Sanctions for Whom? The Immigration Reform and Control Act's "Employer Sanctions" Provisions and the Wages of Mexican Immigrants

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Abstract: Past research has found that wage differences between authorized and unauthorized immigrants could be entirely explained by human capital factors prior to the 1986 passage of "employer sanctions." However, a significant post-1986 wage differential has been broadly understood as employers "passing along" expected costs of sanctions through lower wages for unauthorized immigrants. In this paper, I use administrative data on employer sanctions enforcement combined with survey data from the Mexican Migration Project to test this explanation. I find employer sanctions enforcement levels do affect Mexican immigrants' wages, reducing them about 21% for each dollar in fines collected per employee from non-compliant firms in the same industry, state, and year. However, levels of employer sanctions enforcement have no statistically significant differential effect based on legal status. That is, while sanctions may cause national-origin wage discrimination against Mexican immigrants, they do not explain the wage gap *between* authorized and unauthorized Mexicans.

"The I-9 [form] takes a lot of responsibility off of me and puts it back on the employee."
-Garment shop personnel director (quoted in Calavita 1990)

Introduction

In the late 1970s and early 1980s, "illegal" or undocumented immigration from Mexico was increasingly perceived as a "serious" social problem in the United States (Bustamante 1990). After years of debate, at the end of the 1986 congressional term, Congress passed the Immigration Reform and Control Act of 1986 (IRCA).

The law contained four main provisions: legalization, guestworker programs, border enforcement, and employer sanctions. The legalization provisions included the "regular" or general amnesty, allowing for the legalization of undocumented immigrants resident in the U.S. since 1982, as well as a "Special Agricultural Worker" (SAW) program, allowing for the legalization of immigrants who had worked at least 90 days in perishable agriculture in a 12 month period (Bean, Espenshade, et al. 1990: 111).

Under the "regular" or general program, 1.77 million applications were filed (Bean, Espenshade, et al. 1990) and 1,595,439 immigrants were eventually granted legal permanent resident status (U.S. Immigration and Naturalization Service 1998). The SAW program received 1.3 million applications (Bean, Espenshade, et al. 1990), which was many more than had been expected. Ultimately 1,092,956 immigrants received legal permanent resident status under the SAW program (U.S. Immigration and Naturalization Service 1998).

In addition to the SAW program, IRCA included an ongoing agricultural guestworker program, the H-2A program. Created at the request of agricultural employers, but through a series of compromises with stakeholders such as organized labor, civil rights groups, and ethnic organizations, the program contains a number of important protections for both guestworkers and domestic agricultural workers. Many agricultural employers have preferred to employ the undocumented at lower wages rather than participate in the program (U.S. General Accounting Office 1998).

With regards to immigration enforcement, IRCA made permanent funding available for an increase in Immigration and Naturalization Service[1] (INS) hours spent on enforcement activities that had begun in fiscal year 1986[2]. At the U.S.-Mexico boundary, Border Patrol enforcement hours increased 31% in the three years following the passage of IRCA relative to the three years prior (based on my calculations from Table 4.3 in Bean, et al. 1990).

Lastly, IRCA made it illegal to knowingly employ immigrants without valid work authorization and required employers to verify potential hires' work authorization and record this verification on an I-9 form. The law included fines for violations of either the verification ("paperwork") or knowingly hire provisions, and well as the possibility of jail for employers engaging in a "pattern or practice" of knowing violations.

This marked a shift from the 1952 "Texas Proviso[3]," which explicitly spelled out that employing undocumented immigrants was not considered "harboring" and was therefore legal (Calavita 1992). Economist Deborah Cobb-Clark and her co-authors (1995) explain the change this way:

> The Immigration Reform and Control Act of 1986 (IRCA) represents an attempt to use labor market regulation to control illegal migration into the United States by imposing fines on employers who hire unauthorized workers. Sanctions lower wages directly because they act as a tax on hiring additional workers.

Because of concern that the discrimination the law intended to create against unauthorized workers might spill over onto authorized "foreign-looking" or "foreign-sounding" people, IRCA also included provisions against national origin and citizenship discrimination in hiring and termination[4] (Fix & Hill 1990).

While all the provisions mentioned above are interrelated, the focus of this paper is to examine the effects of the employer sanctions provisions, specifically with regard to the difference in wages between authorized and unauthorized male Mexican immigrant workers. A number of studies (Phillips & Massey 1999, Donato & Massey 1993, Donato et al. 1992) have found that the implementation of IRCA coincided with a shift in the determinants of Mexican

immigrants' wages. Examining data from the pre-IRCA period, these studies found no significant differences between the wages of legal and unauthorized Mexican immigrants, once migrants' differences in human capital (e.g., education, English ability, experience) were taken into account (see also Massey 1987, Bailey 1985; Chiswick 1984, 1988). However, post-IRCA observations show a significant wage gap between authorized and unauthorized Mexican immigrants combined with decreasing returns to human capital factors such as education.

"Research generally suggests that IRCA led to a deterioration in the wages and working conditions of undocumented migrants, but studies have not yet identified the reasons for this change," write Phillips and Massey (1999). Although they set out to find these reasons, Phillips and Massey met with limited success. Finding some evidence that the wage gap does *not* stem from competition with newly legalized immigrants, an increase in subcontracting, or a general increase in unemployment, Phillips and Massey (1999) attribute the post-IRCA wage gap to wage discrimination brought about by employers passing along the expected costs of sanctions.

The main contribution of this paper is to examine another possible reason for the observed wage gap: that empowering employers to check employees' documents has improved employers' information regarding the status of their employees and thus increased their power over undocumented employees via the (implicit or explicit) threat of reporting them to the INS (now Immigration and Customs Enforcement-ICE). The research is designed around a "crucial experiment" (Stinchcombe 1968), building support for this hypothesis by attempting to falsify the best alternative explanation: Phillips and Massey's hypothesis that the wage gap between legal and unauthorized Mexican immigrants is directly related to the costs to employers generated by enforcement of IRCA's employer sanctions provisions.

Literature Review

It may be useful to summarize the main lines of research relevant to the relationship between IRCA's employer sanctions provisions and the wage gap between authorized and unauthorized immigrant workers. One area of research is the evaluation of the implementation of

employer sanctions, both in the U.S. and in other industrialized countries. The other main area of research is on the labor market effects of sanctions, which can be further sub-divided into studies examining whether sanctions cause discrimination against "foreign-appearing" authorized workers; and studies of the determinants of the wage gap between unauthorized and authorized immigrant workers.

Implementation Studies

Prior to the passage of IRCA, two reports by the U.S. General Accounting Office (1985, 1982) surveyed a number of countries (9 and 19 respectively) and Hong Kong regarding their experience with using employer sanctions to prevent illegal immigration. The 1982 report concluded that:

> Although each country had laws penalizing employers of illegal aliens, such laws were not an effective deterrent to stemming illegal employment for primarily two reasons. First, employers either were able to evade responsibility for illegal employment or, once apprehended, were penalized too little to deter such acts. Second, the laws generally were not being effectively enforced because of strict legal constraints on investigations, noncommunication between government agencies, lack of enforcement resolve, and lack of personnel.

Despite this conclusion that employer sanctions "were not an effective deterrent" in the 19 countries (and Hong Kong) which already had such laws on the books, the 1985 report cautions that the earlier report had not concluded "that such laws, if enacted, will not deter illegal alien employment in this country" (U.S. GAO 1985). The second report was requested by one of IRCA's authors, Representative Romano Mazzoli, apparently because congressional opponents of sanctions were using the 1982 report as evidence of sanctions likely failure in the U.S.

The 1985 report painted a rosier picture of increases in enforcement since the first survey was completed and generally effective laws. The later report arrived at the conclusion that sanction *were* effective based on a question which asked the government official responding to the survey for their *opinion* about the deterrent effect of sanctions on the employment of illegal aliens. These opinions were by definition subjective. Officials may have been reluctant to openly

acknowledge that a law was ineffective[5]. If nothing else, the 1985 follow-up GAO report suggested that employer sanctions were at least somewhat effective in at least some of the countries which had such laws.

Within the United States, Calavita (1982) analyzed California's employer sanctions law, which served as a model for the 1972 bill which eventually evolved into IRCA. Calavita describes the employer pressure which led to amendments eviscerating the California law, leading one opponent in the legislature to announce, "This bill is totally unenforceable" (Ketcham quoted in Calavita 1982). In fact, the California law never resulted in a successful prosecution (Schwarz 1983, Calavita 1982).

IRCA contained provisions requiring the General Accounting Office (GAO) to issue three annual reports "to determine whether the sanctions provision resulted in a pattern of discrimination against eligible workers, was carried out satisfactorily by INS and Labor, and resulted in an unnecessary regulatory burden for employers" (U.S. GAO 1990). For the moment, I will focus on the question of satisfactory implementation.

The 1990 GAO report defines "satisfactory performance" as developing "plans and policies and implementing procedures that could reasonably be expected to (1) identify and fine violators and (2) educate employers about their legal requirements." The report does not mention any minimum number of employers to be fined or educated in order to meet the standard of "satisfactory performance." However, apparently the 2.2 million educational contacts with employers and the 39,000 warnings and 3,532 fines issued (as of September 19, 1989) were sufficient. To put this effort in context, however, INS's goal of 20,000 inspections in fiscal year 1988 amounted to less than one half of one percent of the over 7 million employers (U.S. GAO 1987).[6]

Fix and Hill's 1990 study of the implementation of IRCA's employer sanctions provisions concluded that INS had "successfully met the challenges of IRCA's first three years."

However, the study raised a number of cautions about the future. Fix and Hill's (1990: 4) four major findings were:

1 In the eight sites in our sample, few civil or criminal fines had been assessed relative to the number of establishments covered or the number of investigators assigned to sanctions enforcement

2 The enforcement of IRCA's sanctions provisions varied sharply in terms of priorities, processes, targets, and fines.

3 We did not observe extensive use of criminal sanctions…Only half our sites initiated any criminal enforcement actions.

4 We observed limited coordination among IRCA's implementers. This was true both within the INS and between the INS and other implementers.

The study also warns that "a low level of enforcement activity could lead many employers to discount the possibility that violations will be detected and punished, thus weakening the deterrent effect" (Fix and Hill 1990: 3). In more ways than one, Fix and Hill's study seems to suggest that the United States' employer sanctions laws were in danger of proving to be ineffective for the exact reasons the 1982 U.S. GAO report found that such laws were ineffective in 19 other countries.

Calvita (1990) argues that

> It is not enough, then, to explain the prevalence of this white-collar crime by citing lenient penalties, inadequate enforcement, or lax attitudes on the part of enforcement agents, although these clearly are the *immediate* causes of employer violations. Rather it is important to trace the low risk associated with this crime to their source in the law itself to arrive at a more complete understanding of the social processes that set the stage for this white-collar crime. (emphasis in the original)

In essence, Calavita claims that employer sanctions cannot succeed in sanctioning employers or stopping the employment of undocumented immigrants because they were neither intended nor designed to do so. Rather, she claims, they function as a symbolic resolution to "fundamental underlying structural contradictions in the political economy" (Calavita 1990: 1045). The employer sanctions provision was only acceptable to (and in fact endorsed by) employer lobbies once it contained a "good faith" clause providing an "affirmative defense" to employers who

follow the verification procedures (Calavita 1990:1057-1061). Employers are protected from prosecution under the "knowing hire" provision if they have examined a document which "reasonably appears on its face to be genuine" (8 USC 1324a(b)(1)(A)). Calavita's (1990) interviews with top INS officials suggest that this phrase was interpreted leniently. This interpretation was codified in the 1996 IIRIRA by a provision that redefined any "technical" violation as compliance, provided the employer corrected the violation within 10 days (8 USC 1324a(b)(6)).

Calavita points out that through the legislative process employers who do, in fact, knowingly hire unauthorized immigrants have been redefined as "compliers" because they have met the paperwork requirements. While this makes "compliance" likely, it works at counter purposes with the goal of reducing the employment of unauthorized immigrants.

Calavita's post-IRCA[7] interviews with both employers and employees in southern California demonstrate this. About 48 percent of the employers surveyed "thought" some of their employees were undocumented. Another 11 percent volunteered that they *knew* they had hired undocumented workers after IRCA had gone into effect. Of the workers interviewed (from the same firms) 30 percent acknowledged being undocumented at the time they were hired. Of these, 35 percent used fraudulent documents. Slightly more than 4 percent of the undocumented workers reported being *told by their employer* to obtain false documents (Calavita 1990). At least some number of employers use paperwork compliance to continue knowingly hiring undocumented workers with relative impunity.

Discrimination

Another major area of research related to IRCA's employer sanctions provisions is discrimination. There was considerable debate in the formulation of the law that sanctions might provoke discrimination against foreign-appearing authorized workers. In fact, IRCA contains provisions making national origin and citizenship discrimination illegal in hiring and termination

(8 USC 1324b). Note, however, that these protections do not apply to wage discrimination nor do they protect those lacking valid work authorization.

General Accounting Office (GAO) Studies

Congress required GAO to determine whether the employer sanctions provisions caused "widespread discrimination" on the basis of national origin or citizenship (U.S. GAO 1990). While the GAO's 1989 report concluded that the sanctions provisions did not cause such a pattern of discrimination, the 1990 report reversed this finding. Both relied on an employer survey which found that 10 percent of employers acknowledged engaging in national origin discrimination in their efforts to comply with the law. Similarly 9 percent acknowledged discriminatory practices based on citizenship. However, the 1990 GAO report also relied on an audit study commissioned by GAO and carried out by the Urban Institute. The study used matched Hispanic and Anglo testers to apply for posted entry-level job openings in San Diego and Chicago. Anglo testers received 33 percent more interviews and 52 percent more job offers than the Hispanic testers (U.S. GAO 1990). Although both the employer survey and the audit study lacked a pre-IRCA baseline, taken together with information on discrimination charges, GAO determined that employer sanctions had provoked "widespread" national origin discrimination. Had Congress approved this finding, the sanctions provisions would have terminated (8 USC 1324a(l)). But congressional inaction has kept employer sanctions on the books.

Empirical Findings in Academic Studies

While the GAO, following its congressional mandate, focused its research on discrimination in hiring and termination, Bansak and Raphael (2001) studied IRCA-induced wage discrimination. Their study, which uses Current Population Survey (CPS) data, makes pre and post-IRCA comparisons. But it also utilizes the quasi-natural experiment created by the two year delay in implementing sanctions in agriculture to attempt to distinguish changes related to IRCA from broader changes in labor market conditions. The authors find that the wages of

Latino workers in non-agricultural sectors declined relative to Latino workers in agriculture, while Anglo whites in non-agricultural sectors gained in wages relative to Anglo whites in agriculture. Their findings suggest a negative effect of IRCA's employer sanctions provision on Latino wages (Bansak and Raphael 2001). However, because the CPS data does not contain information on the immigration status of non-citizens, it is impossible to discern whether the wage discrimination effected all Latinos or was concentrated on the undocumented.

A number of other researchers have used other sources of data to address both the broad question of whether legal status causes a wage differential, and the specific role of IRCA in such a differential. Perhaps unsurprisingly, the literature examining the causes of the wage gap between authorized and unauthorized workers arose around the same time that the employment of "illegal aliens" gained currency as a "social problem" in need of a legislative solution.

North and Houstoun's 1975 study of apprehended undocumented immigrants found that they received wages 37% lower than the average wages in the same industry. In 1987, Massey found an identical wage gap in a survey of both documented and undocumented Mexican male migrants. Chiswick's 1988 study of apprehended undocumented immigrants (and their employers) had no similar documented comparison group. However, he found average earnings above the federal minimum wage. Both Chiswick (1988) and Massey (1987; see also Borjas 1990, Bailey 1985) argue that observed differences in wages between undocumented and documented immigrants were not due to legal status, but rather to human capital characteristics such as English ability, job experience, and skill.

However, later work by Massey and his co-authors (Donato, et al. 1992, Donato, & Massey 1993, Phillips & Massey 1999) concluded that things had changed since the passage of IRCA. Incorporating more recent surveys with those used in Massey's 1987 study, they found that while legal status did not produce a significant effect in the pre-IRCA period, it trumped human capital in predicting wages in the post-IRCA period. Similarly, Rivera-Batiz, using the Legalized Population Survey[8] found that observed characteristics explained less than half of the

wage gap between amnesty applicants and legal immigrants. Legalized immigrants saw a growth in wages from their time of application until 1992, of which, again less than half can be explained by changes in measured characteristics (such as education, English ability) over time.

Another study (Cobb-Clark, et al. 1995) looks at the effect on metropolitan manufacturing wage rates of IRCA outcomes such as level of employer sanctions fines and legalization applicants per capita. Their findings regarding sanctions are consistent with their prediction that "sanctions lower wages directly because they act as a tax on hiring additional workers." Perhaps surprisingly, sociologists Phillips and Massey (1999) interpret their findings in this straight-forward economic framework as well: "[IRCA] appears to have encouraged discrimination against undocumented migrants, with employers passing the costs and risk of unauthorized hiring on to the workers."

Two Competing Interpretations of Findings

Both sets of authors implicitly assume that the wage gap (net of human capital differences) can be explained entirely as employers passing along the possible costs of being fined. That is:

(Undocumented Wage) = (Documented Wage) – [(amount of fine) x (probability of fine)]

This is to implicitly assume that, while firms might choose a more or less risky hiring strategy, IRCA's employer sanctions provisions are cost-neutral to the average firm. Neither the economists nor the sociologists who have addressed this question empirically have explored the possibility that IRCA may have effects on the wages of unauthorized immigrants that have more to do with a shift in power relations between employers and employees than the risk of citations.

Two reasons we might suspect this are the "modest" level of sanctions enforcement (Fry, et al. 1995, Fix and Hill 1990) and the affirmative protection provided to employers who make good faith efforts to comply with paperwork requirements. Can the modest enforcement of

employer sanctions truly explain the wage gap between legal immigrants and their unauthorized counterparts?

An alternate explanation is that IRCA's requirements that employers check workers' authorization documents (combined with weak enforcement) has increased employers' power relative to their undocumented employees. The use of fraudulent documents is widespread (Lowell & Jing 1994). In cases where such documents are used, the employer, having requested the proper documents and made a good faith effort to evaluate them, is largely safe from fines. For example, one employer quoted in Cornelius (1989) noted that: "The compliance procedures are not that difficult. You don't have to verify the person's documents are valid, so there's no hazard in hiring someone with fraudulent documents."

However, the requirement to check documents creates an interaction between potential hires and employers which gives the employer information about employees' legal status. A second employer interviewed in Cornelius (1989) remarked: "You ask them for IDs and they don't have any. Three days later, they do." While another responded that if presented with fraudulent documents, "I would just try to get them to get something that wasn't so fraudulent looking. If it doesn't look right, go get a right one for me." These are clear examples of employers who, in "complying" with the paperwork provisions of IRCA, have gained both knowledge that the applicant is unauthorized *and* an affirmative defense against charges of knowingly employing such unauthorized immigrants.

The verification process (or "I-9" process after the name of the attestation form) creates a situation in which employers may have better knowledge or more accurate suspicions regarding the status of their unauthorized workers. However, even if the employer does not suspect the worker is unauthorized, going through the I-9 process may instill in the worker the fear that his or her employer knows that the documents presented are fraudulent. Any of these situations would lead to a perception on the part of the worker that he or she is vulnerable. Immigrant

workers in such situations would be less likely to make demands on their employers regarding wages or working conditions.

In the case where unauthorized workers do make such demands, employers might threaten to call INS or may actually do so (Wishnie 2004, Bronfenbrenner 2000, *Washington Post* 1999, *Chicago Tribune* 1998). Bronfenbrenner (2000) found that employers threatened to report workers to the INS in 7 percent of all union organizing campaigns and 52 percent of campaigns for bargaining units which included undocumented workers. Wishnie (2004) matched data from INS raids to labor standards violation investigations and proceedings for the New York City area, finding that from 1997 to 1999, 55% of INS raids occurred following an investigation or proceeding by a state or federal labor or labor relations agency. Both threats and actual raids are likely to have a strong chilling effect on immigrants' attempt to assert their workplace rights. Note that in the case of collective demands, such as union organizing drives or contract campaigns, the employer need not have information about which individual employees are undocumented to make threats that effectively undercut support for such demands.

In summary, I have identified two hypotheses that might explain the wage gap between legal immigrants and their undocumented counterparts. First, employer sanctions may create expected costs for employers willing to employ undocumented workers. The employers may then pass these costs along to their employees. In this case the law would create a disincentive to hire the undocumented,for which employers compensate with lower wages. On the other hand, "employer sanctions" may improve employer information about workers' immigration status, increasing employers' power over their undocumented employees through (explicit or implicit) threats to report them to INS. Employers would likely use this power to keep wages low. Such a decrease in labor costs combined with small expected costs of "sanctions" implies higher profits. If this latter hypothesis is correct, then "employer sanctions" have the perverse effect of creating labor market incentives to hire undocumented workers.

I propose that it should be possible to adjudicate between these two hypotheses using INS administrative data on "employer sanctions" fines and survey data on the wages of individual Mexican immigrants. If the "wage penalty" hypotheses is correct, we should expect no wage gap between Mexican legal immigrants and Mexican undocumented immigrants prior to IRCA, and a post-IRCA wage gap varying over time and place with the level of sanctions enforcement. If, however, the "employer power" hypothesis is correct we would also expect no pre-IRCA wage gap, but in the post-IRCA period we should expect a significant and fairly stable wage gap both over time and across the country. The regression methods described below will allow us to determine the extent to which each of these scenarios matches the empirical data available.

Data and Methods

Data on Individual Wages

This project will use two surveys of Mexican immigrants to the United States which include data on wages as well as other key wage determinants such as education, duration in the U.S., age and sex. Of course, one requirement is that the survey data used must include information on respondents' immigration status or work authorization. This requirement rules out the use of many U.S. sources of data on wages, specifically the Current Population Survey (CPS) and Decennial Census Public Use Microdata Samples (PUMS). Instead, we turn to data from the Mexican Migration Project (MMP) and Mexico's Survey of Migration at the Northern Border (know by its Spanish acronym *EMIF, or Encuesta sobre Migración en la Frontera Norte de México*). The MMP data has been used by Douglas Massey (1987) and a number of his collaborators (Phillips & Massey 1999; Donato & Massey 1993; Donato, et al. 1992) in articles that have found a wage gap between authorized male Mexican immigrant workers and their unauthorized counterparts. The EMIF data has not, to my knowledge, been used to examine the wage gap between authorized and unauthorized Mexican immigrants.

Both surveys collect data primarily in Mexico, although the MMP has a small non-random sample of Mexican immigrants settled in the US. The MMP randomly samples

households within purposively selected migrant sending communities. The survey is administered during the December-January period, when many US migrants return to Mexico. Household heads are asked to give a retrospective migration history as well as detailed information about their last trip to the US. Based on referrals in each sending community, approximately 10 households of settled migrants in the US are also sampled[9]. It is also worth noting that the retrospective migration histories collected by the MMP may make it possible to analyze the impacts of IRCA's sanctions and legalization provisions longitudinally on the same individual respondents, rather than comparing aggregate cross-sectional samples.

The EMIF does not use a standard sampling frame to capture a "stock" of people. Rather it is a probabilistic sample of the flows of migrants through the Northern border of Mexico in years between 1993 and 2000. For this project, I will be using a subsample of migrants returning to Mexico from trips to the US. If one is interested in the population of migrants in the US, this sampling technique will oversample temporary migrants relative to settled migrants. This bias can be partially corrected by weighting each case with the duration spent in the US. This gives a sample weighted to the migrant person years each respondent contributes to all migrant person years in the US. However, this weighting scheme is still biased in that it does not include the person years between last US entry and death. If migrants who never return to visit Mexico are significantly different from those who do, this may present a problem. Unfortunately, the fact that data collection for the EMIF began after sanctions were implemented makes it considerably less useful than the MMP data. The EMIF data may, however, be useful in validating the results based on the MMP.

One other source of data on individual wages is the National Agricultural Workers Survey (NAWS), collected annually since 1988 by the U.S. Department of Labor. While limited to workers in the agricultural sector, this survey contains data on workers' wages, education, English ability, place of birth and immigration status. A public version of the data is available on the web, albeit with less detailed geographic coding than would be ideal for this project.

Regardless, I intend to write a future chapter focused particularly on the effects of the employer sanctions provisions on wages within the agricultural sector using either the NAWS public data, or if I can get access, the non-public data. Result reported here are based on the MMP data.

Results from the Mexican Migration Project Data

My project attempts to pick up where Phillips and Massey (1999) left off, looking for the cause of the post-IRCA wage gap between authorized and unauthorized Mexican Male immigrant workers. As such, I begin my investigations by attempting to replicate their key finding (see also Donato & Massey 1993, Donato, Durand & Massey 1992) that wage differences between legal and unauthorized immigrants can be explained by human capital factors in the pre-IRCA period, but not after IRCA's passage. My first explorations used only cases in the MMP MIGFILE from communities surveyed and included in the dataset as of Phillips and Massey's analysis. Following Phillips and Massey, I limited the analysis to males (due to small female household head sample size), who worked in the U.S. since 1970. The logged hourly wages used as the dependent variable in this analysis is adjusted to constant 1982-1984 dollars based on the Bureau of Labor Statistics' Consumer Price Index (CPI) for all urban consumers at the Metropolitan Statistical Area level, where such a series exists, otherwise to the regional urban CPI.

My initial models included many fewer variables than Phillips and Massey, in part because many variables were not relevant to this project, in part because of methodological and causation issues (especially with social capital variables – see Livingston 2005), and finally because Phillips and Massey found many of them not to have statistically significant relationships with wages. Nonetheless, using models containing variables measuring age, U.S. experience, education and English ability (see Table 1), I was able to replicate the finding that

the wages of unauthorized Mexican immigrant workers are significantly lower than the wages of comparable authorized workers only during the post-IRCA period. The results of regressions on this limited sample (not reported here) imply that the hourly wages of unauthorized immigrants were about 15% lower than legal immigrants (significant at the 0.05 level). Table 3 shows the results of the same model (Model I) on the sample which includes over 1400 additional (newer) observations. Including these newer observations, the results imply a 12% post-IRCA wage penalty for unauthorized immigrants, controlling for age and human capital factors (education, English ability, and measures of U.S. experience). Note that the pre-IRCA wages of unauthorized immigrants are statistically indistinguishable from the wages of legal immigrants. The same is true of those unauthorized immigrants whose last U.S. trip began before, but ended after, IRCA. These immigrants were subject to a "grandfather clause" which made it legal for employers to continue to employ them, provided they had been hired prior to IRCA's passage.

The question remains as to the causes of the post-IRCA wage penalty for unauthorized immigrants. Can it be explained by employers 'passing along" the costs of expected fines? Or has IRCA somehow shifted the playing field such that unauthorized immigrants earn less regardless of the level of employer sanctions enforcement directed at workplaces like theirs?

The Expected Fine Measures

To answer this question, I have constructed measures of actual levels of fines, based on INS/ICE administrative data on employer sanctions enforcement activities. I use the Employer Sanctions Database obtained by the Center for Immigration Studies (CIS) through the Freedom of Information Act (FOIA). This database is contains records from the INS/ICE database known as "LYNX" from the beginning of sanctions implementation through early 2000. The data are case level; that is, each observation corresponds to one "case" in which an employer was

investigated/audited. The dataset contains the results of cases in which the employer was found to be in compliance and well as cases resulting in warnings or fines. However, relative to the aggregate counts of enforcement activities reported through the INS/DHS "Performance Analysis System" (PAS), the CIS database suffers from considerable incompleteness. This incompleteness stems from two main sources. The first is incomplete reporting, which was more severe prior to fiscal year 1996, when LYNX was designated the primary system for recording sanctions enforcement activities. Second, the records released to CIS represent only those cases which are "closed." A case would be closed if the employer was found to be in compliance or if fines were levied and the employer's opportunities to appeal them have been exhausted, resulting in the issuance of a final order. However, open cases include those for which INS/ICE found the employer not to be in compliance, but no final order has been issued. In theory, cases which will never result in fines (e.g., because the company has been dissolved) can be closed with a notation of "No Action." However, unresolvable cases might remain open indefinitely if INS/ICE never takes the time and effort to officially close them.

Although the absolute levels of enforcement recorded in the CIS database are lower than those reported in PAS, the variation is strongly correlated (see Brownell 2005 for a visual display of the national trends from both data sources). Moreover, if we believe that employers are making changes in wages to compensate for fines, the incompleteness due to cases which are not closed and will not be closed in the future will not effect the levels of fines.

Without going into great detail in describing the enforcement process, I will first describe what the measure of expected fines is supposed to estimate, and then describe how it is calculated. The expected fines measure is an estimate of the average fine paid per employee by employers[10] found by INS to be out of compliance with IRCA's employer sanctions provisions.

It is based on a denominator of employees (of any status) for two main reasons: 1) It estimates the cost (in sanctions enforcement) that an informed, non-compliant employer would anticipate upon considering hiring a new employee; and 2) the models which follow take immigrants' (logged) hourly wages as the dependent variable, making it appropriate to have a measure which estimates fines per employee rather than per firm.

The measure of expected fines (E_f) used is calculated for each industry/state/year cell based on the following formula:

$$E_f = P_a \times P_f \times F_a \quad (1)$$

Which further simplifies to

$$E_f = P_a \times F_{a\_nc} \quad (2)$$

Where P_a is the probability that one works at an audited firm:

$$P_a = \textit{(count of workers at audited firms)/(CPS based estimate of count of workers at all firms)} \quad (3)$$

within each industry/state/year cell. P_f is the probability of working at a fined firm *given* that the firm was audited *and found to be in non-compliance* (fined, warned, or "no action"):

$$P_f = \textit{(count of workers at fined firms)/(sum of workers at fined, warned, and "no action" firms)} \quad (4)$$

And F_a is the average total amount of fines *paid* (not levied) weighted to the size of the firm:

$$F_a = \textit{(sum of (total amount paid} \times \textit{number of workers employed))/(count of workers at fined firms)} \quad (5)$$

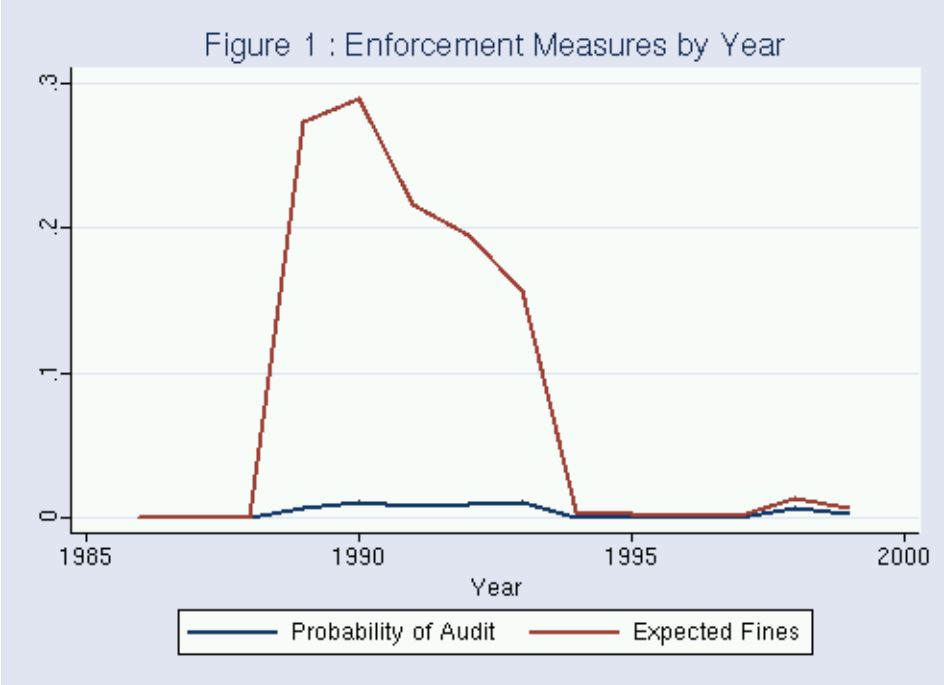
And F_{a_nc} is the combination of the last two terms such that:

$$F_{a\_nc} = P_f \times F_a \quad (6)$$

in which the count of workers at fined firms cancels out of the measure.

So E_f is a measure of sanctions enforcement that includes the probability of working for an audited firm, but is independent of compliance with employer sanctions. It is the fine that a non-compliant employer would expect to receive for each (average) employee, based on the average enforcement in the particular industry/state/year combination.

Note in Table 2 that the levels of expected fine average about $0.08 per employee, but vary considerably. Elsewhere (Brownell 2005), I have shown the trends in employer sanctions enforcement measures investigations/ audits, warnings, fines counts and total fines collected have declined sharply since the early 1990's. Figure 1 shows the average levels of E_f and P_a for immigrants in the MMP sample, which are relatively high from 1989 to 1993 and then drop to near zero levels. The timing of this drop may be due to INS' adoption of a new Southwest border strategy which shifted a substantial share of INS resources toward the U.S.-Mexico border.



While we see considerable variation over time in sanctions enforcement, we have no strong a priori assumptions about how long it might take for information regarding enforcement actions to diffuse to other employers. To find the empirically best-fitting time lag, I tested the effects of expected fines for one year periods beginning zero to 30 months prior to the beginning of the year in which a migrant reported earnings (results not reported here). I found the most highly correlated effect with no lag, that is, the effect of enforcement within year *t* on wages in year *t*, which suggests that any diffusion of information about enforcement takes place quite

quickly. Model II in Table 3 shows the previous model with the addition of unlagged expected fines. The fines measure does have a statistically significant negative effect on wages, implying a decrease in wages of about 21% for each dollar in expected fines. However, the model also makes it clear that expected fines are not the sole or most substantively significant explanation for decreased post-IRCA wages for unauthorized immigrants. Rather, the change in R^2 implies that the introduction of the expected fines measure accounts for only 0.6% of the variation in Mexican male immigrants' wages. That is, while expected fines have a statistically significant effect on wages, the low level of observed enforcement means that they have very little substantive effect on wages. With regards to the role of expected fines in explaining the post-IRCA wage gap between authorized and unauthorized Mexican immigrants, we see no statistically significant change in the coefficient representing the gap once expected fines are added to the model. This implies that the level of fines cannot explain the wage gap.

This conclusion is further supported by Model IV, which includes interactions terms allowing the effect of fines to vary between legal and unauthorized workers. The results show no statistically significant difference in the effects of expected fines on the wages of authorized and unauthorized Mexican immigrants. So while fines do seem to affect wages, they are not a valid explanation of the post-IRCA *difference* in wages based on legal status. Rather they seem to affect all Mexican male immigrants equally, a result consistent with IRCA-induced national origin discrimination (see also Bansak and Raphael 2001, U.S. GAO 1990).

One other possibility is that the relationship between fines and wages is that INS may have targeted (or received the most leads regarding) industries with low wages. Thus, low wages could cause increased fines, rather than causation running in the opposite direction. Alternatively some third factor could cause both low wages and higher fines, resulting in a spurious

relationship between fines and wages. However, if enforcement was focused on sectors with low wages, then the probability of apprehension would be negatively related with wages. Model III shows that when both expected fines (E_f) and probability of audit (P_a) are included, there is no statistically significant relationship between P_a and wages, but the relationship between E_f and wages persists. Here it is worth noting that the meaning of E_f is somewhat different in a model containing P_a. Recalling Equation 2, we see that E_f is the product of P_a and F_{a_nc} (the average fine per employee at non-compliant firms). So in Model III, the coefficient for E_f represents the additional effect of average fines (per employee at non-compliant firms) controlling for probability of audit (P_a). In Model III, probability of audit is not statistically significant, while expected fine remains significant at the 0.01 level. Put differently, holding the probability of audit constant, higher fine levels are associated with lower wages. Conversely, holding levels of fines constant, probability of audit has no statistically significant effect on wages. This shows that the relationship between E_f and wages is not caused by targeting of employer sanctions audits at employers paying lower wages, and is consistent with the hypothesis of IRCA-induced national-origin discrimination.

Conclusion

Analysis of MMP survey data on Mexican Male immigrants' wages, combined with administrative data on employer sanctions enforcement falsify the broadly held hypothesis that the post-IRCA wage gap between authorized and unauthorized Mexican immigrants is due to employers "passing along" expected enforcement costs to their unauthorized workers. While sanctions enforcement does have a statistically significant negative effect on Mexican immigrants' wages, there is no statistically significant *difference* in the strength of this effect based on legal status. In other words, sanctions enforcement may drive down wages, but it does

not explain why unauthorized immigrants' wages are lower than their authorized counterparts in the post-IRCA period.

Given that neither human capital factors nor sanction enforcement explain the legal status gap in wages, we must conclude that some other institutional change in the post-IRCA period has reduced the wages of unauthorized immigrants relative to their authorized counterparts with similar human-capital endowments. In particular, evidence suggests that INS workplace enforcement has served to undermine the ability of unauthorized immigrants to enforce their employment rights. In turn, this legal vulnerability has made unauthorized immigrants particularly attractive to unscrupulous employers operating in violation of state and federal labor standards. Rather than creating effective disincentives to hiring the unauthorized, our current policy brings higher profits for sweatshops which hire them and tilts the economic playing field to favor these employers over law-abiding businesses. In turn, the demand for unauthorized immigrant labor (combined with ever fewer opportunities to legalize) has fueled the massive growth of the unauthorized population over the last decade.

Future Directions

These initial results represent only the early stages of the project's analysis. There are a number of directions for future work and improvement. As of this writing, I have yet analyze the MMP as panel data (although Livingston (2005) does just that to examine the effects of social capital on wages). I intend to replicate this analysis using the EMIF data, and explore the relationship between sanctions and wages in the agricultural sector using the NAWS data. Given the finding that expected fines are associated with lower wages for both authorized and unauthorized Mexican male immigrants, it would also be interesting to examine the question of

national origin discrimination using a larger dataset, such as the CPS. This would allow comparisons to native-born workers and immigrants from other national and ethnic groups.

In addition to this quantitative analysis falsifying the hypothesis employers' experience of fines causes the post-IRCA wage differential, I will further investigate the causes of these wage differences through qualitative research on the employment authorization verification process. This research will involve both secondary sources and new interviews with government officials, employers, union officials, immigrant advocates, and immigrant workers.

Notes

[1] As of March 2003, the Immigration and Naturalization Service (INS) has been incorporated into the Department of Homeland Security and restructured.
[2] The Federal Government's fiscal year ends September 30. Thus Fiscal Year 1986 ended before IRCA passed on November 6, 1986.
[3] "Named after the Texas growers who fought for it" (Calvita 1992: 67).
[4] The law allows preferential hiring of U.S. citizens only if they are "equally qualified" (Fix and Hill 1990).
[5] For example, the Danish official believed the sanctions were a strong deterrent due to adequate enforcement personnel and fines severe enough to deter employers from hiring illegal aliens. Later, the report states that Denmark's "severe" fines averaged approximately $50 (US), an amount that hardly seems likely provide a strong deterrent.
[6] The 1990 U.S. GAO report also concluded that IRCA "appears to be reducing illegal immigration and employment." However, a detailed examination of the GAO's summaries (as well as studies summarized- see Bean, et al. 1990 and Crane, et al. 1990) suggests that the evidence was mixed on this question.
[7] The interviews were conducted in 1987-88, after IRCA's employer sanctions provisions had gone into effect. This survey was a collaboration between Cornelius, Calavita, and other researchers. See also Cornelius 1989.
[8] A U.S Department of Labor survey of amnesty applicants in 1987-88 and a 1992 follow-up.
[9] The MMP investigators often refer to this sample as a "snowball sample," citing Goodman's 1961 paper. Their non-random, however, differs from the probabilistic sample that Goodman describes.
[10] To be clear, fines are levied only against employers based on the number of employees for whom the employer has either failed to properly complete a form I-9 or "knowingly employed." Employees found to be out of status are not subject to fines, but rather to deportation.

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Table 1: Variable Descriptions

Variable	Description
Real Wage	Hourly wage adjusted to constant 1982-1984 dollars for year last US trip ended
Logged Wage	Natural logarithm of hourly real wages in constant 1982-1984 dollars
Age	Age in years at end of last US trip
Prior US Experience	US experience in months prior to beginning of last US trip
US Trip Duration	Duration of last US trip in months
Number of US Trips	Number of US trips (including current trip)
Education	Years of schooling in 4 categories (1-3, 4-5, 5-11, 12+) with none as reference
English Ability	Three categories: "Understands Some," "Speaks Some," Speaks Well," with none as reference
Immigration Status	
Authorized	Legal Permanent Residents, US Citizens, other visas/statuses allowing work
Guestworker	H-2(A), cases coded "Temporary work", and immigrants who entered as Braceros
Unauthorized	No valid entry documents or documents not permitting work (e.g., student visa)
Pre-IRCA	Unauthorized, last US trip ended prior to 1986
Trip spans IRCA	Unauthorized, last US trip began during or before 1986 and ended during or after 1986
Post-IRCA	Unauthorized, last US trip began after 1986
Enforcement Measures	
Expected Fine	Unlagged Expected Fines (see Equations 1-2)
Audit Probability	Unlagged Probability of Audit (see Equation 3)

Table 2: Summary Statistics

Variable	Mean/Percentage	SD
Real wage	5.86	8.295
Age	36.976	8.240
Prior US Experience (months)	47.341	70.333
US Trip Duration (months)	71.306	102.516
Number of US Trips	3.843	4.767
Education (years)		
None	8.75%	-
1-3 years	20.43%	-
4-5 years	10.97%	-
5-11 years	46.45%	-
12+ years	13.40%	-
English Ability		
None	26.68%	-
Understands Some	29.35%	-
Speaks Some	26.71%	-
Speaks Well	17.26%	-
Immigration Status		
Authorized	35.56%	-
Guestworker	0.68%	-
Unauthorized	63.76%	-
Pre-IRCA	24.40%	-
Trip spans IRCA	14.77%	-
Post-IRCA	24.59%	-
Enforcement Measures		
Expected Fine	0.080	0.212
Audit Probability	0.003	0.008

Based on weighted data. Unweighted N=2682

Table 3: Regressions of Logged Hourly Wages on Selected Predictors

Variable	Model I	Model II	Model III	Model IV
Age	0.008	0.008	0.008	0.008
	(0.008)	(0.008)	(0.008)	(0.008)
Age Squared	-0.000**	-0.000**	-0.000**	-0.000**
	(0.000)	(0.000)	(0.000)	(0.000)
Prior US Experience	0.001+	0.001+	0.001+	0.001+
	(0.000)	(0.000)	(0.000)	(0.000)
US Trip Duration	0.002*	0.002*	0.002*	0.002*
	(0.000)	(0.000)	(0.000)	(0.000)
Number of US Trips	0.002	0.003	0.004	0.003
	(0.004)	(0.004)	(0.004)	(0.004)
Education (Ref = None)				
1-3 years	0.051	0.056	0.056	0.056
	(0.076)	(0.076)	(0.076)	(0.076)
4-5 years	0.077	0.083	0.084	0.085
	(0.085)	(0.085)	(0.085)	(0.085)
5-11 years	0.079	0.075	0.077	0.076
	(0.076)	(0.076)	(0.076)	(0.076)
12+ years	0.156+	0.152+	0.153+	0.153+
	(0.083)	(0.083)	(0.083)	(0.083)
English Ability (Ref = None)				
Understands Some	0.113*	0.107*	0.106*	0.106*
	(0.037)	(0.037)	(0.037)	(0.037)
Speaks Some	0.177*	0.175*	0.175*	0.175*
	(0.046)	(0.046)	(0.046)	(0.046)
Speaks Well	0.279*	0.273*	0.271*	0.273*
	(0.066)	(0.065)	(0.065)	(0.065)
Immigration Status (Ref = Legal)				
Guestworker	-0.120	-0.127	-0.132	-0.127
	(0.158)	(0.157)	(0.157)	(0.157)
Unauthorized				
Pre-IRCA	0.057	0.023	0.017	0.030
	(0.053)	(0.055)	(0.056)	(0.056)
Trip spans IRCA	-0.069	-0.077	-0.078	-0.074
	(0.070)	(0.071)	(0.071)	(0.071)
Post-IRCA	-0.124*	-0.130*	-0.130*	-0.114**
	(0.047)	(0.047)	(0.047)	(0.050)
Enforcement Measures				
Expected Fine		-0.210*	-0.185*	-0.151
		(0.060)	(0.069)	(0.087)
Audit Probability			-1.432	
			(1.549)	
Unauthorized*Expected Fines				-0.140
				(0.119)
Constant	1.214*	1.256*	1.258*	1.252*
	(0.191)	(0.193)	(0.193)	(0.192)
Observations	2862	2862	2862	2862
R-squared	0.168	0.174	0.174	0.174

Robust standard errors in parentheses
+ significant at 10%
** significant at 5%
* significant at 1%