

Cutting Off Our Nose to Spite Our Face: The Real Consequences of I-9 Audits Considered through a Case Study of Brewster, Washington

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ABSTRACT

The phrase “cutting off one’s nose to spite the face” has many meanings, most of them violent and, historically, sometimes literal. In our times, its meaning is colloquial and suggests a needless, disproportionate, and self-destructive response to a perceived threat. This strangely violent phrase aptly describes what is happening in small agricultural communities across the country. One such community is Brewster, Washington, where Immigration and Customs Enforcement (ICE) carried out I-9 audit of Gebbers Farms, Brewster’s major employer, in December of 2009. After presenting the Gebbers Farms case, I discuss what this example from one small town in North Central Washington reveals about the workings of immigration law and law enforcement in, and upon, small agricultural communities today.

INTRODUCTION

“All politics is local,” observed the late Thomas “Tip” O’Neill, the longtime speaker of the United States House of Representatives. O’Neill’s observation is certainly true as far as immigration is concerned. Although the setting and enforcement of immigration law, codified in the Immigration and Nationality Act (INA), is the purview of the federal government, small agricultural communities around the country feel the impact of these laws in a way that other locales often do not. This is because these often rely on the labor of migrants, a high percentage of whom are not authorized to work in the U.S.

Ideally, laws exist to protect the lives and livelihoods of those who reside within the jurisdiction from irresponsible and dangerous behaviors. Yet what are we to make of laws that, although they are intended to protect communities, actually serve to damage or destroy them?

Immigration law and its enforcement are particularly egregious in this regard. Laws and law enforcement activities that prohibit presence and employment without authorization, which are arguably intended to create a

secure workplace and promote a decent wage, can destroy families, cripple enterprises, and destabilize entire communities.

Because immigration law and law enforcement cast a wide net, their impact reaches far beyond the intended targets. Although national security is an announced goal of immigration policy, in the vast majority of cases no Americans are lining up to take the jobs vacated by those unauthorized migrants who are forced away from them. What is more, the lost economic activity and lost sense of community security that results from the current regime of immigration law enforcement destabilizes communities in which these actions occur.

I. CASE STUDY: THE I-9 AUDIT OF GEBBERS FARMS

While working under the auspices of the Catholic Diocese of Spokane, Washington, I provided immigration legal services in Okanogan County, including the town of Brewster, where the case study discussed herein took place. Just before Christmas of 2009, 525 workers at an orchard and packing operation in Brewster were fired from the jobs that some had held for as long as fifteen years or more (Sanchez, 2010). Their employer, Gebbers Farms, had been audited under the I-9 audit program carried out by Immigrations and Customs Enforcement (ICE). The Gebbers Farms audit was one of 2,900 such audits conducted across the country that year. This audit threw the equivalent of one-quarter of the town's population out of work overnight; it was the biggest firing of its kind that the State of Washington had ever seen.

Okanogan County is one of the world's premier regions for harvest fruits and vegetables, as well as agricultural tourism. The town of Brewster, named for the first white settler in the area, John Bruster, is one of the most important and intriguing ones in this area of North Central Washington. Surrounded by the high, rocky hills that overlook it, Brewster sits at the confluence of the Okanogan and Columbia Rivers, just south and west of the first European settlement in the area, Fort Okanogan, which was founded in 1811 as part of John Jacob Astor's Pacific Fur Company. For miles in every direction, apple and cherry orchards line the riverbanks and climb the slopes of the surrounding hills.

The road leading to Brewster from the south and east crosses a barren landscape known as the Channeled Scablands. At Bridgeport, some twenty miles east of Brewster and the site of Chief Joseph Dam, the landscape softens and becomes less barren. The first cherry orchards appear, and compact discs hanging from branches catch sunlight to scare away birds. Migrant laborer residences are just visible from the road, tucked below grade and hidden in the trees. The road follows the Columbia River, cross-

ing a quarter-mile long bridge which connects the southern bank to the northern, and Douglas County to Okanogan, as it enters Brewster. In town, the highway becomes Bridge Street, the thoroughfare that runs from one end of the community to the other. The houses along Bridge Street are small structures, including single-story dwellings and mobile homes. Bridge Street ends at US Highway 97, which continues north up the valley to the city of Okanogan (also the county seat), and to other communities—Omak, Tonasket, and Oroville—before it crosses into Canada. Highway 97 also continues to the south, where it follows the Columbia to nearby Pateros. Wenatchee, popularly known as “The Apple Capital of the World,” lies 65 miles away. Brewster more than contributes its share, as about 17 percent of all the apples in the U.S. go through one of Brewster’s packinghouses (Fig Tree, 2010).

Brewster’s Main Street intersects Bridge Street near the north end of town. Main Street is anchored on the west end by a branch office of Sterling Savings Bank and on the east by the waterfront and a Cold War era jet fighter. Main Street is home to businesses with names like La Moderna, Ropa Para Toda la Familia, La Moda, La Milpa, Mi Pueblo, Fruiteria Tropical, Los Reyes, and Mercado Mexicano. These businesses sit cheek by jowl with ones that carry names like Precision Auto Parts, the Brewster Chiropractic Center, Legacy Memorial Funeral Home, Skirko CPA, and Webster Furniture. Sacred Heart Catholic Church, located at 5th and Hanson, offers three Masses each weekend: one in English on Sunday and two in Spanish; one on Saturday evening on one on Sunday afternoon. There are also Spanish Masses offered on Thursday and Friday evening.

Brewster represents roughly 2,730 of Okanogan County’s approximately 41,000 residents. According to the 2010 Census, Hispanics and Latinos comprise 73 percent of Brewster’s population. Though the county’s foreign born population (11 percent) is less than the statewide figure (13 percent), Okanogan is one of Washington’s most demographically diverse counties, due significantly to the size of its Native American (it is home to the Confederated Tribes of the Colville Reservation) and Hispanic and Latino populations (at 12.3 percent and 18.2 percent, respectively). Both Okanogan County and the town of Brewster are relatively poor. Sixteen percent of families, 21 percent of all individuals, and nearly 30 percent of those under age 18 living in Okanogan County live below the poverty line. By comparison, 29 percent of Brewster’s families, 32 percent of its overall population, and 38 percent of those under age 18 living in Brewster live below the poverty line.

The largest employer in the area, Gebbers Farms, is omnipresent, and according to some residents, Brewster would not exist without the company. The ancestors of the modern Gebbers family first arrived in the

Brewster area in the late 19th century. In 1899, Martha Gamble Gebbers was the first baby ever born in the town of Brewster (Gebbers Farms, 2006). Gebbers Farms has been family-owned and managed for more than a century, and today, most Gebbers family relatives are still involved in some capacity of daily operations or are learning the family business. Though it still identifies strongly as a family business, it also boasts one of the world's largest contiguous apple orchards, five thousand acres worth in all, and it is one of the world's major suppliers of late-season cherries. Gebbers Farms is well-regarded by residents, especially for investing in its workers and the community in general (Sanchez, 2010).

The company employs hundreds of people at any given time in growing, sorting, picking, and packing operations. Given the foregoing discussion, it should come as no surprise that Gebbers Farms employs a large number of Hispanic and Latino farm laborers; perhaps as much as seventy percent of whom might not be authorized to work, or be present, in the United States (Serrano, 2012; Southern Poverty Law Center, 2010).

The effects of the December 2009 I-9 audit were widely felt, though not necessarily as anticipated. Brewster and nearby communities endured economic losses, including short-term ones, as a result of the workers' pay that was taken out of local economic circulation. By rudimentary calculations and conservative estimates, removing from the local economy the income and earning power of 525 workers who earned minimum wage (\$9.19 an hour) for eight hours, or about \$62 per day after taxes, meant a short-term gross loss of real worker income of roughly \$32,500 *per day*.

The fired workers had two choices: leave Brewster or try to ride out the hard times. This dilemma reflects a primary, though not necessarily directly stated, purpose of the I-9 audits: to encourage those who are fired to then "self deport"—that is, to leave the area or the country entirely because they will not be able to sustain themselves if they remain where they have been. Yet for those who had been in the area for two decades or more, self-deportation was out of the question, for they had established what immigration law and policy refers to as "significant ties." Though some, even many, may have been born in Mexico or Central America, Brewster was home. Their children had been born in local hospitals and were being educated in local schools. They had attended local churches, supported local businesses, and buried loved ones in local cemeteries. Furthermore, these families are often "mixed status," comprised of members who are citizens, legal residents, and/or unauthorized migrants.

For those who chose to stay, religiously based community organizations provided short-term support resources. The local Episcopal Church had a food bank; the local Catholic Church furnished vouchers for food, clothing, housing, and gas, as well as immigration information and assis-

tance (Fig Tree, 2010). Many of these displaced workers and their families felt confident that things would work themselves out by the end of March 2010. Yet given the evidence of displaced workers' reliance on local relief efforts, and the sudden massive loss of employment, Brewster and other local communities had no immediate means to recoup or offset these short-term local economic losses.

Another primary purpose of the I-9 audit system is to shift the costs associated with immigration law enforcement from the government onto to those businesses who hire unauthorized migrants. Namely, either by forcing those businesses to pay a stiff penalty for breaking U.S. immigration law or to fire those people who lack authorization to work, or be present, in the United States. Businesses claim that they cannot determine with certainty just which workers are properly documented and those who are not and, furthermore, E-Verify, the government system for checking immigration status, is inaccurate. Some businesses also regard verification of employees' documents as a regulatory activity outside the scope of their business responsibility, and consider E-Verify program to be too costly and time consuming to set up (Westat, 2010). Until E-Verify is simplified and made mandatory, it is unlikely that a great number of employers will use it. As well, asking employers to force workers to prove their authorization status and the veracity of their documents borders on legally impermissible profiling and discrimination, which could lead to lawsuits. Finally, employers contend that they are not in the best position to determine legal authenticity of immigration and citizenship documents, and thus they take at face value the documents as presented to them.

Agribusinesses may also find that unauthorized migrants are the only people who are willing to perform the work that they have to offer. In the instant case, Gebbers Farms lost many loyal workers who knew the company well and on whom the company had relied for many years, not just seasonally but often year-round. Indeed, this family-owned and managed business had to sever ties with many of the Hispanic and Latino families who had helped to grow and sustain the enterprise, and whom Gebbers Farms had supported through its community involvements. After the audit and terminations, Gebbers Farms placed advertisements that sought up to 1,280 minimum-wage workers who could meet requirements such as: *must be able to lift 60 pounds, climb a ladder while carrying 40 pounds and endure "wet orchards in temperatures from 30 to 100 degrees"* (Westneat, 2010).

It probably comes as little surprise, then, that the local response was less than enthusiastic. Said one orchard owner who is familiar with the Gebbers Farms case: "There is a ten percent unemployment rate. And I've not had a single U.S. American stop by and ask for a job" (Sanchez, 2010).

Unable to find replacements among the available workforce, Gebbers Farms hired 300 temporary guest workers who came from Jamaica on H-2A visas (Rural Migration News, 2010).

Many speculated that Brewster would also see declines in business activity and school enrollments. However, the Brewster School District reported that enrollments remained steady, after a temporary decline in the winter of 2010, and many businesses had bounced back to pre-audit levels in the summer of 2010. Esteban Camacho, owner of La Milpa Grocery Store, said: "Everything is back to normal. I think most of the people who stayed here wound up working somewhere else. There are a lot of the same people around" (Rural Migration News, 2010). Ron Oules, Brewster's Chief of Police, offered a similar assessment of the I-9 audit's impact: "It did nothing! That's the thing. It hit the media and it looks like this great big thing, but the reality—the end result truly is, other than putting a financial burden on a local business and disrupting the lives of the residents around here, did it truly make a change? I don't believe so, no" (Robinson, 2013). Yet one thing that did change was the influx of Jamaican workers into the community. In response to which, Mr. Camacho reported that he learned to make coconut rice and jerk chicken (Robinson, 2013). The number of Jamaicans who have remained in area after marrying U. S. citizens has increased, too.

II. LOCAL IMPLICATIONS IN A NATIONAL DEBATE

The Gebbers Farm I-9 audit and its aftermath raise questions about the goal of U.S. immigration law and enforcement, which can, in part, be defined in terms of the economic well-being and personal safety of legal residents, complex aims like community membership and security, and, of course, national security. The sections of the Immigration and Nationality Act of 2013 which address immigrant admissibility (8 U.S.C. 1182, § 212) and deportability (8 U.S.C. 1227, § 237) express the federal power to prevent people from entering the country or to remove them from it. Reasons for admissibility and deportability include: holding political philosophies that are at odds with those of the United States; lacking good character; posing a threat to national security or public safety; falsely claiming membership in American society; being in the country without permission or having overstayed that permission; and working without authorization.

Without overlooking the federal powers and interests, there are numerous local implications to the immigration debate, as well, because all migrants, whatever their authorization and documentation status, live and work in some local community or other for some amount of time. Everyone who lives within, or simply visits, the U.S. affects community member-

ship and security, as well as national security. Everyone who works in the U.S., regardless of authorization status, affects in myriad ways the economic security of those who are lawfully present and authorized to work in the U.S. These and other impacts are not just federal; they are also local. Therefore, any analysis of the Brewster audit should also consider how well the I-9 audit met national immigration goals and how doing so affected this particular community.

III. UNAUTHORIZED WORK AND PRESENCE

What primarily draws people to Brewster is the availability of work, as well as secondary benefits like quality of life, which may consist of both tangible and intangible goods. According to Census data, the Latino population in Brewster grew rapidly from 1980, when Latinos made up only three percent of the town's population of 1,337 (1980 Census of Population and Housing). Since then, the Hispanic and Latino population has climbed rapidly and propelled Brewster's growth, from 35 percent in 1990 (1990 Census of Population and Housing) to almost 60 percent in 2000 (2000 Census of Population and Housing), and finally to a total of 2,730 residents in 2010, 73 percent of whom are Hispanic or Latino. In fact, during this last ten-year period, Brewster's non-Latino population actually decreased by 28 percent (Brewster, Washington Population). Viewed in light of the major economic influence of Gebbers Farms and its historic reliance on unauthorized migrant workers from Mexico and Central America, and notwithstanding the recent influx of Jamaican immigrants, Brewster might not exist today—or at least not as it does today—without its growing Hispanic and Latino population, including those who are unauthorized migrants.

Because the economy of Brewster continues to depend on immigrant labor, and because of the high percentage of unauthorized migrants within the agribusiness workforce, it is not surprising that the economy of the town suffered greatly, at least short-term, as a result of the I-9 audit. Based on the statewide average hourly wage for picking apples, a worker could earn about \$2,113 per month before taxes (about \$1,900 after taxes). Note, however, that such workers receive compensation according to how much they *pick*, not necessarily according to minimum wage. The Washington statewide average hourly wage earned in 2009 was \$16.48 for picking cherries and \$12.19 for picking apples (Westneat, 2010). Thus, the workers' aggregate earning power might have been even greater and the lost local economic contribution more even more devastating.

With the Gebbers Farms I-9 audit, suddenly that income was gone, and there was no immediate alternate employment or unemployment insurance available to the 525 fired workers (Westneat, 2010). Furthermore, 525

fewer workers in the orchards meant less money in circulation in the community, perhaps as much as \$1 million per month, based on the previously recited estimates. Though donations from charitable organizations helped bridge the gap for those who chose to ride out the audit's aftermath, which also helped boost the local economy, reliance on charitable giving is an unsustainable strategy over the long haul.

The 111th Congress (2009-10) allocated \$135 million for ICE workplace enforcement, of which the I-9 audits are a part. In terminating these 525 workers, Gebbers Farms took the necessary action to avoid incurring a fine, the average of which in 2009-2010 was \$110,000 (Committee Reports, 2010). Gebbers Farms ultimately paid \$475 per H-2A visa to bring 300 guest workers from Jamaica to Brewster (approximately \$142,500), plus up-front travel costs which the company would require those coming to repay (Mehaffey, 2010). Employers must pay H-2A workers the Adverse Effect Wage Rate (AEWR), which in 2009 was \$8.87 per hour (Rural Migration News, 2010), less than the state minimum wage at the time. However, given that the new hires would need more time to accomplish the same work as the more seasoned and skilled workers who had been fired, the new workers (though costing less per hour) were less efficient and thus likely cost Gebbers Farms more in the long run (Reyes, 2012). A family-owned nursery in California audited around the same time as Gebbers Farms estimated a resultant 10 percent increase in costs due to an I-9 audit (Gardella, 2011).

Three years after the audit, the money circulating in the local economy remained below pre-audit levels, even when Gebbers Farms had full employment in the peak season and with some businesses, like La Milpa Store, reporting a return to normal. One reason why is that whereas the local Latino farmworkers kept most of their earnings in Brewster's economy, the Jamaican workers—who still have lesser “ties” to the area—are drawing more out of the local economy through remittances (Robinson, 2013).

IV. COMMUNITY MEMBERSHIP AND SECURITY

As mentioned, one of the goals of the I-9 audit system is to encourage those who are fired to “self deport,” to leave the country because they are unable to sustain themselves here (Reyes, 2012). This strategy does not consider the investment or contributions that unauthorized migrants have made to the communities in which they live, even without receipt of legal status. Unauthorized migrants cannot be surgically removed from their communities without having their absence reverberate throughout it. To give one illustration, shortly after the Gebbers Farms audit I received an

email from the pastor of one of Brewster's churches, in which the pastor said "ICE is now deporting people. . . They are going to the houses of the people who were fired through the audit and deporting them."¹ Although this information turned out to be inaccurate, the bottom line is that the community was destabilized and now insecure in ways beyond economic impact. Local community members were scared, rumors were flying, and since even something as minor as a routine traffic stop can turn into a deportation situation, it was not out of the question that the audit would ultimately result in a house-to-house raid. People feared that their loved ones who had lost jobs might be removed from the country and taken away from them permanently.

For Gebbers Farms, the unannounced audit also created an atmosphere of uncertainty. In general, an audit during harvest time in an apple orchard can create chaos and severe losses of produce and income. While laborers who have lost jobs with a given employer due to an audit may be able to find work with a local competitor, audited employers must attract new employees from the available pool of authorized workers (which proved impossible) or work with a labor contractor (as Gebbers Farms ultimately did) to hire temporary workers through the H-2A program.

CONCLUSION

What happened in Brewster just before Christmas 2009, which also happened in 2900 other workplaces that year, raises questions about the real effectiveness of U.S. immigration law and its enforcement. In 2012, the federal government spent \$18 billion on immigration law enforcement, compared with \$14 billion spent on all other law enforcement activities combined (Preston, 2013). In 2011, the Obama Administration deported over 400,000 individuals—a record (Gavett, 2011).

While politicians debate the merits of this or that aspect of immigration reform, the current system of laws and policies harms small towns across the country. In many ways, as Brewster shows, nothing really changes, because of the connections that those targeted by the I-9 audit have to the community, and because the community has been subject to an action that, according to its stated objectives, accomplished nothing. Yet in other ways, the I-9 audit system is producing many effects, negative ones that drain economic resources out of local communities and community organizations, burden businesses and consumers alike, and introduce community insecurity. Any real discussion of immigration reform should consider the makeup of communities like Brewster, seek to understand the factors that shape them, and look to what kinds of conditions actually promote secure communities. For just as the national debate plays out locally,

so too do immigration law enforcement actions like the Gebbers Farms I-9 audit in Brewster have an impact on the nation as a whole.

NOTES

1. E-mail on file with the author.

REFERENCES

- Brewster, Washington Population. (n.d.). Retrieved from <http://censusviewer.com/city/WA/Brewster>
- Data Tables, Hispanic or Latino Population, Okanogan County, Washington, 1980-2010. (n.d.) Retrieved from <http://censtats.census.gov>
- Gardella, A. (2011, July 14). As immigration audits increase, some employers pay a high price. *The New York Times*. Retrieved from http://www.nytimes.com/2011/07/14/business/smallbusiness/how-a-small-business-can-survive-an-immigration-audit.html?pagewanted=all&_r=2&
- Gavett, G. (2011, October 18). Record number of illegal immigrants deported in 2011. *Frontline*. Retrieved from <http://www.pbs.org/wgbh/pages/frontline/race-multicultural/lost-in-detention/record-number-of-illegal-immigrants-deported-in-2011/>
- Gebbers Farms. (2006). Who We Are. Retrieved from http://www.gebbersfarms.com/who-we-are_22.html
- Hoefler, M., Rytina, N., & Baker, B. (2011, January). Estimates of the unauthorized immigrant population residing in the United States: January 2011. *Office of Immigration Statistics, Policy Directorate*. Retrieved from https://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf
- Immigration and Nationality Act. General classes of aliens ineligible to receive visas and ineligible for admission; waivers of inadmissibility, 8 U.S.C. 1182, § 212. General classes of deportable aliens, 8 U.S.C. 1227, § 237. Retrieved from <http://www.uscis.gov/iframe/ilink/docView/SLB/HTML/SLB/act.html>
- Mehaffey, K.C. (2010, May 31). New guest workers fill empty Brewster orchard jobs. *The Wenatchee World*. Retrieved from <http://www.wenatcheeworld.com/news/2010/may/31/new-guest-workers-fill-empty-brewster-orchard/>
- Passel, J. S. (1986). Estimating the number of undocumented immigrants. *Population Division, Bureau of the Census. Changes in the Estimation Procedure in the Current Population Survey Beginning January 1986*. Retrieved from <http://www.bls.gov/opub/mlr/1986/09/rpt2full.pdf>
- Preston, J. (2013, January 8). Huge amounts spent on immigration, study finds. *The New York Times*. Retrieved from http://www.nytimes.com/2013/01/08/us/huge-amounts-spent-on-immigration-study-finds.html?_r=0
- Reyes, P. (2012, March). 'It's just not right': the failure of Alabama's self-deportation experiment. *Mother Jones*. Retrieved from <http://www>

- .motherjones.com/politics/2012/03/alabama-anti-immigration-law-self-deportation-movement
- Robinson, J. (2013, March 20). Wash. town rides 'ups, downs' of broken immigration system. *News for Seattle and Northwest, KPLU* 88.5. Podcast retrieved from <http://www.kplu.org/post/wash-town-rides-ups-downs-broken-immigration-system>
- Rural Migration News. (2010, July). H-2A, ICE and RICO. Retrieved from http://migration.ucdavis.edu/rmn/more.php?id=1550_0_4_0
- Sanchez, M. (2010). Massive firings in Brewster, and a big debate about illegal immigration. *The Seattle Times*. Retrieved from http://seattletimes.com/html/localnews/2011069760_brewster14.html
- Serrano, A. (2012, September 21). Bitter Harvest: U. S. farmers blame billion-dollar losses on immigration laws. *Time*. Retrieved from <http://business.time.com/2012/09/21/bitter-harvest-u-s-farmers-blame-billion-dollar-losses-on-immigration-laws/>
- Southern Poverty Law Center. (April 2010) Who Are Farmworkers? Retrieved from <http://www.splcenter.org/sexual-violence-against-farmworkers-a-guidebook-for-legal-providers/who-are-farmworkers>
- The Fig Tree (2010, May). Catholic Charities says layoffs in Brewster demonstrate the need for immigration reform. *The Fig Tree*. Retrieved March 23, 2014 from <http://www.thefigtree.org/may10/050110ccsimmigreform.html>
- United States. 111th Congress. Committee Report. (2010). Department of Homeland Security Appropriations Act, House Report 111-298. Retrieved from http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp111&sid=cp11102KMw&refer=&r_n=hr298.111&item=&sel=TOC_235361&
- Westat. (2010, December). The practices and opinions of employers who do not participate in E-Verify. Retrieved from <http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports/E-Verify/e-verify-non-user-dec-2010.pdf>
- Westneat, D. (2010, May 25). The fruits of our labor absurdity. *The Seattle Times*. Retrieved March 20, 2014 from http://seattletimes.com/html/dannywestneat/2011952772_danny26.html

