

# “Illegal Alien” *The Proper Terminology*

An Issue Brief by Eric A. Ruark, Director of Research | August 22, 2014

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## Introduction

Under federal law, any non-U.S. citizen is an alien. Aliens who have entered the United States without permission, or who have violated the terms of their admission, are identified under the law as illegal aliens. That is a fact, not an issue for debate.

The term “alien” means any person not a citizen or national of the United States.  
 —United States Code, Title 8, §1101(a)(3)

An illegal alien...is any alien (1) whose most recent entry into the United States was without inspection, or (2) whose most recent admission to the United States was as a nonimmigrant and—(A) whose period of authorized stay as a nonimmigrant expired, or (B) whose unlawful status was known to the Government, before the date of the commission of the crime for which the alien is convicted.  
 —United States Code, Title 8, §1365(b)

It is also a fact that, according to U.S. law, it is a crime to enter the United States without permission. The first offense is a misdemeanor, the second, a felony. It is true, however, that most violations of immigration law are dealt with in a civil court and not in a criminal court. An immigration judge is really an administrative adjudicator who has authority under the Department of Justice’s Executive Office for Immigration Review (EOIR) to determine whether or not an individual is deportable under U.S. law. This procedure for handling immigration cases is designed to speed up the process of deportation; it should not be interpreted as an indication that illegal immigration is not a criminal violation. Because illegal aliens are not U.S. citizens, they are not entitled to the full panoply of rights and privileges under the Constitution as are citizens. Thus, they can be held subject to a non-judicial ruling instead of a jury trial for their criminal violation of immigration law.

Despite the clarity in the U.S. code on proper terminology, what is known in legal parlance as the “term of art,” a political movement has arisen whose object is to substitute euphemism for

precision. A variety of motivations underlie this effort, but regardless of intent, the goal is the same. Insistence on alternate terms such as "undocumented worker" represent a deliberate avoidance of the central and inescapable fact that millions of people are illegally residing in the United States in direct violation of democratically enacted and popularly supported law. Those who object to the use of the term "illegal alien" appear to believe that if they can convince the American public that illegal immigration is not really illegal, then amnesty no longer is amnesty, and enforcing immigration law is unnecessary.

## History of the Term

The manufactured controversy over the term "illegal alien" ignores not only U.S. law but also historical precedent. The origin of the term dates back to ancient Rome, which had a highly developed concept of citizenship. The modern usage of the term is first found in 14<sup>th</sup> Century France and was incorporated into Anglo-Saxon common law from which our own legal system is descended. The U.S. government has referred to non-citizens as aliens for over two centuries.

The Immigration Reform and Control Act (IRCA) of 1986 that granted amnesty to over three million illegal aliens, along with a promise of a secured border and penalties for employers who hire illegal workers, forms the basis of our current immigration enforcement code. IRCA is clear: an alien in the country in violation of immigration law is an "illegal alien."<sup>1</sup> In Title V of IRCA which deals with law enforcement, there are five references to "illegal alien" while the terms "unauthorized" or "undocumented" are not mentioned once.

Today, a quarter of a century later, there is no ambiguity in the law over the correct term to apply to a foreign national in the United States illegally. However, there is a political movement afoot for another amnesty, this time covering over 11 million illegal aliens, and an effort to confuse the language of the amnesty debate.

## The Case Against

There are a few principal arguments made against the use of illegal alien. They are simplistic, and easily refutable. The first is that no human being is illegal. However, to identify someone as an illegal alien does not banish that person from the human race; it simply identifies an individual who does not have the legal right to reside in the United States.

Another oft-employed argument is to claim that illegal aliens just lack the proper "papers," and so they are not really illegal but instead "undocumented." The implication is that those with documents were lucky enough to have somehow come into possession of a visa or a "green card," and not that an alien who received these documents submitted to a process that complies with the requirements of entry into the United States, including a screening to check for health risks, a criminal and national security background check, and a determination that one has the means to avoid becoming a public charge. The "undocumented" term is also patently misleading because illegal aliens as a group are certainly not lacking identification documents, only legitimate, legally obtained immigration documents. Often an illegal alien will purchase or manufacture false or stolen

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<sup>1</sup> IRCA does mention "unauthorized aliens," this is in reference to non-U.S. citizens who do not have authorization to work in the United States. Aliens may be in the country legally but without the permission to work.

documents and, according to Ronald Mortensen of the Center for Immigration Studies, as many as 75 percent of illegal aliens in the workforce are using fraudulent Social Security cards.<sup>2</sup>

## Legal Avenues and Limited Resources

To argue, as some do, that one must enter the United States illegally or remain illegally in the United States because there is not a legal avenue open for immigrants is to ignore the 1.1 million legal permanent residents that the United States has admitted annually over the past decade. According to immigration statistics from the Department of Homeland Security, Mexico, the country that has the most illegal aliens living in the United States, also sends the most immigrants through legal channels. It is true that not everyone who *wants* to come to the United States is allowed in, but in order to accommodate all who would like to immigrate, the United States would have to admit tens of millions, if not hundreds of millions, of people every year. In order for Americans to continue to be welcoming to immigrants, they must have the assurance that the system has integrity and that foreigners are not coming illegally. The goal of U.S. immigration policy, first and foremost, should be to benefit the American people and not those who came to the United States illegally. The advocates for illegal aliens seem to ignore this fundamental principle.

One of the main reasons for having an immigration system that limits immigration and a legal system that enforces those limits is that the resources of the United States are not limitless, which advocates of mass immigration fail to acknowledge. The population of the United States is growing rapidly because of immigration – directly through the arrival of immigrants themselves and indirectly through the children born in the United States to immigrants. The population of the United States has grown exponentially since immigration laws were changed in 1965 resulting in a dramatic expansion of immigration levels. According to the U.S. Census Bureau, the U.S. population has grown by more than 115 million people (or by over 57 percent) since 1970. We would have population stability if not for increasing immigration levels.

Census Bureau data reveals that, currently, a new immigrant is added to the U.S. population every 40 seconds, and that immigrant women on average have higher fertility rates than do native-born women. This leads to a growth in the overall population by one person every 12 seconds. Should this rate remain constant, our population would reach a billion residents by in about a century's time. This simply cannot be sustained and should be addressed by reducing immigration levels and enforcing immigration laws; and not by rewarding those who have come here illegally (thus encouraging more illegal immigration). U.S. overpopulation is not something that can be brushed aside as insignificant or irrelevant to the discussion of illegal immigration.

## Why All the Fuss?

The semantic wrangling over the term illegal alien goes beyond whether particular words are proper to use. Underlying the "newspeak" by defenders of illegal aliens is the question of whether the United States will remain a sovereign, independent nation, governed by the rule of law and subject to constitutional constraints. U.S. immigration laws were enacted by Congress, and the Executive Branch has the responsibility to enforce them, not to implement them as the President sees fit.

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<sup>2</sup> Ronald W. Mortensen, "Illegal, but Not Undocumented: Identity Theft, Document Fraud, and Illegal Employment," *Backgrounder*, Center for Immigration Studies, June 2009 (<http://www.cis.org/IdentityTheft>).

Those who deny that immigration laws are binding are declaring that there should be *inequality* under the law, where some groups are not only immune from compliance but should benefit from their offense.

Under attack is the very foundation of this republic as a nation established on the principle of respect for the law, as is the right to self-determination of the American people. A fundamental principle of sovereignty is that the people of any country have the absolute right to defend their borders and to admit or deny admittance to others according to their discretion and laws. Foreigners have no right to come to the United States unless granted permission by the U.S. government, which is exercising the power conferred on it by the American people.

It is not extremist, racist, or anti-immigrant for Americans to expect their national borders to be secure and that those who violate immigration laws to be held accountable.

## Conclusion

There are many words that can be used to marginalize or demean a person. "Alien" and "illegal alien" are not among them. There is nothing insulting or dehumanizing about using the term alien to indicate an individual is a non-citizen. Likewise, it is perfectly fitting to acknowledge that an alien who is residing illegally in the United States has broken the law. It has only been recently, within the political context of the current immigration debate, that proper and unambiguous language has come under attack as inaccurate or derogatory.

What might appear at first glance to be a minor semantic disagreement is crucial to understanding what is at the very heart of the contemporary debate over illegal immigration and "comprehensive immigration reform." Referring to an illegal alien as an undocumented immigrant, or any other such euphonious alternative is, ultimately, the denial that a foreigner is in the United States in violation of the law. This is the first step in denying the American people the right to determine who is admitted into their country and under what conditions.

Advocates of immigration enforcement often ask amnesty proponents, "What part of illegal don't you understand?" This may be simplistic, but it highlights the frustrations that many Americans have when it comes to the immigration debate. Americans, while generous and forgiving, are not about to simply brush aside the fact that millions of foreigners are living and working in the country illegally, and will not accept another mass amnesty that rewards illegal aliens and the employers who profited from hiring them at the expense of the American people.

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