

Lawsuit to Determine Rights of Illegal Aliens

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Body

Three years ago, Alicia Castrejon, a young, undocumented worker from the state of Michoacan, Mexico, had a job counting and packaging tortillas in Farmersville, a small town about 30 miles south of Fresno in California's central agricultural area.

After she took a disability leave for pregnancy, she says, she was denied her job when she tried to return.

Today, lawyers who specialize in immigration and in employment problems, unions and civil rights organizations around the country are watching the progress of a lawsuit brought by the Equal Employment Opportunity Commission here on Mrs. Castrejon's behalf against her former employer.

Implications for Millions

The case is expected to determine whether millions of undocumented aliens are protected by Federal laws against sex and race discrimination in employment while they go through the process of seeking amnesty under last year's sweeping immigration law.

On Monday in Federal District Court in Fresno, Judge Robert E. Coyle will hear arguments on a motion brought by the former employer, Tortilleria La Mejor, to dismiss the lawsuit on the ground that under the new immigration statute, illegal aliens do not enjoy the protection of Federal laws governing the workplace, including Title VII of the Civil Rights Act of 1964.

"We expect this to be a major decision establishing that all individuals working in this country are entitled to protection from race and sex discrimination regardless of immigration status," said Michael Rubin, a San Francisco lawyer who has filed a friend-of-the-court brief in the case on behalf of several organizations. They include the International Ladies' Garment Workers' Union, the Service Employees International Union, the American Civil Liberties Union and the Mexican-American Legal Defense and Education Fund.

While the Immigration Reform and Control Act of 1986 prohibits discrimination based on citizenship status, it is silent as to whether undocumented alien workers who have applied for amnesty, as Mrs. Castrejon has, are protected by the civil rights act in the period before a decision is reached on whether they can become citizens.

Lack of Guidance Cited

I. Singh Aulakh of Visalia, Calif., the lawyer representing La Mejor, said that because of the lack of guidance in the new law, "the courts will have to resolve the issue of what rights we're going to give an illegal alien."

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Mrs. Castrejon initially brought a complaint to the commission charging sex discrimination after she was denied her former job when she completed her disability leave.

She was eventually reinstated in 1986 at the tortilla factory, which employs about 30 workers, but was subsequently discharged. She has filed another action with the commission, asserting that she was dismissed in retaliation for bringing the first complaint. That action is not an issue in the current **lawsuit**.

No court has ever ruled on the question of whether Title VII applies to undocumented workers. A number of court rulings decided before the immigration law was passed have held that undocumented workers are covered by other protective legislation governing the workplace like the National Labor Relations Act. Thus undocumented workers have been allowed to vote in union elections and file charges of unfair labor practices.

'Direct and Questionable Conflict'

But in a case decided last May in a Federal District Court in Birmingham, Ala., a judge cited the new immigration law as the basis for dismissing an action by an undocumented worker who asserted that he had been paid less than the minimum wage and denied overtime compensation.

Ruling that the Fair Labor Standards Act does not cover **illegal alien** workers, Judge William M. Acker Jr., said that to rule otherwise would be in "direct and unquestionable conflict" with the immigration law's policy of discouraging employment of **illegal aliens**.

That case is on appeal to the United States Court of Appeals for the 11th Circuit.

The Department of Labor has taken the position that **illegal aliens** are covered by the Fair Labor Standards Act.

In papers filed with the court in the California case, Francisco Cancino, a lawyer for the E.E.O.C. here, argued that if the court followed the reasoning in the Alabama case, it would "create a class of workers in the United States without labor law **rights** and civil **rights** protection."

In his friend of the court brief, Mr. Rubin argued that the Alabama case had been wrongly decided and the court should follow a 1987 ruling made in the Ninth Circuit, which includes California.

In that case, the National Labor Relations Board told a group of employees who had been discriminated against for engaging in union activity that because of the immigration law, they would have to prove lawful immigration status to collect back pay and be reinstated. The court rejected the argument, holding that the National Labor Relations Act applied regardless of a worker's immigration status.

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