

What Do Undocumented Workers, Al Capone, and the Jerusalem Cafe Have in Common?

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By [James M. Paul](#)

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The answer is “nothing really,” but the Eighth Circuit Court of Appeals successfully searched Al Capone’s vault to unearth the comparison in its recent opinion in [Lucas v. Jerusalem Cafe, LLC](#). When Capone claimed that he should not be legally required to pay taxes on money that he received illegally, that defense did not work for him. Nor did the employer’s defense in *Jerusalem Cafe*, essentially arguing that it should not have to pay minimum wages or overtime if it was illegal to employ the undocumented workers in the first place. And, you know when an opinion begins with a sentence describing how workers “toiled” for an employer and later refers to the employer’s version of events as a “fantastic story”—as this appellate opinion did—that the employees will prevail in the end.

In the first federal appellate court decision on the issue in over 20 years, the Eighth Circuit left no room for doubt that any work actually (and already) performed by undocumented and unauthorized workers must still be paid according to the requirements of the Fair Labor Standards Act (FLSA). The employer’s defenses in the case involved two basic issues: whether unauthorized workers could be “employees” or “employed,” as defined by the FLSA, and whether such workers had legal standing to bring a claim under the FLSA.

To make sure that the FLSA “does not allow employers to exploit any employee’s immigration status or to profit from hiring unauthorized aliens in violation of federal law,” the court summarily (in 18 pages) dismissed the employer’s arguments. The Eighth Circuit was clearly cognizant of the implications of its decision on the immigration reform debate. Quoting an Eleventh Circuit opinion, the court emphasized that its holding advances the purposes of federal wage and hour laws and immigration policy by “offset[ing] what

is perhaps the most attractive feature of [unauthorized] workers—their willingness to work for less than the minimum wage.”

The appellate court also quoted a comment from a congressional debate that the FLSA’s “definition of employee [is] the broadest definition that has ever been included in any one act.” Furthermore, despite numerous exceptions to the FLSA’s definition of “employee,” nowhere is there any indication of an exclusion for unauthorized aliens. So, the employer’s first defense was rejected.

Although the unauthorized workers might not have had “standing” to bring a claim for prospective or continued employment due to their work status, the court ruled, they still had the requisite level of legal standing needed to pursue their claims. The workers, who were paid an insufficient flat amount—in cash—each week regardless of the number of hours they worked, claimed that they were not effectively paid the minimum and overtime wages due to them for their work. Accordingly, the workers plainly fell within the “zone of interests protected or regulated by” the FLSA, and thus the court also denied the employer’s second argument relatively easily.

Interestingly, the federal district court initially precluded any evidence or testimony at trial concerning the workers’ immigration status because it was “irrelevant” to the extent they were seeking FLSA wages for work already performed. The ruling was later modified after both sides attempted to elicit testimony regarding the work status of the plaintiffs during trial. Nonetheless, the appellate court emphasized that providing prospective relief to any unauthorized worker (e.g., either back pay or front pay as a remedy) would be problematic or precluded because it would essentially be providing damages for employment deemed unlawful by the Immigration Reform and Control Act of 1986.

Along the same lines, in 2002 the Supreme Court of the United States held that the National Labor Relations Act (NLRA) could not require back pay damages for unauthorized aliens after they were discharged for engaging in protected union activities. While the NLRA might protect the actual work activities of illegal aliens to some extent, the National Labor Relations Board’s remedial power could not extend to award back pay for work that was not *actually and already performed* and which would be unlawful due to the workers’ status. In this case, that distinction did not matter because the workers’ claims were only for additional pay to provide them the required minimum wage and overtime amounts owed for work already performed—albeit it illegally.

The main takeaways from this case are that “employers who unlawfully hire unauthorized aliens must otherwise comply with federal employment laws” and that “undocumented workers are ‘employees’ within the meaning of the FLSA.” The opinion’s conclusion pretty much sums it up: “Consistent with the principle that breaking one law does not give license to ignore other generally applicable laws, we affirm.”



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