

Lawyer Responds To Santa Barbara News Press Editor for Use of Term Illegal

Written by DD

Monday, 05 January 2015 10:32 - Last Updated Sunday, 01 March 2015 03:13

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Chicano lawyer, Ruben Salazar writes with regard to Santa Barbara News Press' usage of the term "illegal" when referring to immigrants. It's too bad they won't drop an antiquated offensive word and follow the [Associated Press' suit](#). Please sign this petition Chipsterlife began [here](#). In the below, Ruben Salazar essentially gives the Santa Barbara News Press a history lesson.

THERE IS NO SUCH THING AS AN "ILLEGAL" HUMAN BEING, ONLY "ILLEGAL ACTIVITY."

By: Ruben Salazar Esq. Jan 4, 2015 ©

Santa Barbara News Star PO Box 1358, Santa Barbara, CA. 93102

Attn: Editorial Board and Taylor Brianna Knopf (805) 564-5193

I am both a sociologist and a lawyer, and in that vein, I would like to formally register my seven (7) complaints about your news outlet's improper usage of the term, "illegals" in your January 3, 2015 front page story on California's new law relating to driver's licenses. It is wrong on so many levels.

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First, usage of the racially divisive misnomer is legally wrong and borders on unethical journalism. Nowhere in the U.S. Immigration Nationality Act, the controlling federal immigration laws, is the term “illegal” defined. The word “alien” is defined. INA Sec. 1101(a)(3). The word, “immigrant” is defined. INA Sec. Sec. 1101(a)(15). Both terms are used to describe categories of persons who are not U.S. citizens. Even the term, “special immigrant” is defined. INA Sec. 1101(a)(27). But, nowhere does the term, “illegal” appear in any of the immigration laws or regulations. Thus, the word is misleading to the general public, as it does not even exist under governing U.S. immigration laws. This begs the question: if the term, “illegal” is not found under the federal immigration laws (the definitive authority on the subject), then what gives the author – who claims to have studied sociology as I have – or the editorial board of your local newspaper the temerity to use such an inflammatory non-legal term? It would behoove the board to remember that businesses don’t like controversy or unethical practices by media outlets which don’t adhere to national professional standards of journalism. This is because publicly advertising with such unethical or misleading media outlets make their businesses look unethical or sleazy. Perhaps the more accurate legal terms, “aliens,” or “unlawful immigrants” should have been used instead.

If your regrettable use of word, “illegals” refer to foreigners who entered the country without being inspected by an immigration officer or without proper documentation, that too could or would be misplaced. Contrary to popular belief, it is not a crime to cross the border without papers or authorization. INA section 275(a) is entitled “improper entry by alien” and deals with the civil penalties for “avoidance of examination or inspection.” Given this important civil provision, many immigration judges and lawyers in removal proceedings often use the legal phrase, “entering without inspection,” or (“EWI”). Other informed people, call these people through the less offensive legal terms, “foreign nationals” or “arriving aliens.” Maybe the terms, “foreign nationals,” “arriving aliens” or “EWI’s” would have been more legally and factually accurate and ethical; that is, assuming ethics and accuracy is what your local newspaper strives to achieve.

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Second, the term “illegals” is potentially overbroad and contrary to existing immigration case law. What you may not know is that many foreign nationals initially entered because they were inadvertently admitted into the U.S. by immigration officials. For example, it is not uncommon for an individual migrant to be “waved through” inspection at a port of entry and be allowed to enter without being asked any questions by the inspecting border patrol agent. Such a non-citizen who physically presents him or herself for inspection, makes no false claim to U.S. citizenship, and is inadvertently permitted to enter the U.S., has been legally inspected and admitted, even if the inspecting office asks no questions. Such an individual has not made an entry without inspection (EWI), and so cannot be considered to be here “illegally.” See, *Matter of Areguillin*, 17 I&N Dec. 308 (BIA 1980).

Third, and perhaps most notably, the term, “illegals,” is journalistically obsolete and unfair, racially biased, and passé. We remind the Santa Barbara Star News that the influential Associated Press (AP) Stylebook is used by reputable newspapers and schools around the United States. On April 2, 2013, the AP dropped the phrase “illegal immigrant” from its stylebook. AP no longer sanctions the term, “illegal immigrant” or the use of “illegal” to describe a person. Instead, AP Executive Editor, Kathleen Carrol, tells its users that “illegal” should describe only an action, “such as living in or immigrating to a country illegally.” The 2013 AP move is part of broader national journalistic shift away from labeling people and toward labeling behavior. Even former U.S. Homeland Security Secretary Janet Napolitano once defined an “illegal immigrant” to reporters as “immigrants who are here illegally.” Thus, on a more fundamentally factual and journalistic level, no human beings are technically themselves illegal, albeit their actions may be.

In addition, the AP has also previously rejected the term, “undocumented immigrants.” This, too, is inaccurate, since many people in the country illegally do have documents; they have just overstayed their temporary non-immigrant visas. Accordingly, instead, the AP standards call for details: “Specify whenever possible how someone entered the country. Crossed the border? Overstayed a visa? What nationality?” Regrettably, the Santa Barbara Star News does not adhere to the AP standards on journalistic ethics. With that kind of history and political baggage, however, many readers may start to doubt about where to get their local news from. More importantly, some major advertisers like Best Western, Sotheby’s Realty, and Santa Barbara Homes, may think twice about where to place their advertising dollars, especially once they realize some of these people are their paying customers or after they are economically

pressured with bad press and boycotts from outraged consumers and political activists.

Incidentally, for people who have overstayed more than 180 days, they are barred from re-entering the U.S. for 3 years. An overstay of more than one bars them from re-entry for a period of 10 years. However, these 3/10 time bars are mere “civil” penalties for violating federal immigration laws; the actions do not rise to the level of a “crime” unless there is a re-entry after an order of deportation. See, 18 U.S.C. Sec. 1369. The point here is that, despite having violated federal civil laws relating to immigration admission and documentation, even these overstay immigrants are not criminals. In reality, their behavior is diminimus and much akin to committing a mere infraction for “jay-walking.” Labeling such a person as “illegal” based on a low level civil violation is, thus, a misnomer and is fundamentally unfair. That biased and divisive term smacks of racial code for “Mexicans.” And, it serves only to stigmatize some hard-working Santa Barbara and California Hispanic residents hoping to gain American citizenship, many of whom have ancestors and others who came to the country as children.

Fourth, the misleading term “illegals,” suggests that this group of foreign people physically present in the United States have no rights, when nothing could be further from the truth. Long ago, the U.S. Supreme Court held in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) that the protections of the U.S. Constitution apply to all persons “within the territorial jurisdiction, without regard to any difference of race, of color or of nationality.” See, also, *Hernandez v. Texas*, 347 U.S. 475 (1954) [finding national origin discrimination against Mexican-Americans in grand jury selection impermissible].

Fifth, the inaccurate word, “illegals,” is historically wrong, dismissive of the original indigenous people of Santa Barbara, and repugnant to many of the subsequent Spanish and Mexican settlers; many of whom still reside in and literally made Santa Barbara what it is today – a thriving popular and diverse resort destination. The Santa Barbara County area was first settled by Native Americans called the Chumash people at least 13,000 years ago. Later, Europeans

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from Spain first made contact with the Chumash after they landed offshore in the Channel Islands in AD 1543. Spanish explorer Sebastian Vizcaino sailed along the coast in 1602, and named the Santa Barbara Channels. The first land expedition in California was led by Gaspar de Portola who explored the coastal area in 1760 on his way to Monterey Bay. Later, the Presideo of Santa Barbara was established by the Spanish in 1782, followed by the Mission Santa Barbara in 1786. The establishment of permanent settlements had devastating effects on the Chumash people, including a series of disease epidemics that drastically reduced their population. However, the Chumash survived and thousands of Chumash descendants still live in the Santa Barbara area or surrounding counties. Moreover, after the Mexican secularization of the mission Indians in the 1830's, the mission pasture lands were mostly broken up by Mexico into large "ranchos" and granted mainly to prominent local citizens, many of who still reside in Santa Barbara. These original Santa Barbara ranchers were sometimes called, "Los Californieros." Six-hundred and four (604) of these Mexican land grants were later confirmed by the State of California, thirty six (36) in Santa Barbara County. Eventually, Santa Barbara County was one of the 26 original counties in California, formed in 1850 at the time of statehood. After that, Santa Barbara was (successively) transformed from grand Mexican "ranchos" and haciendas to: a dusty cluster of adobes; a rowdy, lawless Gold Rush era town; a Victorian-era health resort; a center of silent film production in the 1920's; an oil boom town in the 1930s; a town supporting a military base and hospitals during WWII in the 1940's; and finally it became the economically and racially diverse resort destination it remains in the present day. Based on these historical facts, is it fair and does it make economic sense to offend and label potential descendants of Spanish and Mexican American settlers and residents – who have had a continuous presence in the Santa Barbara area since the 1540's – as "illegal"?

"Who really is the 'illegal' one here?," some may quip!

Sixth, the term, "illegals," is politically insensitive and offensive to many of the Hispanic people of the United States, California, and of Santa Barbara. In March of 2014, for the first time ever, the official population of California was 39% Latino, surpassing the 38.8% of the state residents who are white non-Hispanic. After New Mexico, California has become the second state in the U.S. to undergo such a major demographic shift. More importantly and relevant, the 2010 U.S. national census reported that there are 423,895 residents in Santa Barbara. Out of this, approximately 76.54% are white, and 42% are Hispanic or Latino. Last year, the Pew

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Research Center called Hispanic electorate “an unawakened giant” that is likely to double in size over the next 16 years. Presumably, many of the so-called “illegals” here and others who will arrive in the future have ancestors or family relatives in Santa Barbara, and they may naturally find this ugly term extremely offensive. Based on these compelling demographics and electoral realities, is it politically appropriate or wise in today’s supposedly enlightened and post-racial period to label potential descendants of many Santa Barbara Spanish-Mexican settlers as “illegal”?

Seventh, as you must know, the southern portions of Santa Barbara county has a bustling economy based largely on tourism, with a significant portion of people with white-collar and high-tech jobs which have contributed most recently to a liberal populace. The southern portions of the county has a strong history of left-wing activism with anti-war protests common in Santa Barbara. In fact, it is generally believed that the inspiration for Earth Day was the 1969 Santa Barbara oil spill. These white non-Hispanic liberal residents from Santa Barbara are also likely to be taken aback at the harsh and divisive “illegal” label. No doubt, some of these liberal whites in the burgeoning and thriving southern areas of Santa Barbara financially support the Santa Barbara Star News through their subscriptions or contributions, and would be disturbed and less inclined to continue to support a newspaper still using such radical or racially-charged terms.

In summary, if the editorial board or individual journalist must use a label, perhaps the phrase “foreign nationals” who “illegally entered the country” is more legally and factually accurate. It is certainly less unfair and offensive. If that long phrase is unacceptable, then maybe the Santa Barbara News Star should employ the unbiased terms, “undocumented” or “non-citizen” residents. A third acceptable alternative could also simply be, “unauthorized migrant.” Accordingly, given these three (3) reasonable alternatives in terminology, and based on my seven (7) valid objections stated above, I hereby demand on behalf of many outraged and offended “Barbareños,” Santa Barbara Hispanics, and liberal white citizens, to retract the offensive, inaccurate, overbroad, unfair, and misleading term, “illegals.” Perhaps it is high time for such an old prestigious newspaper like the Santa Barbara Star News- which was established in 1850 when statehood occurred- to get with the times; and to start adopting the nationally accepted standard used by the Associate Press when referring to the 11 million people in the country illegally. Humans are not “illegal,” only their actions are. If for no other reason, you should stop using the arcane word out of sheer respect and concern over your

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advertisers, subscribers, and contributors, many of whom may justifiably not want to be associated with such backward dog -whistle tactics designed only to rally the more uninformed, conservative, or nativists elements in our society.

Ruben Salazar, Esq.