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# THE IMMIGRATION DEBATE - Edgar Velázquez: Maimed at work, then deported

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*By Karen Lee Ziner May 20, 2007 Publication: Providence Journal (RI) Page: A-01*

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The Mexican man came to Rhode Island as an illegal immigrant, was seriously injured on the job, and then was caught by immigration officials before he could seek compensation for his injuries.

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One year ago, Edgar Velázquez slashed his face open with a chainsaw while working for a Warwick tree service company. The saw blade struck a fence, kicked back and sliced through his nose, left eyelid and forehead, leaving a flayed crimson channel and nearly exposed bone. Though a surgeon repaired his face, his wounds reopen and ooze, he said, and his pain lingers.

At the time, Velázquez was in the country illegally from Mexico, working for William J. Gorman Jr., owner of Billy G's Tree Care. Velázquez said Gorman hired him despite knowing of his undocumented status.

Soon after his injury, Velázquez learned that he was entitled to seek compensation from his employer for his medical bills, permanent disfigurement and weekly benefits.

But Velázquez never had his day in court.

State law entitles undocumented workers to workers' compensation benefits - as is true in many other states - but on the day of Velázquez's scheduled hearing, on Aug. 2, immigration agents arrested him outside the J. Joseph Garrahy Judicial Complex in Providence. Less than one month later, the 20-year-old was sent back to Mexico.

"I was about to get into the courthouse when Mr. Gorman said my name. He speaks a little Spanish. He says, 'Edgar, Edgar, stop!' So I turned around and Immigration was there. And then he [Gorman] laughed, and he said, 'Now Edgar, I'm sending you back to Mexico - I have no use for you now,' " Velázquez said in a phone interview from Mexico. "He said, 'Edgar, adiós.' "

Velázquez said he believes Gorman called immigration agents to the court that day.

Maureen Gemma, a lawyer in the firm of Stephen J. Dennis, which represents Velázquez, said she arrived shortly before the scheduled hearing but did not witness the arrest. Gemma said Gorman approached her to say that Velázquez had been detained by immigration. "He said, 'You'll never guess what happened,' " said Gemma. " I just saw your client walking up to the courthouse and Immigration snatched him up. ... I think it was Immigration. It had to be.' ... He was obviously amused."

Gorman has declined to comment for this story. Gorman's lawyer, Michael A. St. Pierre of Revens, Revens & St. Pierre, said he was inside the court and did not see the arrest. He said he learned of it when Gemma came inside and told him. "As far as who placed the phone call [to Immigration and Customs Enforcement], unequivocally, it certainly wasn't me. Whether my client did, I have no idea. He didn't say whether he did or he didn't."

St. Pierre acknowledged that his client has no workers' compensation insurance, but said he is not certain that it was required.

Absent Velázquez in court that day, the lawyers and judge agreed that the claim would be withdrawn with the stipulation that Velázquez has until March 31, 2008, to refile.

Dennis is trying to bring Velázquez back into the country to pursue his claim. He must show up in court - in person - prior to March 31.

"It's an injustice," said Dennis. "He's been tossed out as damaged goods. He's being depreciated like a piece of machinery. I think it's horrible we have a system that allows this. We love their labor," he said, speaking of undocumented immigrants, "but when they get hurt, they're nobody."

Dennis has appealed to U.S. Sen. Jack Reed's office, the Mexican Consulate in Boston, the Mexican government and a local Mexican-American Association on his client's behalf. "I will continue until I can get him back into the country," said Dennis. "I want him to have his day in court."

Dr. Steven G. McCloy, an occupational health physician who treated Velázquez, has also written letters on Velázquez's behalf, including to Chief Judge George E. Healey Jr. of the Rhode Island Workers' Compensation Court. McCloy is medical director and a clinical assistant professor of medicine at Brown University.

"I have no idea who dropped the dime on Edgar" by calling immigration, McCloy said, "but this is one of the things held over the head of these workers. This is 17th-century indentured service - we just repackaged it 400 years later."

VALAZQUEZ SPOKE at length twice with The Journal, through an interpreter, from a restaurant in a small town in Chiapas, Mexico, where he works as a dishwasher. The restaurant is a six-hour bus trip from his mountain village in Siltepec.

In 2005, Velázquez said, he borrowed \$1,800 to pay a coyote to help him cross the Mexico-Arizona border. Velázquez made his way to Rhode Island to join relatives who live here. It was his first entry into the United States, he said.

An uncle who worked in landscaping helped Velázquez get a job with Gorman, he said. On workdays he took the bus to Warwick with a Guatemalan man who was also in the country illegally.

Velázquez said Gorman knew of their undocumented status.

"He [Gorman] was hiring people he needed. He was never worried about papers or not. He

knew. ... We didn't have papers so we never lied to him."

Velázquez said Gorman paid the men \$10 to \$12 an hour in cash to cut tree limbs and chop down trees.

Velázquez said he asked for protective gear. "I never received any. The only thing he gave to me was the chainsaw to cut the tree. When we ask for gloves, he was very angry, but he provided gloves. He never gave us any helmets."

Velázquez described Gorman as "very abusive. He talked to us very harshly. He used foul language. We didn't know what he was saying to us, but we learned."

The day of the accident, Velázquez said, he was working in Warwick, near Gorman's house.

"I was chopping, taking a tree down with the Guatemalan." After they cut off the branches, he said, Gorman took those away to mulch them. Gorman was out of range when the chainsaw bounced off the fence and struck Velázquez, and a tree limb he was cutting fell onto his shoulder, he said.

"I passed out," said Velázquez, but his co-worker later told him what happened.

"When the Guatemalan guy saw me bleeding and in bad shape, he called Mr. Gorman [by cell phone], but he didn't want the Guatemalan guy to call the ambulance," he said. Nonetheless, the

co-worker called 911.

When Gorman learned that the worker had called 911, Velázquez said, "he became very angry."

Velázquez said he remembered nothing until he woke up in the hospital and saw his aunt and uncle beside him.

When the relatives told Gorman that Velázquez was badly injured, Velázquez said, "he denied that I was working for him. He denied knowing me."

The uncle, Manuel Marmol, said he called Gorman at least four times after his nephew's injury.

"He said, 'Why you call to me?' I said, 'Edgar.' And he said, 'Edgar is nothing. I don't care. He's not working for me. Don't call more to me.' " After that, said Marmol, Gorman no longer took his phone calls.

Dr. David T. Barrall, who performed emergency reconstructive surgery on Velázquez, called the injury "devastating."

"When a saw goes through there, it kind of chops everything up," he said. "Obviously, if it takes out trees - he was cut down to the bone on his forehead." He also suffered soft-tissue loss in the eyebrow and upper eyelid.

The chainsaw also sliced "through and through" Velázquez's nose, injuring the nasal septum.

Barrall said he debrided the flayed flesh on Velázquez's forehead, which involves cutting off the edges to make straight seams that could be sutured back together.

Although medical records provided by Dennis reflect that Velázquez was cleared to return to work several weeks after the accident, subsequent pain from apparent muscle damage to his shoulder then prevented him "from returning to useful work." The medical records also state that because of scarring, Velázquez's left eye eventually may not fully close and he may require more surgery.

McCloy, the occupational health physician who treated Velázquez regularly after his surgery, said he called Billy G's Tree Care to establish whether Gorman had insurance. A man answered the phone, McCloy said, and told him that Velázquez "does not work here and never did. Don't call again."

BEFORE HIS arrest, Velázquez said, he had no prior criminal history and not even a traffic ticket, and had no outstanding deportation order. That could not be confirmed.

A spokesperson for ICE in Boston did confirm that immigration agents arrested Velázquez on Aug. 2. The spokeswoman, Paula Grenier, also said that the federal Immigration and Nationality Act gives agents the power to interrogate "any alien or person believed to be an alien as to his right to be or remain in the United States" without a warrant.

An ICE spokesperson in Boston said that under the Immigration and Nationality Act, agents do not need a warrant to arrest someone they suspect of being in the country illegally.

After his arrest, Velázquez was sent to a Boston detention center, moved to another in Plymouth, Mass., and then - some eight or nine days later - flown to a third detention center, in Texas.

During a March immigration raid at the Michael Bianco Inc. company, in New Bedford, Mass., that shifting of detainees to a Texas detention center became the subject of a class-action lawsuit.

ICE maintained that detainees are moved to where beds are available. Lawyers for the 361 people arrested in New Bedford argued that shifting some 200 of those detainees to Texas took them out of jurisdiction and away from legal resources and/or relatives who could help them through the legal process. A federal judge later dismissed the class-action lawsuit, arguing that it was out of his jurisdiction.

In his detention case, Velázquez did not have legal representation.

Elaine Komis, spokeswoman for the executive office for immigration review with the Department of Justice, said Velázquez was detained at Rolling Plains Detention Center, in Haskell, Texas, and appeared before Judge Edwin R. Hughes on Aug. 24. She said the record indicates that Velázquez did not have a lawyer. The court provided an interpreter for Velázquez, but he said he had a tough time trying to follow the proceedings.

"I did not understand everything," said Velázquez, adding that he can read and write Spanish "a little."

In court that day, Judge Hughes ordered that Velázquez be removed to Mexico, Komis said.

"They asked me if I wanted to stay there [in Texas] to find a lawyer, or go back to Mexico. They told me if I needed a lawyer, it would take at least six or eight months," during which time he would remain in detention. "That's why I decided to go home ... and because I was sick during those days, I said I wanted to go back to Mexico."

Five days after the judge ordered him removed, Velázquez said, immigration agents drove him across the border.

"They drove us to Mexico, and they said, 'Get out of the car,' and we were in Mexico," he said.

His family in Rhode Island wired him money for a bus ticket to Chiapas, and Velázquez returned to his mountain village, to the adobe house he shares with four brothers and sisters, and his mother.

Asked to describe the village, Velázquez estimated that 60 people live there.

"There are four houses nearby," all made of adobe and dirt, with outhouses, he said. His mother

washes clothes to support the family; they also raise chickens, hens, pigs and corn, he said.

Because there is little work available where he lives, Velázquez frequently travels six hours each way to the tiny town of Angel Arbino Corso, where he washes dishes at his aunt's restaurant, an indoor job that won't hurt his eyes. He sleeps overnight at the restaurant.

"I don't feel very good with the accident that I had. I have headaches. ... Every time I go outside, my vision gets very blurry and I have a burning sensation in my eyes."

He went to a local hospital. "They gave me some medicine, some eyedrops for my eyes, and some painkiller. That's all I got. I have still pain and my scars ... all of my scars are still bleeding, and they burst, with some discharge. They are still oozing."

LAST MONTH, a man who said he was Billy Gorman answered the door of a small building on Sandy Lane in Warwick. Several red pickup trucks with "Billy G's Tree Care" stenciled on the sides were parked in the yard.

Told that this reporter was writing a story about Edgar Velázquez, Gorman said, "I don't know him."

When the reporter showed him a picture of Velázquez with his face slashed open, Gorman said, "I don't know who that is."

Asked if he was represented by lawyer Michael St. Pierre in this court case, Gorman said that St. Pierre "might have represented me for something. But I'm not talking with you," and closed the door.

No public record exists showing that Gorman has had workers' compensation insurance in the recent past. St. Pierre confirmed that Gorman did not have workers' comp insurance at the time of Velázquez's accident.

Workers' compensation insurance is required of all businesses with more than one employee. It is a no-fault system which allows injured workers to receive medical benefits, weekly benefits and an award for permanent disfigurement and/or loss of use; dependency benefits and rehabilitation. It may also confer death benefits to the survivors.

St. Pierre said it's not clear whether Velázquez would be considered an employee. "There's a distinction between employees and independent contractors," St. Pierre said. He gave as an example an employer who does most of his work on his own, but "every so often needs a hand."

Billy G's Tree Care is not incorporated in Rhode Island. St. Pierre said Gorman is a sole proprietor, and as such, is not required to incorporate his company.

Public records show that between 1974 and 1994, Gorman had convictions for malicious damage, larceny, obstructing a police officer and evading a restaurant bill, each of which resulted in one year's probation. In 1993, he was fined for driving while his license was suspended. In 1990, a judge issued a no-contact order after a girlfriend told the court that Gorman "has haunted me day and night" and in a phone call threatened to kill her and himself.

In 1994, Gorman's mother reported that he stole a set of antique baseball cards from her, and then sold them for \$600. A Superior Court judge gave Gorman a three-year suspended sentence and probation, and ordered him to pay \$600 restitution and undergo counseling.

IF VELÁZQUEZ is allowed to return, Dennis believes his client has a chance of proving his claim. Dennis has demanded \$72,800 for settlement of the claim, including scarring, medical reimbursement and weekly benefits.

A Rhode Island Supreme Court ruling - *Villa v. Eastern Wire Products Co.* - found that a person's legal status is not a bar to entitlement of compensation benefits, said Dennis. The same is true in many other states.

"It is well established in tort law that you can be here illegally and still have a tort action," said Dennis. But, he said, the immigration issue "has been politicized, and people are afraid to prosecute." He added, "It seems to me that ICE [Immigration and Customs Enforcement] should not go into court and take you, when you have a legitimate workers' comp case pending."

Chief Judge Healey, of the workers' compensation court, also confirmed that illegal immigrants are entitled to benefits. "There's a Supreme Court case that says, in and of itself, a person's immigration status is not relevant to the issue of whether they suffered a workplace injury."

"Different states have different approaches to it," said Healey, and "there is a lot of movement now in other states to bar compensation. But the mere fact that they are undocumented does not bar them from receiving a compensation benefit."

Gorman's lawyer, St. Pierre, who specializes in workers' compensation law, concurs.

"Clearly, there is no issue," said St. Pierre. "I educated Mr. Gorman - there is a law, that even if you are undocumented, if you prove that you are an employee and you are injured and you file a claim, that is the status of the law."

He said he told Gorman: "You have to prepare yourself - you may have some exposure if I'm not successful."

After two or three postponements in the Rhode Island Workers' Compensation Court, St. Pierre said, the Velázquez case had not proceeded beyond preliminary discussion, and he was seeking more documentation.

Dennis said talks had proceeded to the point of discussing potential settlement.

IF DENNIS succeeds in bringing Velázquez back to pursue the case, he has support from McCloy, the occupational health specialist who treated Velázquez. Last November, McCloy wrote a letter to Judge Healey.

This case, he wrote, "is emblematic of the challenges faced by the immigrant community who are treated by people like Billy G as disposable items."

"To me, this event is a huge injustice," McCloy wrote. "Miriam Hospital is out several thousands of dollars from care it provided in good faith. Dr. Barrall also treated him in good faith and did incredibly skilled work. He will not be paid either. My services were small in comparison, but I too will not be paid.

"The only persons to benefit are Billy G and his attorney. This seems wrong to me. It certainly cannot be called 'Justice.' "

During a recent interview at his Pawtucket office, McCloy said, "It's a sad story. He sliced himself from his hairline to his chin. He's lucky he didn't lose an eye. He's lucky he didn't lose the nerves that control the motion of his face."

McCloy travels yearly to Guatemala to give free medical care to indigenous people. "I have a soft spot in my heart for Central Americans," he said. Through his fluent Spanish, McCloy was able to get to know Velázquez.

"I really like this kid. This is a decent, humble kid," he said. "This just seemed so wrong to me. Really immoral."

McCloy said the last time he saw Velázquez, "he was in pretty good shape, in pretty good humor," but nonetheless was experiencing continuing problems. McCloy said he was concerned that the way Velázquez's eyelid was healing might in the future prevent it from fully closing, and that he may need more surgery.

EVERY FEW weeks, Stephen Dennis's legal assistant phones Restaurante La Sierra to update Velázquez on the case.

Dennis expects to meet with a representative of the Mexican consulate in Boston, and one of its attorneys, this week.

But so far, "it's been difficult," he said.

Dennis appealed for help from Senator Reed's office. Relaying information from the U.S. Embassy in Mexico, Reed said Velázquez may apply for a visitor visa, but could face some bureaucratic difficulties in that process.

Niña Gauvin, spokeswoman for a newly formed Rhode Island Mexican-American Association, said that group has also been in touch with the Mexican consulate in Boston, and is attempting to hire an immigration lawyer on behalf of Velázquez.

Meanwhile, Velázquez washes dishes to pay off the \$600 he still owes the coyote.

"I have no money," he said. "Thank God my family is here, they are helping me with money. My mother is working to support us. I have no father."

He trusts in others - and his faith - to help him return to Rhode Island.

"I hope the lawyer in this case will bring me back to the United States," he said.

At the restaurant, he waits for that call.

With reports by Staff Writer Mark Aresenault. Interpreting by Miguel A. Rojas of T & I Solutions.

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Edgar Velázquez was photographed at Kent Hospital on March 31, 2006, the day a chainsaw cut his face on the job.

Courtesy of lawyer Stephen J. Dennis

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Lawyers Maureen Gemma and Stephen J. Dennis are trying to bring Edgar Velázquez back to Rhode Island from his native Mexico to pursue a workers' compensation claim.

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