Immigration of the Senate Judiciary Comm., June 17, 1985, *reprinted in* 62 INTERPRETER RELEASES 589 (1985).

15. *See* Lewis, *Is This America?*, N.Y. Times, Feb. 10, 1987, at A35, col. 5 (op-ed). *See also Is This Case for Real?*, L.A. Times, Feb. 10, 1987, at II4, col. 1 (editorial).

16. *See* CONTINGENCY PLAN, *supra* note 14, at 10.

17. *See infra* notes 21-24 and accompanying text.

18. Chicago, Ill., Exec. Order No. 85-1 (Mar. 7, 1985) (on file with the New York University Review of Law & Social Change). Not coincidentally, the first mayor of a major city to proclaim a "non-cooperation" relationship with the INS in order to protect the undocumented was a Black American elected on a program of progressive reform and full equality.

19. *Id.*

20. New York N.Y., City Council Res. No. 1643 (Sept. 26, 1985) (on file with the New York University Review of Law & Social Change). *See also* Mayoral Memorandum from Edward I. Koch to All Agency Heads (Oct. 15, 1985) (outlining City policy on undocumented aliens) (on file with the New York University Review of Law & Social Change) [hereinafter N.Y.C. Mayoral Memorandum].

Council of Oakland, California[21] and by a significant number of other local governments.[22]

Despite the unfounded clamor that immigrants were taking away jobs from citizens, city governments across the nation recognized that undocumented persons must have full protection under the law. Only when undocumented people know that the cities in which they live will not act as agents of the INS will they be able to assert their rights as victims of crime or to cooperate with authorities as witnesses without fear of deportation.[23] Furthermore, only when undocumented people are provided the essential city services without regard to immigration status can they receive their due for the contributions they have given to their communities and for the taxes they have paid.

The eighteen city of refuge or sanctuary resolutions passed so far highlight the plight of refugees from Central America, Haiti, and South Africa, educate city governments about the plight of immigrants and correct misconceptions about the undocumented. In Oakland, California, where the city population is fifty percent black and where the unemployment rate is high,[24] the predominantly black city council premised its City of Refuge resolution in part on the action of ten states in the 1850s to pass "Personal Liberty" laws, prohibiting their cooperation with the federal government's efforts to find and to return fugitive slaves.[25] The council's humanitarian approach to the law

21. Oakland, Cal., City Council Res. No. 63950 (July 8, 1986) (on file with the New York University Review of Law & Social Change). *See also* Oakland, Cal., Administrative Instruction No. 323 (Oct. 31, 1986) (on file with the New York University Review of Law & Social Change) [hereinafter Oakland, Admin. Instr.].

22. *See generally* Sacramento, Cal., City Council Res. No. 85-973, (Dec. 17, 1985), resolution from Cambridge, Mass. and San Francisco of Refuge Resolution, December 18, 1985 (on file with the New York University Review of Law & Social Change). "City of Refuge" or "sanctuary" resolutions, expressing similar policies of "non-cooperation" with the INS, have also been passed in St. Paul, Minnesota; Madison, Wisconsin; Los Angeles, California; Seattle, Washington; and Berkeley, California (on file with the New York University Review of Law & Social Change).

23. *See* N.Y.C. Mayoral Memorandum, *supra* note 20.

24. In November 1987, the unemployment rate for Oakland was 6.2 percent, the highest rate in Alameda County. In comparison, the next highest rate in the county was 4.7 percent for Hayward, while Oakland's neighbor, Berkeley, had a rate of 3.1 percent. San Francisco had an unemployment rate of 4.1 percent. CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT, MONTHLY LABOR FORCE DATA FOR COASTAL AREA, NOVEMBER 1987, REPORT 400R-COASTAL (1987). In 1986, when the Oakland City Council adopted its City of Refuge Resolution, the average unemployment rate was 8.2 percent and in 1985, 9.1 percent. In 1983 and 1984, the rates were 12.7 percent and 9.6 percent respectively. Letter from Don Jen, Office of Economic Development and Employment, City of Oakland (Jan. 11, 1988) (on file with the New York University Review of Law & Social Change).

25. *See* Oakland, Admin. Instr., *supra* note 21. In addition, the City Council also acknowledged that the United States supported the United Nations' adoption of the Universal Declaration of Human Rights which states in part:

> Article 14 (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
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> Article 23 (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
>
> (3) Everyone who works has the right to just and favorable remuneration en-

and appreciation for civil rights provided the necessary framework for their deliberations.

Specific legal authority for these resolutions or executive orders is found in *Gonzales v. City of Peoria*,[26] a case involving the assistance and cooperation of local law enforcement officials with the Border Patrol in the apprehension of migrant farmworkers in a border town. The Ninth Circuit Court of Appeals held that federal constitutional law did not preclude local enforcement of the criminal provisions of the Immigration and Nationality Act, which imposes criminal liability on any person who enters the United States without appropriate documentation.[27]

Although the issue of civil enforcement was not squarely before it, the court noted in the strongest possible language short of a holding that the civil provisions of the Immigration and Nationality Act constitute the kind of pervasive scheme that creates exclusive federal jurisdiction.[28] While *Gonzales* emphasizes that an alien's illegal *presence* in the United States violates the Act, the system of federal regulation undeniably precludes enforcement of the Act's *civil* provisions, including length of stay, residence status and authorized entry provisions, by local police.

Following *Gonzales*, the California Attorney General concluded, "There is no duty for state and local officials to enforce the *civil* aspects of the federal immigration laws."[29] Further, no California statutory authority imposes any affirmative duty on local California officials to arrest or to report persons who are known to be present in this country illegally by virtue of violating federal immigration laws.[30] Because the actual offense of illegal entry is one of "limited duration,"[31] local officers whose jurisdiction does not extend to the immediate area of the border have no authority to arrest. Deportation proceedings are civil in nature, and civil enforcement "may well be preempted by federal authorities."[32]

In 1978, former United States Attorney General Griffin Bell issued the following guidelines regarding the local enforcement of the immigration laws: "Do not stop and question, detain, or place 'an immigration hold' on any persons not suspected of crimes, solely on the grounds that they may be de-

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suring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

International Bill of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 at 71-79 (1948).

26. 722 F.2d 468 (9th Cir. 1983).

27. *Id.* at 475.

28. *Id.*

29. Judges and Peace Officers on Persons Illegally Entering the United States, 67 Ops. Cal. Att'y Gen. 311, 336 (1984).

30. *Id.* at 334 ("A foreign national commits no continuing violation of [federal immigration law] merely by being present in this country.")

31. *Id.* at 336.

32. *Id.*

portable aliens."[33] Although recent pronouncements of federal policy depart somewhat from these bluntly worded directives, focusing instead on the "valuable support" local agencies afford,[34] municipalities rekindle the civil libertarian ways of the Carter Administration by issuing refuge and sanctuary resolutions.

The power of these sanctuary resolutions and executive orders cannot be underestimated.[35] For example, countless battered or abused undocumented women and children bear the indignities and horrors of domestic violence and social discrimination because they fear that calling the police would result in their deportation.[36] However, under the resolutions and executive orders, these victims (and other victims of crime) are encouraged to contact the appropriate authorities and to seek necessary benefits and services throughout such emotionally and physically critical periods. In light of this authority, city resolutions and executive orders specifically instruct city employees, including the police, to refrain from asking about immigration status and from disseminating such information if attained.

Resolutions and executive orders provide some protection and signal a turnabout in attitudes, at least on certain government levels, toward the undocumented. However, we need more public concern for defending the rights of these persons. Even the traditional civil rights movement finds itself unsure as to whether undocumented people should have full rights, and certain sectors of this movement have at times believed the Reagan Administration's argument that undocumented workers take away jobs from black youth. For example, in the three congressional sessions in which versions of the Simpson-Mazzoli or Simpson-Rodino bill had been introduced, the National Association for the Advancement of Colored People ("NAACP") testified in support of employer sanctions based on the belief that undocumented workers deprive black youth of employment.[37] Such statements ignore black unemployment which has repeatedly been more than double that of whites,[38] averaging above forty percent, since long before the immigration debate became so heated.[39] When the NAACP supports employer sanctions based on the belief that undocumented workers "take away" jobs from black youth, they stand on the same side of the barricades as an administration which black civil rights leaders have sharply criticized for its failure to provide significant opportunities to black youth and for its hostile posture toward the advancement of civil

33. D. KESSELBRENNER & L. ROSENBERG, IMMIGRATION LAW AND CRIMES § 8.1 (1987).

34. *Id.*

35. *See* N.Y.C. Mayoral Memorandum, *supra* note 20.

36. D. Jang, Introductory Remarks at a Seminar on Domestic Violence and the Rights of Immigrants and Refugees, Golden Gate University (Sept. 8, 1986) (on file with the New York University Review of Law & Social Change).

37. *See* Statement of Althea Simmons, NAACP, *supra* note 14.

38. Dingle, *Finding a Prescription for Black Wealth*, BLACK ENTERPRISE, Jan. 1987, at 38, 48.

39. *Facts and Figures: Teen Unemployment*, BLACK ENTERPRISE, Aug. 1986, at 27.

rights.[40]

What will it take to convince the majority of the civil rights movement to advocate for the rights of the undocumented? Advocates must broaden the viewpoint of civil rights leaders and must not allow their tasks to be defined by nativists. They must then learn about the conditions of workers all over the world, especially in those countries that have sent, and will continue to send, immigrants to this country: the Philippines, Korea, Mexico, El Salvador, Guatemala, the Caribbean nations, South Africa, and many others. Mexico, the Philippines and El Salvador have sent the largest number of immigrants to the United States in the past five years, indicating only too clearly that United States foreign policy shapes immigration and that immigration laws reflect that policy domestically.[41] When the civil rights movement advocates for the undocumented, it expresses an international solidarity opposed to United States foreign policy. International events will help to construct the standard for the defense of civil rights at home.

Second, immmigrant rights advocates must connect the defense of the undocumented to the past victories and battles of the movement. For example, the active mobilization of the civil rights community against apartheid in South Africa came fairly easily because of this country's struggle against its own racism. Leaders active in civil rights in the United States used the vivid and recent experience of blacks in the United States to remind the public of the intense pain and suffering caused by racism and called on that same public to express solidarity with black South Africans. In the same way immigrant rights advocates need to draw out the discrimination and abuse that undocu-

40. *See generally* NATIONAL URBAN LEAGUE, REPORT ON THE STATE OF BLACK AMERICA (1987).

41. As of January 1987, the number of active immigrant (permanent resident) visa registrants in the preference/nonpreference categories at consular offices was 2,052,676. A total of 381,530 were charged to Mexico and 380,244 were charged to the Philippines. (Ranked Nos. 1 and 2) U.S. DEP'T OF STATE, V VISA OFFICE BULLETIN NO. 103 (May 1987). As of January 1986, the total number was 1,903,475; 366,820 were charged to Mexico and 362,695 were charged to the Philippines. (Ranked Nos. 1 and 2) U.S. DEP'T OF STATE V VISA OFFICE BULLETIN NO. 86 (May 1986). These statistics indicate that many more immigrants will enter from these countries in the next few years through the legal immigrant visa process.

The number of preference and nonpreference visas issued from 1977 through 1984 to those born in Mexico was 140,813. 141,282 were issued to those born in the Philippines. The number of visas for immediate relatives (spouses, parents and unmarried minor children of U.S. citizens over 21 years of age) issued to Mexicans from 1977 through 1984 was 189,749. The number of similar visas issued to the Philippines for the same time period was 130,142. In the special immigrant category for the same time period, 573 visas were issued to Mexico and 2,488 visas were issued to the Philippines. Thus, the number of immigrant (permanent resident) visas issued to Mexico from 1977 through 1984 was 331,135; 273,912 similar visas were issued to Filipinos. U.S. DEP'T OF STATE, REPORT OF THE VISA OFFICE 40, 42, 59, 61, 64, 66 (1984).

These statistics do not include the hundreds of thousands of Mexicans and Filipinos who entered on *non-immigrant* (temporary) visas, under the catogory, for example of visitor, student, or one who overstayed. No accurate number of these people is available. There are over 500,000 Salvadorans in the United States, the vast majority of whom came after 1980. *See Salvadorans in the United States: The Case for Extended Voluntary Departure*, ACLU PUBLIC POLICY REPORT No. 1 (Dec. 1983).

mented people will face simply because of their immigration status and dark skin.

Not everyone, even within the civil rights movement, will accept that undocumented people have civil rights worthy of respect, and we should not be surprised at this. If we were to view the history of the United States as an outsider, we would probably conclude that in the United States, civil rights are an exception and the notion of equality an aberration.[42] Even the civil rights organizations that opposed the Simpson-Rodino bill were ambivalent about defending the full rights of the undocumented. Opponents of the the bill emphasized potential discrimination against citizens and lawful permanent residents because of employer sanctions, not the inherent right of undocumented people to work and the fact that undocumented aliens do not cause unemployment.[43] Several groups, it should be noted, also protested the expansion of the temporary workers program for fear that these workers would suffer abuse and would undermine efforts to protect laborers and to promote more reasonable working conditions.[44]

Political necessity on the part of mainstream civil rights organizations, who want to "maintain credibility" in Washington, D.C., and to appear "safe" to politicians, bar any explicit advocacy for the undocumented. Direct challenges to the political and ideological premises of the bill were scarce. As a result, the national debate was limited and relatively narrow in its scope. The statute contains no way to defend and to expand the rights of the undocumented except through the limited legalization program and the special agricultural worker program. In fact, civil rights groups at one time suggested increased enforcement of labor laws as an alternative to employer sanctions.[45] Without dismantling the bill's fundamental premises, exemplified by the positions of civil rights groups in the hearings on the bill, any legislative program to advance the rights of the undocumented will not receive a full hearing.

While the mass political movement to place the rights of the undocumented on the national agenda for social change is weak, though steadily growing, more advocates for social change must stake out an unpopular position in favor of undocumented aliens and defend it as publicly as possible. The goal must be to make full rights for the undocumented a popular cause, a just

42. Until the passage of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 42 U.S.C. § 2000(e) (1982), it was lawful for employers and unions to discriminate on the basis of race, national origin, color, religion, and sex. The Equal Rights Amendment has yet to be added to the United States Constitution.

43. *See Hearings on H.R.3080, The Immigration Control and Legalization Amendments Act of 1985, Before the Subcomm. of the House Comm. on Immigration, Refugees, and International Law, House Comm. on the Judiciary*, 99th Cong., 1st Sess. 111-56 (1985) (statements by Raul Yzaguirre, President, National Council of La Raza; Richard P. Fajardo, Acting Associate Counsel, Mexican American Legal Defense and Education Fund; and Joseph M. Trevino, Executive Director, League of United Latin American Citizens).

44. *See, e.g., id.* at 129-30 (statement by Richard P. Fajardo).

45. *Id.* at 119 (statement of Raul Yzaguirre). Employer sanctions will neither stop nor slow the flow of undocumented immigrants into this country. *Id.* at 122. (statement of Richard Fajardo).

demand, a human response to the misery and suffering of millions of human beings. As the history of the United States has shown, taking this position will be difficult. In the 1920s and 1930s, those who advocated equal rights for blacks were labeled "dreamers," "crazies," "nigger lovers," and "communists." Only after decades of organizing and countless sacrifices did the fight for racial equality become a popular cause. Similarly, even though women were finally "granted" the right to vote, the Equal Rights Amendment, which would assure full and equal rights for all women, has never been added to the United States Constitution.

Expansion of the rights of the undocumented will require an attack upon the more vulnerable provisions of the Immigration Reform and Control Act,[46] a demand for fair immigration legislation, and a strategy to use every opportunity to expose the injustices of the new law. Advocates for the undocumented must realize that while the new law provides some immediate relief for a portion of undocumented immigrants, it ultimately will usher in a whole new period of discrimination and civil rights violations. More importantly, advocates must not lose sight of the fact that the law codifies public sentiment favoring the restriction of the rights of undocumented immigrants.

From now through the next decade, millions of people will enter the United States illegally, forced by sheer necessity to escape the poverty and repression in their homelands, conditions created in part by United States foreign policy. Millions who entered after January 1, 1982,[47] including the vast majority of Central American refugees, have been left unprotected by the new law and instead have found themselves more vulnerable to exploitation by employers and to arrests and abuse by the INS. The civil rights movement can ill afford to vacillate on whether the undocumented should have full rights. To vacillate would be to abandon a large number of immigrants.

Immigrants have been discriminated against, disenfranchised, and forced to occupy levels of society reserved historically for those denied their civil rights: the poor, minorities and foreign-born citizens. When society denies rights on the basis of immigration status, it dredges up the "All-American" practice of denying rights on the basis of race, sex and national origin. The unfortunate example of the three-year incarceration of over 110,000 Japanese-Americans in the United States during World War II — Americans held with-

46. Some religious leaders have called for the repeal of employer sanctions and for noncompliance with the verification requirements. *See*, Malnic, *Violate Immigration Law, Priests, Nuns Urge Citizens*, L.A. Times, Sept. 12, 1987, § 2, at 1, col. 5. Under IRCA, the General Accounting Office is conducting a study regarding the discriminatory impact of sanctions. The results of that study could serve as the basis for the repeal of sanctions if Congress should so decide. 8 U.S.C. § 1324a(j), (k) (Supp. IV 1986). Civil rights groups are currently organizing methods to coordinate that documentation work. *See* Coalition for Humane Immigration Rights of Los Angeles, ACLU & MALDEF, JOB PROBLEMS (on file with the New York University Review of Law & Social Change).

47. Under IRCA, aliens who have maintained an illegal status since January 1, 1982, can apply for lawful temporary resident status (and eventually lawful permanent resident status) through the legalization program. IRCA, § 201, 8 U.S.C. § 1255a (1982 & Supp. IV 1986).

out any hearings and, importantly, without significant public opposition to their incarceration — only serves as an all-too-painful reminder of what can happen when the social categories of our society are given life at the cost of basic human rights.