

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA**

**ANDREW O’SHEA, individually and on behalf
of all those similarly situated,**)

Plaintiffs,)

v.)

Marisol Martinez and James Harding,)

Defendants.)

CIVIL ACTION NUMBER

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

INTRODUCTION

1. This is a class action brought pursuant to the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§1961-1968, brought by hourly-paid production workers at Indiana Packers Corporation (“IPC” or “the plant”), a large meat processor located in Delphi, Indiana against two of its Human Resources (“HR”) personnel for carrying out a scheme to employ vast numbers of illegal immigrants at the plant to depress wages.
2. Because of IPC’s size in the predominantly rural area where it is located and the difficulty hourly workers at IPC face finding equivalent employment elsewhere, IPC has market power to lower wages for unskilled workers, like Mr. O’Shea, below the wage it would otherwise be obliged to pay if it were not hiring illegal immigrants (hereafter “Illegal Immigrant Hiring Scheme” or “the Scheme”).

3. The employment of illegal immigrants is carried out by the repeated false attestations that the illegal workers are authorized to be employed in the U.S. on I-9 Forms, the document every employer must complete to ensure compliance with the Immigration Reform and Control Act (“IRCA”).
4. These false attestations are RICO violations. Marisol Martinez, an IPC Human Resources (“HR”) worker has hired hundreds (and perhaps thousands) of illegal immigrants to work at the plant over the last four years. James Harding is her boss, the HR Director in charge of hiring for the plant, who is aware of, and approves of, her hiring practices and the Scheme.

PARTIES, JURISDICTION & VENUE

5. Andrew O’Shea (“O’Shea”) is a citizen of Indiana and lives in this district.
6. James Harding (“Harding”) and Marisol Martinez (“Martinez”) are citizens of Indiana and live in this district.
7. The Court has jurisdiction of the case as a federal question arising under RICO’s civil remedies provision, 18 U.S.C. §1964(c) and 28 U.S.C. §1331 (federal question jurisdiction).
8. Venue is proper in this district because the RICO violations occurred here and the parties reside here.

IPC'S LABOR MARKET

The IPC Workforce:

9. IPC is one of the largest employers in Northern Indiana, particularly for low-skilled workers lacking a high school degree. It has 2,500 - 3,000 employees at its pork processing plant by the small town of Delphi in Carroll County.
10. Most of the hourly-paid workers at IPC are engaged in slaughtering live pigs or on the production lines, where the meat is sliced and packaged.
11. These are hard and unappealing jobs that do not require much education. Workers do repetitive tasks, handle or are in proximity to dangerous cutting machinery, and often stand for long periods of time. The pace of work is fast, unrelenting, and stressful. The work environment is loud, bloody, cold (in refrigerated areas), and more dangerous than jobs in other types of manufacturing/production.
12. The typical IPC production worker is a U.S. high school dropout with one or more of the following characteristics: an arrest record, a recent physical injury, and/or an unstable work history (referred to as "the drop-out-plus-one" workforce). The vast majority of employers will not hire them. On information and belief, IPC is the largest employer in the labor market that will hire them.
13. According to data from the United States Census Bureau's American Community Survey (ACS, 5-year 2006-2010 sample) and other sources, IPC employs approximately 29% of all drop-out-plus-one workers who reside and work in the IPC labor market.

14. Andrew O’Shea fits this profile. He did not complete high school and has an arrest record. Having little choice, he accepted a job at IPC in 2013 for approximately \$10.50/ hour. He lived in Kokomo (Howard County), Indiana at the time he was employed there.
15. Other than the typical worker described above (and who is authorized for employment in the United States), IPC also hires many illegal immigrants who are not authorized for employment. Not only are they welcome to work at IPC, but references from prior employers are not checked, literacy is not required, and Martinez (or one of her colleagues in the HR department) tips them off when there are rumors that Immigration and Customs Enforcement agents might be in the area.

The Geographic Market Of Hourly Production Workers:

16. IPC is located in Delphi, Indiana (population approximately 2,888) in Carroll County (population approximately 20,086). Virtually all the employees at the plant reside within a 50-mile radius. This area includes: Jasper, Pulaski, Fulton, Benton, White, Carroll, Cass, Miami, Warren, Tippecanoe, Clinton, Howard, Tipton, Montgomery, and Boone counties, all in Indiana (“the labor market”).
17. Data from the ACS support the approximate 50-mile radius for the definition of the labor market. These data indicate that the mean commuting time to the job for workers with less than a high school education is 21 minutes for those living in Indiana and 24 minutes for those living in other states. In Indiana, 94% of workers with less than a high school education have a commuting time to the job of 45 minutes or less. 94% of workers with less than a high school education who live in the IPC labor market commute to work in 45 or fewer minutes and half commute in less than 15 minutes. Nationally, for workers with less

than a high school degree who are employed in the Census occupation category for production workers—butchers and other meat, poultry and fish processing worker (code 7810)—the mean commuting time is 21 minutes and 94% commute to work in 45 or fewer minutes. This data on commuting times offer compelling evidence that the relevant labor market is approximately a 50-mile radius from the plant.

IPC Has Market Power To Depress Wages For The Labor Force:

18. IPC employs approximately 29% of drop-outs-plus-one workers who work in the IPC labor market. Other employers that would hire IPC workers are typically small and widely dispersed in the IPC labor market. According to data from the Quarterly Census of Employment and Wages for 2013 (U.S. Bureau of Labor Statistics), the average establishment in Indiana employs 15 people.
19. Therefore, changing employers involves substantial search costs for IPC workers and unemployment until another job is found. These costs “tie” IPC workers to IPC.
20. The labor market for IPC is clearly not the idealized notion of a perfectly competitive market. All IPC workers would not leave if IPC lowered its wage by a small amount, for example, 10 cents per hour, as predicted in a market characterized by perfect competition. The significant costs of finding alternative employment make this proposition implausible.
21. IPC’s 29% share of employment, and the fact that IPC workers face significant costs of finding alternative employment that tie them to IPC suggests that IPC has market power and influence over the wage paid to its workers.

22. IPC's market power is also evidenced by the argument that because of its large share of employment and the harsh working conditions, IPC could not significantly expand, for example, double, its workforce while paying the current wage, as predicted if the labor market was perfectly competitive.
23. Instead, consistent with having market power, IPC would need to raise wages, increase recruiting expenditures, or incur greater costs of turnover to attract workers from further away, from jobs with better working conditions, or entice more people to enter into the labor force.
24. The market power of IPC means that IPC has substantial influence over the wage and working conditions of IPC workers.

IPC Keeps Wages Low By Employing Illegal Immigrants:

25. It is well-accepted that illegal immigrants will accept sub-market wages. This was the prime motivating factor in the enactment of IRCA, the landmark 1986 law which prohibits employers from hiring them. A firm with market power that violates the law on a large-scale basis can seriously depress the wages and working conditions of legal American workers. IPC has been doing this for years to the detriment of its hard-working American workers.
26. Data from the United States Census Bureau's ACS (American Community Survey, 5-year 2006-2010 sample) illustrate this. In the IPC labor market, the average wage of full-time workers with less than a high school education between 2006 and 2010 was \$14.32—well above the wage of Andrew O'Shea at IPC in 2013 even without accounting for the effects of

inflation and rising wages between 2010 and 2013. Nationally, according to the ACS, the average wage of full-time workers with less than a high school education between 2006 and 2010 was \$13.57, which is also well above the wage of Andrew O'Shea in 2013.

THE ILLEGAL IMMIGRANT HIRING SCHEME IS CARRIED OUT THROUGH FALSE ATTESTATIONS ON I-9 FORMS AND ACCEPTANCE OF FALSE DOCUMENTS

Marisol Martinez Knowingly Hires Illegal Workers:

27. Martinez is bilingual and is instrumental in the Illegal Immigrant Hiring Scheme because the illegal workers have poor or no English skills. The vast majority of the illegal workers speak Spanish. She interviews them, reads their Spanish-language job applications, and inspects their work authorization documents presented to comply with IRCA.
28. She works at the IPC Human Resources office and reports directly to James Harding, who is ultimately responsible for her acts.
29. Upon hiring, Martinez then conducts orientation for these workers where she also completes the employer portion of their I-9 Forms. The Form is mandated by IRCA to ensure that employers only hire citizens or lawfully admitted aliens authorized for employment in the U.S.
30. Employment cannot, and does not commence, until the attestations as to employment authorization and genuineness of documents are made on the I-9 Form.
31. The information provided by the scores of illegal immigrants seeking employment at IPC on their applications and I-9 Forms are replete with red flags signaling that they are using fake/fraudulent Social Security cards and other authorization documents such as state IDs.

Some common examples that frequently occur are:

- Workers indicating that they have grown up and attended some primary school in Mexico, Guatemala, or Honduras, have been employed in those countries, or, if in the U.S., at other low-wage food processing companies and farms in Southwest. Yet the illegal workers present Social Security numbers issued from Puerto Rico (with no background information indicating they ever lived/worked/studied in Puerto Rico), or to people with English names.
- Workers presenting state-issued ID's which contain addresses that have no relationship with the other background information (education/work history) provided in the job applications and there is no indication as to the reason why. These state IDs are often issued from states in which the applicant has never lived and often directly conflicts with the location of the applicant's stated work history. For example, a job applicant in Indiana should not be using a California state ID when the application does not indicate any California employment or residency and in the year the ID was issued the application indicates the person was employed in Illinois.
- Workers presenting Social Security numbers that have been issued from states in which there is no indication that they ever lived/worked/studied.
- Illiterate workers claiming that they are U.S. citizens, but their application indicates residency and some primary schooling in Mexico. It is highly unlikely such persons are actually U.S. citizens because English literacy is required for naturalization. *See, e.g.,* 8 C.F.R. 312.1.
- The worker was previously employed at IPC under a different identity, which Martinez knows.

32. As stated, these are all strong indications of identity fraud. Yet, Martinez does not ask any follow-up questions of these workers, such as inquiring as to why they have Puerto Rican Social Security numbers when all other data on their application indicates residency in Mexico, Guatemala, or Honduras, and Southwestern U.S. states.

33. The fact that the Social Security numbers used can pass the E-Verify system does not mean they relate to the applicant. IPC uses E-Verify to give the illusion of compliance with IRCA. But in reality, it is a fig leaf to hide Martinez's massive and never-ending scheme to employ

illegals. She knows full well they are using fake documents purchased to pass E-Verify and asks no questions.

34. Any law-abiding employer would ask questions of these applicants to establish their citizenship or lawful permanent residency, both of which are difficult to obtain.
35. As stated above, Martinez reports to James Harding, Director of Human Resources, a member of IPC's management. He works near her and oversees all of her hiring. He is aware of her hiring criteria and approves of every aspect of it, including the willful refusal to inquire about forged documents.
36. The employment of illegal workers is so pervasive that IPC supervisors make jokes about it. For example, Andrew Draper said if he needed more workers on his production line, defendant "Marisol [Martinez] will get me some more illegals." Many workers openly admit they are illegal, or were working under false identities, and/or had previously worked at IPC under a different name.
37. Many workers speak openly of not having valid employment authorization documents. And it is widely-known throughout the plant that Martinez hires many illegal workers (though others in the HR department likely do as well). As a result of the Scheme, approximately 15-20% of the hourly production workers over the past four years are not legally authorized for employment.

Use of False Attestations:

38. As detailed above, in completing the I-9 Forms for illegal immigrants, Martinez violates 18 U.S.C. §1546(a) and §1546(b)(3), sections of the INA incorporated into RICO as forms of racketeering activity pursuant to 18 U.S.C. §1961(1)(B), which state in pertinent part:

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder...

Whoever uses— (3) a false attestation, for the purpose of satisfying a requirement of section 274A (b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

39. When completing I-9 Forms for newly hired hourly-paid workers, Martinez routinely falsely attests, under penalty of perjury, the following:

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States. The employee's first day of employment (*mm/dd/yyyy*): _____ (See instructions for exemptions.)¹

40. In the case of illegal immigrants, this is a false attestation because Defendants know the documents presented are fake/fraudulent, that these documents do not relate to the person tendering them, and that the worker is not authorized for employment, for the reasons listed in ¶¶ 31-34. (This is not an exhaustive list).

41. As detailed above, Martinez has a good reason to know that these people are not who they say they are and are not authorized for employment. She should ask follow-up questions to

¹ Or a certification that is substantially similar.

ascertain the truth about their claims of work authorization, and if the answers are not satisfactory or forthcoming, refuse to hire the applicant.

42. Thus, these actions violate 18 U.S.C. §1546(a) and §1546(b)(3), RICO predicate offenses.

43. These false attestations occur at the Delphi Plant, by Martinez, who is completing the I-9 Form (as indicated by the signature in the employment section), at the time the I-9 Form is completed for each unauthorized alien (and noted by the date on the Form), and in the presence of the unauthorized alien on whose behalf she is falsely attesting. On information and belief, these I-9 Forms are then kept in the HR office of the Delphi Plant.

44. Martinez, as directed by Harding and her other superiors (executives within IPC), has personally violated §1546(a) and §1546(b)(3) in this manner hundreds of times since 2012. These violations committed by Martinez have been ongoing since 2012, are continuous, open-ended, and will not stop without judicial intervention.

Acceptance, Receipt, Obtaining, and Use of Fake and/or Fraudulent Documents:

45. Martinez has also personally violated 18 U.S.C. §1546(a) and 18 U.S.C. §§1546(b)(1)-(b)(2), other forms of racketeering activity pursuant to 18 U.S.C. §1961(1)(B).

46. Section 1546(a) states, in pertinent part:

Whoever knowingly...uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained.

47. Sections 1546(b)(1) and (2) state, in pertinent part:

Whoever uses—(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor, [or] (2) an identification document knowing (or having reason to know) that the document is false...for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

48. Martinez routinely accepts, receives, obtains, and uses fake and fraudulent identification and work authorization documents (including but not limited to alien registration cards, drivers licenses, state IDs and Social Security cards) as part of the process of completing I-9 Forms and verifying work authorization, knowing that these documents were not issued legally for use by the possessor, for the reasons identified in ¶¶31-34, *inter alia*. Thus, these actions violate 18 U.S.C. §§1546(a), (b)(1), and (b)(2).
49. The acceptance, receipt, obtaining, and/or usage of fake and fraudulent identification and work authorization documents during the new hire process occurs in the Delphi Plant, by Martinez when completing the I-9 Form (as indicated by the signature in employer section), at the time the I-9 Form is completed for each unauthorized alien (as noted by the date on the Form), and in the presence of the unauthorized alien on whose behalf the HR employee is falsely attesting. On information and belief, copies of these fake and fraudulent identification and work authorization documents are then kept in the Delphi Plant's HR office.
50. Martinez, as directed by Harding and her other superiors (executives within IPC), have personally violated §§1546(a), (b)(1), and (b)(2), in this manner hundreds of times since 2012. These violations committed by Martinez have been ongoing since 2012, are continuous, open-ended, and will not stop without judicial intervention.

THE ILLEGAL IMMIGRANT HIRING SCHEME VIOLATES RICO

51. As detailed, the Illegal Immigrant Hiring Scheme violates 18 U.S.C. §1546, which is made a form of “racketeering activity” by 18 U.S.C. § 1961(1)(F).
52. Therefore, Mr. O’Shea alleges that Mr. Harding and Ms. Martinez have conspired to violate 18 U.S.C. §1962(c), which is a violation of §1962(d), by their agreement for her to carry out the Scheme in the manner described above and below, which she has done hundreds (or thousands) of times over the last four years at IPC.
53. IPC is the RICO enterprise.
54. This is both an open and closed pattern of racketeering activity in that it has been ongoing for years and will not cease.
55. Mr. Harding is part of IPC’s management, and Ms. Martinez is his pawn, carrying out his policies.
56. The Defendants are carrying out the Scheme under the direction of high level executives within IPC.
57. O’Shea has been directly and proximately harmed by the RICO violations because his wages as an IPC hourly worker were depressed below what they would otherwise have been, the precise amount being subject to proof.

CLASS ALLEGATIONS

58. This action is brought and may be maintained as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and (3). Plaintiff brings this action on behalf of himself, and all other persons legally authorized to be employed in the U.S., who have been employed at the Delphi Plant as hourly production wage earners in the four years prior to the filing of this case (“the Class” or “Class Members”) and up through trial.
59. The Class is so numerous that joinder of all Class Members is impracticable. The actual number can be ascertained through discovery of IPC’s records, but is in the thousands.
60. Among the questions of fact and law that are common to the Class are:
- a. Whether the Defendants have been and are currently engaged in the Scheme in order to depress wages of the Class in violation of 18 U.S.C. §1546;
 - b. Whether the Defendants conspired with each other to carry out the Scheme at IPC;
 - c. Whether the Defendants have committed the Scheme through the IPC enterprise;
 - d. Whether the individual illegal acts comprising the Scheme constitute a “pattern of racketeering activity” as required by RICO;
 - e. Whether the Defendants violated RICO; and
 - f. Whether, and to what extent, the Scheme has caused Class Members’ wages to be depressed.
61. Plaintiff’s claims are typical of those of the members of the Class inasmuch as his damages were directly and proximately caused by the Scheme. Plaintiff seeks no relief that is antagonistic or adverse to other Class members.
62. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel who are competent in the prosecution of RICO cases generally, and in this legal theory in

particular. Accordingly, he and his counsel will fairly and adequately protect and represent the interests of the Class.

63. Questions of law or fact that are common to the members of the Class are substantially similar and predominate over any questions affecting only individual Class members, and a class action is the superior method for the fair and efficient adjudication of this controversy.

64. Plaintiff anticipates no difficulty in the management of this action because the evidence proving the Scheme is ascertainable through discovery, and the identities of the Class Members are known to the Defendants. Damages can be calculated through expert testimony.

PRAYER FOR RELIEF

65. Wherefore, Plaintiff, Andrew O'Shea requests that this Court appoint him as representative of the class of hourly-paid production workers at IPC since 2012, pursuant to Fed. R. Civ. P. 23(b)(2) and (3), and to enter judgment against Defendants Mr. Harding and Ms. Martinez for three times their damages, attorney's fees, and costs, pursuant to 18 U.S.C. §1964(c), as well as an injunction against the Defendants from committing any further racketeering activity. He also requests a jury trial pursuant to Fed. R. Civ. P. 38

Dated February 16, 2016

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CLASS ACTION COMPLAINT

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