Stories from Immigrant Workers in the Valley of the Sun:

Status, Wage Theft, Recourse, and Resilience

by

Cristina Sanidad

A Thesis Presented in Partial Fulfillment
of the Requirements for the Degree
Master of Arts

Approved April 2011 by the
Graduate Supervisory Committee:

Michelle Téllez
Alan Gomez
Madelaine Adelman

ARIZONA STATE UNIVERSITY

May 2011

ABSTRACT

Wage theft is a national epidemic that only recently became the focus of increasing research, critical public questioning, and activism. Given the socio-political climate in Maricopa County, Arizona and the heightened national attention on the state, this study answers important questions about the work experiences of immigrant workers in the region. Through an analysis of interviews with 14 low-wage Mexican workers from a local worker rights center, I explore workers' access to traditional recourse, the effects of wage theft on workers and families, and the survival strategies they utilize to mitigate the effects of sudden income loss. By providing an historical overview of immigration and employment law, I show how a dehumanized and racialized labor force has been structurally maintained and exploited. Furthermore, I describe the implications of two simultaneous cultures on the state of labor: the culture of fear among immigrants to assert their rights and utilize recourse, and the culture of criminality and impunity among employers who face virtually no sanctions when they are non-compliant with labor law. The results indicate that unless the rights of immigrant workers are equally enforced and recourse is made equally accessible, not only will the standards for pay and working conditions continue to collapse, but the health of Latino communities will also deteriorate. I assert that in addition to structural change, a shift in national public discourse and ideology is critical to substantive socio-political transformation.

DEDICATION

I would like to dedicate this work to my parents, siblings, and significant other who have supported me throughout the writing process, and to all the workers who shared their stories with me and who continue to inspire me with their strength and resilience.

ACKNOWLEDGMENTS

I would first like to thank my thesis committee chair, Dr. Michelle Téllez, who has not only been an insightful and supportive mentor and advisor, but an inspiration for how to bridge the worlds of activism and scholarship. I would also like to acknowledge and thank Dr. Alan Gomez and Dr. Madelaine Adelman for their comments and criticisms on my outlines and drafts of this work. And finally, I would like to thank Bella Espinoza for her hard work, interest, and dedication to this project, and specifically for her assistance in transcribing and translating my interviews.

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STORIES FROM IMMIGRANT WORKERS IN THE VALLEY OF THE SUN

> The "right to have rights," [Arendt] believes, can only be secured by politics, by the civic initiative of those vulnerable to the vagaries of world politics and those in solidarity with them... Arendt's principal point is that such rights do not speak for themselves; nor do weighty declarations of intent speak for them. Such rights are mute, and invisible, unless spoken for, unless made actionable (Isaac 1996, 67).

In the United States today, millions of workers labor in low-wage industries where egregious violations of workplace rights are prevalent, and retaliation against workers who organize or assert their rights is commonplace. Immigrants and people of color are overrepresented in these industries because of systematic discrimination that funnels them into low wage work and creates additional barriers to socio-economic mobility and exercising their rights. Through this study, I explore how legal structures have contributed to the racialization and dehumanization of the low-wage labor force, in turn simultaneously creating a culture of fear among immigrant workers and a culture of impunity among their employers. Furthermore, I explore the effects of wage theft on workers and their families, and assert that not only is structural change necessary to address violence against workers, but we must see a shift in national public discourse and ideology that reflects wage theft as a human rights issue and which assumes equal rights regardless of citizenship or nationality.

Community-Labor Collaborations: Supporting Immigrant Workers

Exploitation and prejudice against immigrant and minority workers is not new. Beginning in the 20th century, a parallel history has existed of community and labor-based organizations mobilizing workers to improve their pay and working conditions and demand respect in the workplace. These community and labor centers support the civic initiative to which Jeffrey Isaac refers, collaborating with workers to actualize and validate the rights to which they are entitled, but which are frequently and actively denied them by their employers and through structural injustice.

Kim Bobo (2009) traces the history of the worker rights center movement, identifying four types of community-labor organizations that have supported historically marginalized immigrant populations. Bobo first introduces the settlement houses of the 20th century where urban immigrants and allies together challenged employers, advocated for progressive legislation, and educated workers. Around the same time, in 1900, the national organization called the Jewish Workmen's Circle formed and developed Labor lyceums or centers where labor unions and workers met for educational purposes and to plan campaigns. In the 1930s and 1960s, the Catholic Church sponsored Catholic Labor Schools, the third type of community-labor organization, to strengthen their involvement in the labor movement. The final community-labor structure to which Bobo refers is the Farm Worker Service Center, spaces created by religious organizations and farm workers to educate farm workers about their rights, connect them with lawyers, organize, and advocate for fair legislation. Complementing Bobo's work on the historical trajectory of worker centered spaces, Janice Fine (2006) delineates the

development of worker rights centers, or community-based mediating institutions, in the U.S. from the 1970s to the present. She categorizes their work in three areas- services, advocacy and organizing- and maps the worker center network across the country. Fine (2006, 9) identifies three waves of worker center development; the first wave, which began in the 1970s, supported African Americans and various immigrant minority workers in the midst of changes to the manufacturing industry that resulted in degraded working conditions, factory closings, and a rise in low paying service sector jobs. The second wave of worker centers developed in the late 1980s and mid 1990s, supported by diverse institutions, including faith-based organizations and churches, unions, and non-profit organizations. These centers focused their services and organizing efforts on Mexican, Central American, and Southeast Asian immigrants who were migrating into the cities in large numbers. The last wave, which began to develop in the year 2000, has expanded into the rural areas and largely supports Mexican and Central American workers in the meat-packing, service, poultry and agricultural sectors. It is in the latter wave that the Phoenix worker rights center was born and in which my research and the stories of Latino immigrant workers is situated.

Introduction to the Worker Rights Center

Arizona's only worker rights center,[1] located in downtown Phoenix, was

[1] Another worker-centered space in Phoenix is the Macehualli Day Labor Center, which provides a space for workers to gather and wait for employment; this center is not charged with addressing work place problems, such as wage theft.

born out of a faith-labor alliance in 2008. In a personal interview with the founding director in October 2009, she claimed that she opened the center in response to the harsh anti-immigrant climate, in acknowledgment of Arizona's inadequate employment law and protections, frustration with pro-management and out-of-touch clergy, and an interest in developing workers' leadership and knowledge base so that they are empowered to take control over their own workplace problems. The organization's mission recognizes that, in collaboration with faith and labor communities, ethical business owners, and government agencies, the center will support workers in fighting injustice in the workplace, by educating them and advocating for change. Although the center is charged with serving all low-income workers, approximately 99% of its members are Latino immigrants, which can partly be explained by the structural obstacles they face to accessing recourse, such as low English proficiency and literacy rates, lack of information regarding rights and recourse, confusion about how the U.S. regulatory system functions, and documentation status. The center exemplifies the archetype of immigrant worker centers (Fine 2006; Martin, Morales, and Theodore 2007): it engages in community education on civil and workplace rights; provides services such as translation or assistance with filing unpaid wage claims; and organizes campaigns both against target employers and to change policy.[2]

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[2] For a detailed description of the center's history and projects and the population it serves, see Téllez, Sanidad, and de la Fuente, *Immigration and the State of Labor: Building a Movement in the Valley of the Sun.*

As a staff member at the center since its opening, I first came to know the participants in this study as their "advocate." In this capacity, I facilitated worker rights trainings which they were required to attend, met with them to outline traditional (i.e. filing with government agencies, or court) and non-traditional (i.e. protests, negotiations) recourse and associated risks, and assisted them in pursuing the recourse they chose. My interactions with these workers and observations of their struggles during educational workshops, one-on-one case review meetings, and community building exercises at the center shaped the research questions that drive this study. My semi-structured research questions centered on: How does the current socio-legal climate in Phoenix shape the work experiences of Latino immigrant workers? What obstacles do they face in utilizing traditional methods of recourse? How are Latino immigrant workers affected by wage theft and what survival strategies do they utilize to mitigate the effects of sudden income loss?

The time spent closely with each worker on his or her labor dispute varied between several months and two years, and we developed a certain level of rapport and trust, which –because of the harsh anti-immigrant climate in Arizona- became a pre-condition in the selection of participants for this study. Participants were hand selected to represent diverse experiences and characteristics, such as: occupation, gender, documentation status, employee/independent contractor status,[3] English proficiency, length of residence in the U.S., presence of support

[3] The distinction between employees and contractors is important to make as they have very different sets of rights and recourse. Employees tend to have a longer work history with one employer as opposed to a contractor who has numerous clients. Employees in Arizona must be paid at least twice a month and usually by

networks, and case results. Workers who were not selected to participate include those with "extreme" cases, those who did not pursue any recourse after our initial intake, and non-Mexicans.

As is visible in Table 1, entitled "Worker Characteristics," of the participants, eleven are undocumented[4] immigrants (though not all entered without authorization), two are documented immigrants, and one is a U.S.-born citizen.[5] The participants are generally representative of those who seek assistance through the worker rights center: undocumented Mexican males working in the construction, cleaning and landscaping industries who seek help once one or several full paychecks have been withheld. That said, I do not claim that the participants and their experiences are representative of all Latino immigrants or all low-wage workers in Arizona. One distinguishing factor is that they all sought and received assistance in addressing their grievances, which might speak to their

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the hour, whereas contractors, by common practice, are paid by the job at its completion, or in several payments.

[4] I refer to workers who have crossed the U.S./Mexico border without the government's permission as "undocumented," rather than "illegal" in order to avoid the negative connotation of the latter, to emphasize the government's role in producing "illegal status" through the negation of documents, and to underscore the fluidity of status for individual workers. Others agree with my position; cf. DeGenova, *Migrant 'Illegality' and Deportability in Everyday Life*; Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America;* Gomberg-Munoz, *Labor and Legality: An Ethnography of a Mexican Immigrant Network.*

[5] The citizen's testimony provides the perspective of someone who is directly affected by the underselling of immigrant labor, but who, despite having fewer obstacles to recourse, has also had difficulty asserting his rights and accessing recourse during the recession.

knowledge of local resources, their willingness to assert their rights, or an inability to pursue recourse without assistance.

Table 1. Worker Characteristics

Worker	Sex	Where from?	Occupation	Length of U.S. residence (years)	Education	Status
Raul	M	Sonora	Landscaper	16	College	Undoc.
Maribel	F	Sonora/ Mexico City	Cleaning	16	College	Undoc
Alfonso	M	León, Guanajuato	Construction/ remodeling	21	Elementary	Undoc.
Carlos	M	Veracruz	Landscaper	4	Elementary	Undoc.
Fernando	M	Veracruz	Landscaper	7	Junior high	Undoc.
Emilia	F	Iguala, Guerrero	Cleaning	21	Junior High/ Middle Sch.	Resident
Gloria	F	México	Shutter making	14	Junior High/ Middle Sch.	Undoc.
Marco	M	México	Drywall/ Const	7	College Degree	Undoc.
Mateo	M	Mexicali	Air Conditioning	25	High School; licensing	Nat. citizen
Juan	M	México	Floor installation	8	Junior High/ Middle Sch.	Undoc.
Rocio	F	Baja CA	Cleaning	18	Elementary	Undoc.
Rosario	F	Sinaloa	Cleaning	24	Elementary	Undoc.
Diego	M	Chihuahua	Plumbing	11	College Degree	Undoc.
Jorge	M	Laredo, TX, USA	Paver Installer	53	Highschool/ vocational schools; licensing	Citizen

Though the workers are characteristic of those the worker center typically serves, Arizona's worker center is very distinct from other worker rights centers throughout the nation. For its location within a border state that has been disproportionately affected by the flow of undocumented migrants and its harsh anti-immigrant response, we see distinct trends in workers' cases. One significant difference is that workers very rarely come to the center for ongoing violations, such as violations of minimum wage, overtime, illegal deductions or improper distribution of tips. Generally, they first visit the center for assistance once they have been denied one or several full paychecks or have been receiving partial wages (usually half or less of the normal pay) for several months. For many, though ongoing violations continue for months or years and amount to a higher dollar figure of wage theft, the threat of losing their jobs outweighs the benefit of being paid all the legally mandated wages. And, most often workers seek assistance when a threat or risk is no longer present; usually, they are either no longer employed for the company or are less hesitant to challenge the employer because being fired in retaliation will have less impact since they are already being denied pay. Finally, workers who have reported violations to the center very rarely agree to organize with their co-workers,[6] opting instead to recuperate back wages for her or himself through the Department of Labor or individual negotiations.

[6] The most commonly reported excuses co-workers give for not supporting the complainant are fear, a desire to avoid problems, lack of interest, or a belief that organizing or filing claims will not make a difference.

Methodology

This study offers an intimate look at the experiences of immigrant workers living and working in a particularly harsh socio-political climate in a state and country where workers' rights are systematically undermined and the rights of immigrants are commonly ignored.

The data for this study was collected between March and November 2010[7] through 14 semi-structured interviews, each lasting between forty-five minutes to an hour and a half. (See Appendix A for Interview Guide.) The interviews were conducted at the worker rights center in Spanish (excluding the interview of the U.S. citizen, which was conducted in English). All interviews were recorded with the participants' verbal consent. Upon transcription, I removed any identifying information so as to protect workers' identity.

Because the content and perceptions of workers are more important to the objective of this study than the ways in which they communicated those ideas, the interviews were transcribed and translated according to the denaturalization mode in which idiosyncratic elements of speech (stutters, pauses, non-verbals, involuntary vocalizations) are removed (Oliver, Serovich, and Mason 2005). Transcription and translation were first completed by the author, and then reviewed and edited by a research assistant who had participated in ten of the 14 interviews. In the English translation, grammar and sentence structure were edited. The decision to edit the grammar and sentence structure was an ethical

[7] Two interviews were completed before the passage of SB1070 in April 2010. SB1070 is an anti-immigrant law that created widespread panic of racial profiling, increased police harassment and attacks on the Latino community. To read the full text of the bill, see: Arizona State Legislator, *Senate Bill 1070.*

challenge with which I grappled; in an effort to not perpetuate stereotypes of Mexicans as uneducated or unintelligent, the decision was made to edit the testimonies, while maintaining the accuracy, intent, and nuance of each statement.

Because my aim is to bring workers' voices and experiences to the forefront, I analyzed my transcripts utilizing the constant comparison method, which allowed me to develop a theory grounded in workers' lived experiences, perceptions and ideas.[8] In line with this method, I read through the transcripts noting in the side column recurring feelings, words, perceptions, and ideas, which Glaser and Strauss refer to as "incidents." The incidents noted in each transcript were compared with incidents across transcripts, in order to identify experiences and perceptions shared between workers; these similarities were grouped into themes or "properties." Some themes were expected given the structure and intent of the interview to learn about survival strategies, the effects of wage theft, obstacles to recourse, and the ways in which documentation status influences the work experience and public life. Other themes reflect common experiences or ways of framing one's experiences. Common frames or themes, which were not driven by the structure of the interview, include personal agency, trust in employer-employee relationships, and the impact of the recession.

Identified themes which were consistent across transcripts were further organized into theories, and those themes that did not fit into the three major theories were set aside. The three theories that I explore and expand upon in this project are influenced by both my observations and experiences at the worker

[8] See Glaser and Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research.*

center, which guided the interview structure, as well as the articulation and perception of the 14 workers' personal experiences.

The ethical implications of my position and experience within the worker rights center were considered. On one hand, because of my intimate knowledge of the population and the research participants specifically, I was able to anticipate ethical concerns related to the vulnerability of the Latino immigrant population, the lack of English fluency, and wide-ranging levels of formal education, all which I addressed through the research design, location of the interview, preparation of materials, and the accompaniment of a second Spanish speaking researcher when possible. On the other hand, my personal investment in the perception of workers and the wage theft issue, and prior knowledge of workers' cases created concerns that would not be present were the lead investigator not also placed in the role of activist or advocate.

Several examples are in order. First, as their advocate, I was aware of the methods of recourse each worker had chosen, the results, and minute details about the situation. At times, workers misrepresented the chronology of events or the facts of their case, such as the amounts they were owed, or the reasoning or law that justified a certain outcome. Rather than rely upon my personal knowledge and records of the events, I analyzed the transcripts according to their perception of the events and facts, because they live their lives based upon their perceived reality rather than the facts. In addition, due to my position, I was aware of the power imbalances at play, both as researcher vs. participant, and advocate vs. client, that may have influenced what information they shared. For example, no

participant expressed frustration or discontent with my work or efforts as their advocate, and my position of power was reinforced when workers took advantage of the interview time to ask about the status of their cases or about community services they might need. I attempted to balance power by showing, in word and through body language, that I was genuinely interested in their perceptions of the events and that I felt I could learn from them and their experiences, and by following up with them after the interview to answer their questions about case status or services. While designing this study and collecting data, I remained mindful and self-reflective of these power relations and my influence over participants, and worked diligently to reconcile this influence in the analysis.

Introduction to Research Participants

Many of the major studies on wage theft are quantitative in nature[9] with the purpose of highlighting the prevalence of wage and hour violations, and when immigrant workers' experiences are interjected into these studies, little context is offered. In an effort to humanize and put a face to the issue of wage theft, show the diversity of its victims, and provide context for the stories you will read, I will briefly introduce you to the 14 workers whose lives fill these pages and to whom I am grateful for their courage and willingness to participate in this study.

[9] See McGrath, *A Survey of Literature Estimating the Prevalence of Employment and Labor Law Violations in the U.S.*

Raul,[10] an immigrant from Sonora, Mexico, has lived in the United States with his wife and children for 16 years. He left Mexico because of the strikes in his small mining town, which created political and socio-economic instability; they settled in Phoenix because several of his wife's family members lived here. Though trained as an economist in Mexico, he operates a small landscaping company in Phoenix. Raul came to the worker rights center after a contractor failed to pay him $3,900 for landscaping services he rendered at bank-foreclosed homes.

A Sonoran native, **Maribel** immigrated to the United States 16 years ago in order to work and save money to send home to support her mother. At the time she left, Maribel was working toward a degree in Information Technology. In Phoenix, her family members helped her find work first as a childcare provider and then in residential cleaning. Maribel is a single mother to one child, and has had to rely on her family for financial and emotional support, especially while she worked three months without pay.

An immigrant from Leon Guanajuato, Mexico, **Alfonso** traveled to the United States in 1989, shortly after amnesty was granted. He has "followed the work," living in five U.S. states, and he considered moving to a 6th state after SB1070 passed. He is the sole provider for his wife and six children, who are of mixed immigration status, supporting them with his construction and remodeling work. Alfonso claimed he lost hope when his employer, who "had always treated [him] as a son," cheated him out of four and a half months of wages or $9,080.

[10] Workers have been assigned pseudonyms so as to protect their anonymity.

Carlos and **Fernando,** from Veracruz, live together in an apartment with their friends; neither has family in the United States, so they have become each other's support network over the last several years. Each immigrated with the goal of sending money home to his family, which has been difficult, as each has experienced numerous cases of wage theft while working as a day laborer. Throughout the interview, each prided himself on having no vices and being a perfect "citizen," claiming they did not deserve to be cheated of their wages ($5,500 each).

Emilia and her husband immigrated legally to Phoenix from Iguala Guerreo, Mexico in 1989, and have three children. Though a resident of the U.S. for 21 years, Emilia reported among the lowest rates of English language proficiency of all study participants, claiming she has always had a Spanish-speaking boss. Emilia and her husband worked together for a small cleaning business for seven years, and were both hurt and shocked when their employer, a Chicano, began to pay them in partial payments. Within three and a half months the debt had accumulated to $5,500.

A single mother of four, **Gloria** works 50-60 hours per week making window shutters to cover her family's monthly expenses. A survivor of domestic violence, Gloria has always been a fighter, though her struggle intensified when her family's visas expired two years ago, around the same time her husband was murdered. Gloria came to the worker rights center after not receiving two paychecks ($1,200) and is the only worker who continued her employment after her grievance was resolved.

Trained as an agronomist engineer in Mexico, **Marco** immigrated to the United States seven years ago with his wife, after his brother told him he could earn more money as a construction worker in the U.S. than as an engineer in Mexico. Now with two children, his family is of mixed status. Both he and his wife support their growing family, he with the temporary work he finds in drywall installation, remodeling, framing or concrete, and his wife with consistent work in a fast food chain restaurant. Marco came to the worker rights center two years ago accompanied by 19 co-workers who were owed between $2,000 and $10,000 each.

Mateo traveled across the U.S./ Mexico border to work in the fields in the U.S. and attend school in Mexico for many of his young years. He was granted a visa under the Simpson-Rodino Bill in 1986 and citizenship years later. His wife and three young children live in Phoenix with him. Mateo has had to balance two steady jobs (one doing maintenance at a hotel and the other teaching in an air conditioning training school) with two side jobs in order to make up for his wife's inability to work due to her documentation status. Mateo visited the worker rights center for assistance on a court case he had initiated on his own against his employer who owed him $6,000 in wages.

A skilled flooring installer, **Juan** migrated from Mexico eight years ago with a close friend from his hometown with whom he continues to live in Phoenix.[11] Even before coming to the worker rights center, Juan was well

[11] For a detailed account of Mexican immigrant networks (through which large sending communities filter their members into specific receiving communities)

informed of his civil rights from programs he watches on TV and hears on the radio, which gave him the confidence to assert his rights in the workplace despite his immigration status and the fact that his co-workers refused to support him. Persistent, Juan was able to recover a percentage of the $3,600 owed to him by this employer.

Rocio, a contractor with her own cleaning company, has lived in the United States since 1992, when she, her husband, and first son migrated from Baja California. The only one without legal status in her family, Rocio reports they moved to Phoenix after facing age discrimination in Mexico and being unable to secure work. She submitted an application to become a citizen as soon as SB1070 passed since the environment had become too dangerous for her to work. On two separate occasions, Rocio sought assistance from the worker rights center after different clients failed to pay her for her services, amounting to $2,500 in total.

Rosario is a single mother of three children. She migrated to the United States legally, following her former husband in 1992; however, she has since lost her legal status. She escaped domestic violence in California, traveling to Phoenix to start a new life for herself and her kids, and began working for the first time. She was working for a neighbor's residential cleaning company, but after being sexually harassed and humiliated she walked away from the job. She is still owed three months of wages.

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and their role in securing employment and living arrangements, see Gomberg-Munoz, *Labor and Legality: An Ethnography of a Mexican Immigrant Network.*

Originally from Chihuahua, Mexico, **Diego**- an industrial engineer by trade- and his family traveled to Phoenix on a tourist visa in 1999, and settled near his brother. With their visas and an ETIN number fraudulently provided him through his first employer, Diego was able to secure a valid contractor's license, and several years ago he started his own plumbing business. He lives with his wife- who owns a cleaning company- and their three children in a home they recently purchased. Diego's business has been suffering because of the economy, taking a real hit when several of his clients failed to pay him at once, including the client he is currently suing for $7,200.

Jorge, a 53-year-old Mexican American, was born in Laredo, Texas and moved to Phoenix after his second divorce. Though he did not graduate from high school, Jorge has taken several college courses and earned various training certificates. Several years ago he started his own paver installation company. He initially came to the center to translate for an undocumented friend who had not been paid, but when several months later he was not paid for a job worth $3,400, he returned for help.

Overview of Chapters

The life experiences of each of the 14 workers introduced above will inform and shape the understanding of low-wage immigrant workers' experiences in the Phoenix labor market, shedding light upon how the socio-political climate influences their experiences, the assertion of their rights and access to recourse, and their resiliency. Their stories reflect diversity in family structure and support

networks, educational background, occupation, English language proficiency, and length of residence in the U.S., all factors which shape their options and influence their decisions to address workplace violations. Additional influences, including documentation status, fear, and the state of labor nation-wide will be examined and explored in the following chapters.

Chapter 2: In this chapter, I utilize a structuralist lens and the concept of racial institutional orders to explain the social and structural production of the racialized laborer. Specifically, I provide a brief history of U.S. immigration law and outline the costs of enforcing immigration law over employment law in order to show how we maintain a repressed, racialized subclass of workers and a bottoming out wage system.

Chapter 3: In chapter three, I review the last ten years of both physical and legislative attacks on Arizona's immigrant population, showing how they have created a culture of fear among immigrants to engage in public life and assert their rights. I posit that a simultaneous culture of impunity among Arizona employers exists, and that the intersection of these cultures has severe implications for immigrant workers' rights.

Chapter 4: International and federal laws assert that all workers, regardless of citizenship, upon entering into an employment relationship have the same rights. In practice, protections for undocumented workers are largely denied or unasserted, and marginalized workers have become the "workers of choice" for employers who maximize profits from their labor. The theoretical concepts of citizenship, illegality and rightlessness will set the stage for a discussion of the

worker-identified obstacles to claims-making, the effects of the abuse they suffer, and the strategies they use to survive.

Chapter 5: In this chapter I offer structural recommendations for the furtherance of workers' rights and protections in the workplace; I also suggest new discursive and ideological frames that American society can adopt in order to create an environment in which we can actualize and enforce equal rights for all U.S. residents.

Chapter 2

THE CREATION OF A RACIALIZED WORKER AND THE EFFECTS ON THE STATE OF LABOR

Throughout history, the United States has opened and closed its doors to immigrants based on, among other things, its demand for labor and for humanitarian purposes, such as extending visas to victims of natural disaster or civil war. In this chapter, I will employ two lenses in my examination of the capitalist influence over immigration policy and labored migrations, and the social production of a racialized rightless laborer. The first is a structuralist lens based on the taxonomy of Avirgan, Bivens and Gammage (2005). They assert that the existence and growth of unregulated work is generated by capitalist strategies to keep labor costs low. Similarly employed by Castells and Portes (1989), Murray (1983), Sassen (1997), and Bernhardt and collaborators (2009, 6), this argument suggests that 'particular circumstances- whether labor surplus, increased competition, or strategic innovation- [leads] businesses in developed countries to seek new ways to avoid labor standards and laws.' The unregulated work upon which capitalists depend is a product of uneven enforcement of labor law and a broken immigration system, examples of which are outlined throughout this chapter. The second lens is based upon Desmond King and Rogers Smith's (2005; Belanger 2006) concept of racial institutional orders, which analyzes the complex intersection of economic expansion, racial identity, and immigration policy, and how 'these orders seek and exercise governing powers in ways that predictably shape people's statuses, recourses, and opportunities by their

placement in racial categories' (King and Smith 2005, 6). I will look at the institutionalization of these racial categories, specifically as they affect workers, and the way in which these racial categories serve capitalist interests.

Mexican Labored Migrations

In this section, I provide a brief overview of key U.S. immigration laws in order to showcase the historical relationship of recruitment and restriction of Mexican laborers, and the ways in which the broken immigration system has served capitalist interest. Of interest is the effect that an "iron triangle" or "subgovernment"- composed of organized interests, specifically south western employers (especially agricultural growers), Western and Southern chairs of Congressional immigration committees and federal immigration bureaucrats- had on migration trends and on the workplace standards, as they supported the legal and illicit importation of Mexican labor (Tichenor 2002). It is clear that immigration policies are shaped by the capitalist need for labor, and yet, also, by the nation's perceived need for border control and security.[12]

In the late nineteenth and early twentieth century, the dominant industries in the southwest region were railroad, mining and agriculture. Due to the severe restrictions on Asian laborers through the 1886 Chinese Exclusion Act, the 1907 Gentleman's Agreement with Japan, and the start of World War I in 1914, these industries were faced with major labor shortages, and forced to seek an alternative

[12] For a more comprehensive history see: Massey, Durand, and Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration*; Bustamante, Reynolds, and Hinojosa, *U.S.-Mexico Relations: Labor Market Independence.*

labor force. Known as the Enganche Era, at this time, private companies coercively recruited laborers from Mexico's west-central states with promises of high wages, offering them an advance for their travels which would later be deducted from their pay (DeGenova and Ramos-Zayas 2003; Massey, Durand, and Malone 2003). Met instead with low wages and poor working conditions, migrant laborers worked as indentured servants, paying off debts to their recruiters. By 1917, the migration rates to the U.S. tripled creating a large surplus of labor, rendering workers replaceable and disposable.

In Arizona and in the town of Bisbee,[13] copper mining production was booming, and, as the primary employers, the mining companies controlled the town. Mexican, Slavic and Finnish workers formed a subclass of workers under English speaking Anglos (English, Irish) in a labor system that physically divided racial groups and paid them different rates. The racial subclass traditionally worked as surface laborers for less than half the wages of the underground white workers. In this way, the racial category workers occupy shaped their mobility, work opportunities, and access to recourse with a union when they were discriminately paid less and offered less skilled work. Distinct treatment based on racial category was justified by the "American Camp Ideology" of Phelps Dodge (the leading copper producer) and other mining companies that indicated Mexicans had a subpar standard of living, which required fewer wages to sustain it (Cohen-Benton 2009). This racial hierarchy and the notion that Mexicans were

[13] By 1907 Arizona was the leading producer of copper, and deposits were concentrated in the districts of Clifton-Morenci, Globe-Miami, Bisbee (Warren), and Jerome; see Taft, *The Bisbee Deportation.*

to blame for falling wages was challenged by the Industrial Workers of the World (IWW)- a unique union which claimed to be open to members of any rank, skill, gender, or race. The IWW accused employers for the falling wages of the dual wage system, and in June 1917, the IWW presented a list of demands to the major mining companies. Demands included safer working conditions, an end to racial discrimination and equal wages for workers. When these demands were denied (the war was used as a means to justify this position) half of the Bisbee miners went on strike. In response, members and supporters of the mining companies organized into vigilante groups and, on July 12th 1917, 1,186 "strikers" (many of whom were targeted Mexicans) were deported from Bisbee to New Mexico and abandoned, sending the clear message that organizing against capital interest would not be tolerated. This action was made possible by a large labor supply as mining companies could easily replace workers who joined or sympathized with the union. The vigilantes and mining companies faced no repercussions for these aggressions,[14] sending another clear message: the government would side with big business over workers. The Bisbee Deportation[15] effectively solidified the racial order in mining camps, and popularized the view of foreign workers as disposable.

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[14] The federal government found no violations of law, none of the 300 civil suits filed by deportees ever went to trial, and only one of the 224 suits against vigilantes was tried, though the verdict was "not-guilty." A compromise settlement was arranged for the deportees, which totaled a little over one million dollars. No union was organized in Bisbee until the New Deal; see University of Arizona, *The Bisbee Deportation of 1917.*

[15] For more information on the Bisbee Deportation, see: Taft, *The Bisbee Deportation*; Cohen-Benton, *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands*.

The story of recruitment and restriction of Mexican laborers continued through the 1920s. Despite the creation of the Border Patrol in 1924, Mexican immigration soared in the late 1920s with the booming economy until the Great Depression, at which time Mexican workers became scapegoats, blamed for stealing American jobs and living off of public benefits (Hoffman 1974). Between 1929 and 1937, approximately 458,000 Mexican workers were arrested and deported, and others, facing harsh anti-immigrant climates, voluntarily returned to their home country. But, with the mobilization of the U.S. economy post WWII which pushed U.S.-born workers out of the rural areas into cities to secure higher paying, unionized work, agricultural growers were left with another pending threat of a labor shortage.

The "iron triangle," (organized special interest groups who influenced the regulatory process) who was pressured by the growers to secure cheap labor, reasoned that Mexicans represented an ideal temporary labor force as their proximity made them "easily returnable" and were, therefore, less likely to permanently settle in American communities and disrupt American life and values. In 1942, the government responded to growers' concerns by negotiating a labor-contracting program with Mexico called the Bracero Program. The program addressed the concerns and needs of the "iron triangle" by simultaneously limiting the flow of illegal immigration while providing a steady flow of cheap and vulnerable labor to satisfy the needs of agribusiness. Approximately 200,000 *braceros* per year entered the United States between 1942 and 1964, totaling 4.5 million over the lifetime of the program. Although the program expanded in the

late 1940s to meet a high sustaining need for labor, growers took labor recruitment into their own hands circumventing the system by using the *braceros'* social networks to recruit additional undocumented workers (Gomberg-Muñoz 2011, 30; Massey et al. 1998, 96-106). The hiring tactic spread, as employers were pardoned from sanctions related to the hiring of undocumented workers through the "Texas Proviso" (Teitelbaum 1986). Employers were granted another loophole in the 1952 Immigration and Nationality Act as a concession to agribusiness. The act stipulates that the harbor, transport, or concealment of undocumented workers is illegal, however the act would not be applied to employers (Nevins 2002, 35; Calavita 1994). As the criminalization of workers increased and they became the brunt of multi-frontal attacks, employers who hired them did not share the responsibility for their recruitment or presence in the U.S.

While the Bracero program ultimately did not stop the flow of unauthorized workers, in part due to the availability of work and the strategies employers used to get around the system, the program did have significant implications for workers' rights.[16] Because *braceros* were tied to the employers who had sponsored them, workers could not organize or demand improvements in the workplace without risking loss of their work and status (Bernhardt et al. 2009, 20). Employers took advantage of worker vulnerability by denying promised rates

[16] *Braceros* routinely were paid as little as twenty cents an hour, worked in unsafe working conditions, and were fired if they spoke with labor organizers. Additionally, they were promised benefits and pensions they did not receive at the end of their contracts. And, in addition to being tied to one employer, limiting his ability to find better work or pay, the *bracero* was under constant threat of deportation with the introduction of Operation Wetback in 1954 (Cameron 2003, 3).

of pay or benefits, and forcing workers to labor in unsafe working conditions. Industry minimum standards were constantly renegotiated since workers' ability to challenge unscrupulous employers was constrained by program design.

Falling standards of wages, and consequently the degrading levels of public housing and public health, were commonly cited reasons for an upsurge in anti-immigrant sentiment as well as perceived threats to national security (Nevins 2002, 34). In response, the government employed Operation Wetback in 1954 to solve the "undocumented problem," and through the program, over one million suspected unauthorized persons in border-states, especially Texas, were apprehended. Because the parties (such as radical right wing conservatives) seeking removal of undocumented people were highly visible and audible, the federal government was forced to balance their demands for border security and increased apprehensions, with big businesses' demands for additional workers which were made behind closed doors. This balance was achieved by forcibly removing undocumented workers who, once deported, were quickly processed through the system as *braceros* and returned to the agricultural fields (Calavita 1992).

In 1965, the amendments of the Immigration and Nationality Act significantly altered the visa-allocation system, stipulating that 120,000 visas would be allocated to the Western Hemisphere; though this quota represented a higher limit than previous acts, it continued to be insufficient in light of the numbers of people pushed to immigrate to the U.S. and the pull of willing employers to hire migrant workers. With a significant backlog, limited

opportunity for legal entry, and rapid population growth and economic instability in Mexico, many workers were forced to migrate without authorization, creating a period of increased undocumented immigration between 1965 and 1985.

With the constant pressure to maintain cheap labor in the fields, agricultural work had become associated with a racialized underclass of foreign workers. Preserving their white privilege, U.S. born workers viewed the work as unfit, and wages were too low to entice them, so growers were forced to rely upon the importation of Mexican labor (Massey, Durand, and Malone 2003, 43). This view of labor has functioned to justify a segmented labor system in which workers are offered distinct work, pay, job security, working conditions, and respect based on their racial category and class. Segregation and the "othering" of immigrant workers has facilitated a process of disassociation between the larger American public and a marginalized subclass (in this case low-wage Mexican farmworkers), and employers take advantage of this divide to dehumanize a subset of workers whom others will not defend or ally with when their labor and human rights are violated to maximize profits.

The "othering" and dehumanization of workers also facilitates the ease with which the government can deport undocumented immigrant workers as a solution during a recession. During the period of increased undocumented immigration between 1965 and 1985, the size and strength of the Border Patrol grew, largely to show the American public that the government was controlling the border with close to one million apprehensions per year. However, the system was not capable of handling such high numbers of deportees and, facing a

bureaucratic overload, the agency began offering immigrants the option for a "voluntary departure"; this option allowed undocumented immigrants to forego trial and be voluntarily returned to Mexico, at which point, most simply re-entered (Andreas 2000). Ninety seven percent of apprehended immigrants chose this option. Growers continued to have access to Mexican laborers.

Through the 1980s and 1990s the presence of migrant communities became more felt and visible as communities developed and the population grew. As economic insecurity and apprehension grew, so did the number of restrictionist laws introduced to the legislature, until the 1986 Immigration Reform and Control Act (IRCA), which was an attempt to comprehensively reform immigration policy and control undocumented migration through a four prong approach (Library of Congress). First, to curb undocumented migration, $400 million in additional resources were allocated to the Border Patrol, INS, Department of Labor, and the Executive Office of Immigration Review with the goal of making unauthorized entry more expensive and dangerous, and making discovery in the United States more likely (Massey, Durand, and Malone 2003, 90; Library of Congress; Bean, Vernez, and Keely 1989). Some of these funds were allocated for the purpose of funding additional worksite inspections. However, Massey and collaborators (2003, 102) point to the fact that only 2% of the INS budget and one-fifth of its investigators (approx. 340 full time staff) were dedicated to the worksite investigations nation-wide. Cosmetically, the government was instigating change, though the limited extent of enforcement allowed employers to proceed, almost unabated, with their abusive business practices.

Second, IRCA provided a path to legalization for more than 3 million people through two programs: Legally Authorized Workers (who could prove long-term residence in the United States) and Special Agricultural Workers (a concession for growers allowing legalization of those workers who could prove they had worked at least 90 days in U.S. agriculture before May 1986). Labor market discrimination became institutionalized as a result of the legalization of workers contributing to increased racial discrimination and a real decline in wages for undocumented workers (Phillips and Massey 1999; Rivera-Batiz 1999). In fact, in immigrant dominated industries, undocumented workers earned 22% less than documented workers, and undocumented agrarian workers earned 33% less than documented workers in the nonagricultural sector (Phillips and Massey 1999, 243).

Third, to disincentivize the employment of undocumented immigrants, IRCA imposed sanctions (including fines up to $10,000) on employers who knowingly hired undocumented immigrants. This approach was highly ineffective for two reasons. First, there was little enforcement of this provision and therefore it did not serve as a deterrent; few employers have been prosecuted, despite hundreds of arrests of workers through worksite investigations (Bacon and Hing 2010; Federal Register). In effect this practice shifted criminalization and risk onto the backs of workers, relieving employers of any responsibility. Another way in which employees suffered the brunt of the new perceived risk affiliated with worksite inspections was through an employer-imposed "tax," in the form of lower wages. This way, through their labor, workers compensated employers for

the new paperwork burden and risk of prosecution (Cobb-Clark, Shiells, and Lowell 1995; Bansak and Raphael 1998). Employers also avoided risk by changing their business tactics to paying cash, subcontracting with workers which did not require an I-9 or verification of work eligibility, and misclassifying workers as contractors[17] (Bernhardt, McGrath, and DeFilippis, 35). The second reason for the ineffectiveness of employer sanctions is that workers were able to circumvent the system by obtaining fraudulent paperwork, creating a booming- and lucrative- black market (Massey, Durand, and Malone 2003).

In addition to being ineffective, the law had grave implications for workers' rights. Gordon (2005) and Bernhardt, McGrath, and DeFilippis describe the commonplace situation in which employers take a minimalist approach to complying with the law (verifying records and status) by filling out and maintaining on record an I-9 form without further investigation upon hiring;[18] however, as soon as a worker asserts his or her rights, the employer begins to investigate and demand verification of legal status. The inability to prove authorization to work became grounds for firing, rather than a deterrent in hiring, and this tactic has been utilized to break union organizing campaigns (Gordon 2005, 50). Employers, noting the contradiction of criminalizing "illegal" residence and employment, but providing all employees equal rights, began to

[17] Misclassifying employees as contractors has the affords employers the additional advantage of reducing liability over workers; subcontractors do not have the right to workers' compensation, unemployment insurance, overtime or minimum wages, among other things.

[18] An I-9 form is an Employment Eligibility Verification Form, which employers must file within three days of employment start date. The form serves to verify an employee's identity and authorization to work.

argue that unauthorized immigrants did not and should not have rights or protections in the workplace.

Finally, the last approach to curbing immigration through IRCA was to authorize and provide a framework through which the President could declare an "immigration emergency" in the case that large numbers of undocumented workers continued to enter the country. The legal framework that emerged was the highly publicized "prevention through deterrence" programs: Operation Gatekeeper (1994) in San Diego, Operation Hold the Line (1997) and Operation Blockade (1993) in El Paso, Texas, Operation Safeguard (1995,1999) in southern Arizona, and Operation Rio Grande (1997) in South Texas. These operations called for increased presence of the Border Patrol, new surveillance equipment (including helicopter surveillance), high-intensity lighting, and construction of the border wall. However, rather than deter migrants from crossing, these measures have funneled them into more remote crossing areas resulting in an increase in the death of border crossers. According to Dunn and Palafox (2010), between 1993 and 1997, there were 1,600 border deaths, approximately 300 per year. These enforcement measures also resulted in higher reported incidences of human rights violations. The anti-immigrant media and border campaigns maintained a high level of popularity among the American public as they were viewed as crime combating measures. This discourse led to the social production of the criminal illegal alien: a threat to national security, to the wellbeing of the general public, and to American values.

The attacks on undocumented workers and families and the public conceptualization of them as illegal persons were further advanced with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which provided more severe social controls, border enforcement measures and tougher penalties for illegal entry. Andreas (2000) and Massey and collaborators (2003) claim this deterrence-based law allowed for the construction of new border fences, the purchase of military technology to assist in the detection of migrants, the hiring of 1,000 additional border patrol officers, tougher penalties for smugglers, undocumented migrants and visa overstayers, and further restrictions on immigrant access to social security and educational benefits.[19] The latest wave of anti-immigrant fervor was fueled by the September 11th attacks in 2001, after which support for curbing immigration rose 17 points according to the Gallup Polls (Judis 2008). Reducing immigration (not just illegal immigration) became conflated with preventing the entry of terrorists and with national security. Nevins (2002, 120) suggests that state actors have taken the lead both in shaping the discourse around and the image of the "illegal" immigrant, and providing solutions, as was evidenced in California with Proposition 187 in 1994 and with the border enforcement operations of the 1990s. In early 2000, Arizona was leading the battle against immigration. By 2004, almost two million immigrants per year were funneled through the Arizona border due to border enforcement measures in California and Texas, and more immigrants, attracted to

19 See Chang, *The Illegal Immigration Reform and Immigrant Responsibility Act of 1996.*

the booming economy and availability of work, were choosing to settle in Arizona. Without the necessary infrastructure, Arizona's schools, police, and hospitals were overextended, leading to the passage of Proposition 200, which denied public benefits to undocumented immigrants and required state and federal government employees to report anyone suspected of being in the country illegally (Judis 2008). The passage of Proposition 200 inspired anti-immigrant legislation across the country. According to the National Council of State Legislatures, 570 pieces of legislation which affected either or both documented and undocumented immigrants were introduced in 2006 and more than double that number (1,562) in 2007.

Aside from the state-driven anti-immigrant campaigns that resulted after the September 11th attacks, the federal government also stepped up its efforts to control immigration. One such effort was the worksite raid, and later, with the Obama Administration, the more "humane"[20] business audits (Bacon and Hing 2010). For example, in 2007 immigration officials- amidst a labor dispute with the United Food and Commercial Workers- raided a North Carolina pork-packing plant, arresting and deporting 21 workers who were found to lack work authorization. In the same year, a Portland food processing plant was raided- again in the midst of a labor settlement- and 167 workers were arrested on site. In 2008, 388 workers in an Iowa meatpacking plant were arrested and prosecuted

[20] Obama's "silent raids" or audits of companies' records are considered a more humane way to control the employment of undocumented workers, because it avoids 'workplace raids by gun-yielding Immigration and Customs Enforcement (ICE) agents,' and results in firing workers, rather than detaining and deporting them (Bacon and Hing 2010).

with aggravated identity theft, and later 481 workers were arrested from a plant in Laurel, Mississippi and sent to a privately run detention center. In 2009, 2,000 women from American Apparel were fired after DHS audited the company's records, and 1,200 janitors from ABM were fired in Minneapolis (See: Bacon 2009; Smith, Avendaño, and Ortega). Considering the trajectory of this story, where does capitalist interest lie in worksite raids? Given the urgent need to rid the nation of the "immigrant problem," the federal government has had to raise its apprehension and deportation numbers to satisfy the American public; however they have managed to do so without much damage or cost to employers.

Although illegal for employers to knowingly hire undocumented workers, they are not the subjects of the raids despite their complicit participation in the "crime" which the workers commit by working without authorization (Bacon and Hing 2010). Smith, Avendaño, and Ortega (10) point out that, in 2008, ICE made 6,287 arrests for immigration offenses at worksites, and only 2.1% of those arrested were employers or employers' agents. Lorraine Schmall (2009, 380) notes that in 2008 the two most highly publicized raids, at Tyson Foods and Wal-Mart stores, resulted in acquittals or dismissal of nearly every criminal charge. Because sanctions, paid for through the uncompensated labor of workers, are limited or non-existent, employers have utilized raids to put a stop to organizing campaigns or weaken the union where a contract already exists. These trends demonstrate that violations of immigration law are deemed worse and more punishable than violations of employment and labor law by employers. These trends also illustrate how the social production of the "illegal" immigrant and

institutionalization of racial categories have served capitalist interest. This theme of employer impunity is central to the following chapter.

Making the Choice: Enforcing Immigration Law or Recognizing Workers' Rights

Arguably, a weakened state of labor and workplace protections is the cost of immigration enforcement. Just as race, gender, or skill level have been utilized historically by employers to weaken labor and divide workers, immigration status is also a tool with which employers yield power over workers to curb union activity and organizing, and deny them legally mandated pay and safe working conditions. In this section, I outline several tools and legal mechanisms with which employers verify and patrol worker status, and retaliate against workers. What I show is that employers comply with immigration law at their convenience to maximize profits and cut costs.

The employer sanctions provision of IRCA requires employers to patrol workers' documentation status in order to assist in the enforcement of immigration law and prevent unauthorized workers from securing work. By design, the employer is to determine status at the time of employment through I-9 and, more recently, the E-Verify[21] verification processes.[22] The expectation is that

[21] The I-9 verification process has been supplemented by the voluntary nation-wide E-Verify program, an on-line source for employee eligibility verification, which became mandatory in the state of Arizona under the 2008 Arizona Legal Workers Act. These processes must be completed within three working days of the employee's start date and should not take place retroactively.

[22] Employers are in compliance with the law by simply completing and maintaining in an employee's record an I-9 form along with supporting

employers will not hire workers who are unable to prove work authorization; however, not all employers comply with these verification processes, and those who do, but continue to hire unauthorized workers use documentation status as a threat against workers who assert their rights.[23] Ultimately, these processes do not prevent employers from hiring undocumented workers, but rather require creative accommodation (such as use of fraudulent documents); the associated risks fall on workers who are later subject to prosecution for aggravated identity theft or other felony crimes.

Another process through which employers become privy to a worker's unauthorized status is through the Social Security Administration's issuance of No-Match Letters.[24] These letters notify an employer that an employee's social security number (SSN) does not match the corresponding name in the SSN system. The employer's only responsibility upon receipt of a No Match Letter is to pass on this information to the employee, allowing him or her to correct any possible errors in the system; however, the No-Match Letters have become a tool of immigration enforcement and union busting.

Employers evaluate the costs and benefits of maintaining an

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documentation of authorization to work, though no verification of document validity is required.

[23] In fact, the employers of all of the undocumented workers who participated in my study knew either upon hiring or at some point in their employment that they were undocumented; one employer even provided the worker with a false social security number so he could work.

[24] A No-Match letter does not prove or disprove an employee's authorization to work. In the letter, the employer is directed not to take not adverse actions against an employee who receives such letter (Mehta, Theodore, and Hincapié 2003, 11).

undocumented workforce when deciding how to respond to No-Match Letters. For example, in their 2003 study, Mehta, Theodore, and Hincapié (2003,16) found that No-Match Letters were used as grounds for firing 21% of workers who were involved in union activity and 25% of workers who complained about inadequate worksite conditions. Their study also shows that when the costs associated with terminating employees (i.e. disruption of operations, replacing a highly skilled workforce) outweigh the risk of being investigated and penalized for retaining unauthorized workers, employers retain workers who are identified in No Match Letters.

Smith, Avendaño, and Ortega similarly find that employers comply with immigration enforcement measures in the workplace as a matter of convenience, and what is not convenient to their ability to maximize profit is when employees organize or demand changes to pay or working conditions. In their report, they highlight that a) Immigration and Customs Enforcement (ICE) undertakes enforcement actions at the behest of employers, b) ICE officials have been summoned to survey picket lines or other labor activities with the full knowledge of an ongoing organizing campaign or labor dispute, c) ICE has tolerated or taken part in the subterfuge to lure workers into enforcement actions, and d) that ICE enforcement actions have directly intervened with the administration of justice, most notably by arresting workers on courthouse steps (Smith, Avendaño, and Ortega, 15-29). These findings clearly indicate that not only does the enforcement of immigration law trump employment law, but that the government is complicit in the employers' scheme to maximize profits at the cost of employee wellbeing

and in the direct violation of their rights as workers and as migrant residents.

The last legal tool I would like to introduce in this section, which is evidence of the political will to divide workers and withhold rights from undocumented workers, is the 2002 U.S. Supreme Court decision in *Hoffman Plastic Compounds vs NLRB.* The National Labor Relations Board (NLRB) protects workers involved in union activity who are victims of unlawful retaliation - such as termination, cut in hours or pay, or threats. Traditionally, victims are entitled to reinstatement and backpay to compensate them for wages they would have earned had they not been illegally fired. In this determination, the U.S. Supreme Court upheld that undocumented workers are neither eligible for reinstatement or backpay, as employment of unauthorized workers is unlawful under IRCA (See Smith et al.; Sensiba and Yavrom; Cameron 2003; Fisk, Cooper, and Wishnie 2005). Employers have used the justification behind *Hoffman Plastics* to claim that undocumented workers have no rights, and the case has been loosely interpreted and applied against workers who challenge employers in discrimination cases and workers compensation claims (Sensiba and Yavrom). *Hoffman Plastics* effectively differentiates the rights of workers by their immigration status, making undocumented workers a more vulnerable and attractive workforce, as it severs their access to both collective bargaining and remedy after illegal retaliation. According to Cameron (2003, 32) the finding is "protectionist" and "anticompetitive" by placing undocumented employees "outside of the free labor system," and encouraging "take-it-or-leave-it deals" because workers who organize can be terminated and, later, denied reinstatement

and backpay (another financial motivator for employers). Undocumented workers have substantiated reason to fear retaliation should they assert their rights to freedom of association and to form and join trade unions, rights conferred to workers by international laws (Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Advisory Opinion OC-18 by the Inter-American Court of Human Rights), and U.S. federal laws.

The State of Labor

The previous sections illustrate that immigration law is more stringently enforced than employment law, the consequence of which is the deterioration of working conditions, pay, and treatment of workers since many are hesitant to organize and demand change. Just as this equation serves capitalist interest so does the devaluation of the worker and working conditions. Because undocumented workers – who made up 5% of the workforce and 23% of lower skilled workers in 2005 (Capps, Fortuny, and Fix 2007)- are more hesitant to challenge abusive business practices, labor costs can be drastically cut through minimum wage and overtime violations, and the denial of safety and health equipment and training, making undocumented workers the "workers of choice" for business owners. Numerous studies have demonstrated the deterioration of wage and hour rights (Bobo 2009; Bernhardt et al. 2009; Valenzuela 2006; Rivera-Batiz 1999; McGrath 2005; Mehta et al. 2002; General Accounting Office 2002; Phillips and Massey 1999), safety and health (deCastro et al. 2006; Human Rights Watch 2005; National Institute for Occupational Safety and Health 2010;

Anderson 2000; Davis and Souza 2009; Goodrum and Dai 2005; Nissen, Angee, and Weinstein 2008; Ore and Stout 1997; Ruttenberg and Lazo 2004; Vinck et al. 2009), and rights to protection from discrimination (deCastro et al. 2006; Mehta et al. 2002; Bernhardt, McGrath, and DeFilippis; Moss and Tilly 2001; Vellos 1996; Gonzalez-Lopez 2006) among documented and undocumented immigrant workers.

While all workers are at risk of having their workplace rights violated, Bernhardt and collaborators (2009) found that certain populations face significantly more risk, including: women, Latinos, the foreign-born, the undocumented, and workers with less formal education, less job tenure, and less English language proficiency. They conducted a comprehensive study of 4,387 workers in low-wage industries in the three largest U.S. cities to determine the prevalence of violations, the most vulnerable groups, and the types of violations that occur. They found that wage theft[25] is increasingly common in low–wage industries; in fact, 68% of workers experienced at least one pay-related violation in the previous week. Some of these violations included minimum wage violations (25.9%), unpaid or underpaid overtime (76.3% vs 19.1%),[26] not being paid for all hours worked (70.1% vs 16.9%), meal break violations (69.5% vs. 58.3%), workers compensation violations (50.3% vs. 4.7%), and retaliation after

[25] Wage theft is when 'an employer violates the law and deprives a worker of legally mandated wages' (Bobo 2009, 7).

[26] The first number represents the percentage of at-risk workers who experienced the violation; the second number represents the percentage of all workers surveyed who experienced the violation.

an organizing effort (42.8% vs. 4.6%) (Bernhardt et al. 2009, 20). While all types of employers steal wages, several trends emerged regarding job and employer characteristics that are often factors (such as business size and company policy) in the likelihood an employer will steal wages. For example, employers with fewer than 100 employees were more likely to steal workers' wages, and employers who offer vacation, sick day pay, or health insurance are less likely to steal wages. Also, numerous studies indicate that violations are more common depending on the industry and worker occupation[27] (Bobo 2009; McGrath 2005; U.S. Department of Labor 2001; Valenzuela et al. 2006; Bernhardt et al. 2009). According to Valenzuela and collaborators (2006), almost half of day laborers have had their wages stolen, and based on statistics provided by the U.S. Department of Labor (2001) 100% of poultry plants, and 60% of nursing homes are non-compliant with wage and hour law. Bernhardt and collaborators (2009) found that the most egregious violators were businesses in apparel and textile manufacturing, personal and repair services, and in private households (40% or more of workers in these industries experienced a pay violation); this was followed by restaurants, retail and grocery stores, and warehousing (20-25% of workers experienced minimum wage violations) and finally residential construction, social assistance and education, and home health care (12-13% of workers employed in these industries experienced a pay violation).

Similar to the disproportionate number of at-risk workers experiencing

[27] For a comprehensive list of studies that highlight wage theft by industry, see Bobo, *Wage Theft in America*; McGrath, *A Survey of Literature Estimating the Prevalence of Employment and Labor Law Violations in the US.*

pay violations, health and safety violations are similarly prevalent in low-wage industries in which immigrant workers are over-represented. Common health and safety violations include the denial of safety equipment (which, by law, should be free of cost to the worker), inadequate safety training, and failure to provide information about risks in the workplace (for example, how chemicals might affect one's health). The disparity in health outcomes of Latino immigrant workers is evident in the fact that Mexican immigrants have an 82% greater risk of non-fatal workplace injuries or illnesses compared to any other gender/race/ethnicity group (O'Connor et al. 2005, 272), and that 'foreign-born Latino men are nearly two-and-a-half times more likely to be killed on the job (in all industries) than the average U.S. worker' (National Research Council 2003).

The documented disparities related to health and safety experiences of Latino immigrants can be explained by numerous factors: Latino immigrant workers are 1) overrepresented in the most dangerous jobs (deCastro et al. 2006), 2) less likely to be unionized and know their rights[28] (Ruttenberg and Lazo 2004; Nissen 2008), 3) less likely to receive adequate training due language and education barriers[29] (Vinck et al. 2009; O'Connor et al. 2005; Brunette 2005), 4)

[28]Also, employers commonly misinformed workers about their rights especially related to workers' compensation (Pransky, Thackrey, and Portillo 1998; Bernhardt et al. 2009; O'Connor et al. 2005).

[29] In a post-Katrina study by Vinck and his collaborators (2009, 475), the researchers suggest that language inhibited training and dissemination of information about rights and risks made it more difficult for workers to ask for protective equipment or instruction from employers. Another study confirmed that 'the group with little or no English ability was less likely to receive any safety training (58% vs. 84%) and less likely to receive more than an hour of training

less likely to access workers compensation after a workplace accident (Bernhardt et al. 2009), 5) less likely to request safety equipment[30] (Davis and Souza 2009), and 6) more likely to fear retaliation based on documentation status (Hopkins 2003; Ruttenberg and Lazo 2004; deCastro et al. 2006; Vinck et al. 2009). The lack of concern over the Hispanic workers' body, health and overall wellbeing is clear with the egregious and prevalent violations they experience in the workplace. Vinck and collaborators (2009, 475) claim that employers

> 'lack a commitment to workplace safety or cut corners with undocumented workers simply because they can get away with it and increase their profit margins…these employers may be taking advantage of the lack of regulations and enforcement or simply choosing to ignore relevant laws.'

The last aspect of employment rights I would like to briefly address is discrimination. The Equal Employment Opportunity Commission (EEOC), the government agency that enforces discrimination law, outlines six main categories of discrimination: gender (including pregnancy and sexual harassment), race (including national origin/ language/ skin color), disability, age (over 40 years old), religion, and genetic information. Numerous scholars (Mehta et al. 2002; Rivera-Batiz 1999; Phillips and Massey 1999) have documented ways in which discrimination in the workplace has become institutionalized, most notably

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(34% versus 66%) than the group with basic or better English ability (O'Connor et al. 2005, 274).

[30] A Massachusetts study showed that Latino foreign born workers were less likely to request protective equipment or training due to cultural differences and experiences in their home countries which shaped their perceptions about what is considered dangerous and the appropriateness of speaking up (Davis and Souza 2009).

through a wage penalty imposed on undocumented workers. According to Mehta and collaborators (2002, 16) undocumented, Latin American females experience a 36% wage penalty compared to documented, Latin American females (28% penalty) and undocumented Latin American males (22%). Apart from differences in pay based on status and race, scholars note clear differences in the treatment of immigrant workers. DeCastro and collaborators (2006, 255) found that Caucasian and African American workers were offered more promotions, higher wages, and other privileges (such as longer lunch breaks), and that Latinos were selected to perform the hardest work, a finding similarly established by Bernhardt, McGrath, and DeFilippis. Scholars like Vellos (1996) and Gonzalez-Lopez (2006) are documenting the high incidence of sexual harassment of female Latina immigrants in the workplace.

The deterioration of workplace rights for documented and undocumented immigrant workers is connected to their dehumanization in public discourse and the historical relationship that the U.S. has with Mexican workers which has placed them in an institutionalized racial order. Their position within the divided labor market has justified their subhuman treatment and facilitated the constant abuse against their person and their rights.

Latino Immigrant Workforce

As the previous sections have shown, the Latino immigrant workforce experiences workplace issues differently and faces a specific set of intersecting structural barriers to exercising their rights. The reality they face is one that we

must study and understand if we intend to improve the state of labor for all workers, especially as they are a burgeoning sector of the workforce.

In 2005, there were 22 million immigrants in the United States, 30% of which are undocumented. Immigrants represent almost 15% of the workforce, and have the highest workforce participation rates of all racial groups, even in times of high unemployment (Lowell, Gelatt, and Batalova 2006; Capps, Fortuny, and Fix 2007; Semple 2010). In 2004, at least one-sixth of Arizona residents were immigrants. Four hundred fifty thousand of them were undocumented, the vast majority (87%) Mexican, and represent one in ten workers (Fortuny, Capps, and Passel 2007). Lowell and collaborators (2006, 1) claim that if immigration rates continue at the same level, immigrants will make-up between one-third and one-half of the growth of the labor force through 2030. And, if unauthorized immigrants continue to make up approximately half of immigrant flows, then undocumented workers may account for a quarter of labor force growth.

With the immigrant population (specifically the undocumented) projected to contribute most significantly to labor force growth, we must be clear about the implications this dynamic could have should they continue to be treated and paid as a subclass of citizens. While economic expansion will surely result from a growing number of immigrants and their contributions of human and social capital, the gap between America's richest and poorest could very well allow for the collapse of middle and low-income America.

Chapter 3

LIVING IN THE INTERSECTION OF THE CULTURE OF FEAR AND THE CULTURE OF EMPLOYER IMPUNITY

> *My girl says to me "let's go to Disneyland, dad," but my wife is scared. So we can't go… And now with the laws as they are we can't leave. We stay in the house. Before [SB1070 was signed], yes. We were going to eat but now she doesn't want to go out to eat because of the laws. And it seems unjust to me… I am a criminal, according to them, because an undocumented [person travels] with me. So I have to get divorced to not be a criminal? Four of us [in the family] are citizens but we have to have a lot of caution because of my wife's status. So there are many things we cannot do for that reason…I bought a house here. I am paying it [off]. We have saved money, but we can't do many things because of her status. So one can't move around with freedom. If I am working, she can't take the kids to the doctor. So I have to leave work to take the kids or change my schedule so I can be able to take the kids to the doctor. She can't drive because she does not have a license, right? Obviously, because they will not give her a license. If they catch her now they are going to want to deport her, so it's better she doesn't drive. So that is the problem. I have to divide myself into like 20 to be able to do everything for the house and then for work... So, yes it's hard. I struggle a lot, but there is no other way…And, yes I feel a lot of racism, even though I am a good citizen. (Mateo, June 23rd 2010)*

> *I want to be able to go the store with ease to buy myself gatorade and if I need food go to McDonalds or a restaurant to eat. One can no longer [do this]. Now, I might leave work to get food, and encounter a police officer and he would stop me. I would have left my work unfinished, and what I already finished I wouldn't be paid for. And the police would take my car and off to Mexico [with me]. No, it's better to be hungry. Better I no longer go out for lunch because it's better that I don't leave and that I work and stay hungry until I arrive home in the afternoon. And honestly, I no longer live with tranquility, not even to spend, and one can no longer trust your boss, even if he's a good person. (Carlos, August 5th 2010)*

Woven throughout Mateo and Carlos' stories are common threads: fear, tension, disillusionment, anxiety, struggle, hiding, limited movement, and

restricted freedom. Like many of the undocumented workers and documented workers with mixed status families, they describe living in a constant state of paranoia and fear of discovery, and having to associate risk with all daily activities, such as driving. Diego, a study participant, refers to this reality as "oppressive insecurity," which I will build upon and employ throughout this chapter. The oppressive insecurity influences immigrants' decision-making, and how they manage their public and private lives, as the threat of discovery in everyday activities causes them to perceive risk in any and all encounters with the law. The prominent fear these workers share is not the mere result of offensive interpersonal interactions with police or neighbors, but rather a strategic right-wing attempt to create an environment too hostile to thrive and survive in, and in which their safety and wellbeing cannot be guaranteed: attrition through enforcement. I posit that the promulgation of fear in the immigrant community furthers two objectives: the creation of a harsh socio-political climate that drives out undocumented workers; and the repression, both in act and in justification, of the immigrant workforce.

Fear mongering, or the use of fear to influence a person or group's opinions or actions is a manipulative tool utilized to achieve a political, personal or corporate gain (Glassner 1999, xi-xii). Fear is a tool in the political game of attrition in which the objective is to rid the country of undocumented immigrants. There are two principal strategies in this political game, the first of which is to create fear among the American public of an immigrant invasion that threatens national security and the wellbeing of American communities and individuals,

and establish the government's power and control over the situation. To do so, the complex immigration issues faced by our country become narrowly defined as the issue of illegal entry, so that the pseudodanger that immigration represents seems more manageably rectified and the government can feign control of the situation by offering targeted solutions (Glassner 1999). The victims of the "immigrant problem" are portrayed in sensationalist terms as the innocent, likable average American whose community, for example, has seen a spike in violent crimes as a result of the immigrant invasion. Political conservatives and the news media portray the perpetrators as "uncaring brutes," human smugglers and drug traffickers; the polarization of communities through these portrayals effectively creates an "us" versus "them" mentality. This game-winning strategy shapes a harsh political climate by creating fear within those who identify with the victim, and who will then support the efforts to stop undocumented immigration through border enforcement and increased numbers of deportations. The second strategy in the game of attrition is to create fear among immigrants for their own safety and wellbeing so that they leave the country of their own accord.

Employers are also players in the politics of attrition, though their objective is not the removal of undocumented workers, but rather the maintenance of a docile, unquestioning and undemanding workforce through the emotional and physical degradation of workers. This power imbalance and the second strategy outlined above will be further explored and exemplified in this chapter.

I will utilize Glassner's concept of the culture of fear to refer to the socio-legal climate within Phoenix, Maricopa County, and Arizona as it is shaped by

public discourse, laws, news media, and interactions between community members in order to demonstrate how the socio-legal climate influences the personal and work lives of immigrants. This climate is defined and experienced both personally and collectively, informing the workers' perception of security and risk. I assert throughout this chapter that the culture of fear has created an oppressive insecurity among the immigrant community, which will be exemplified through workers' stories, underscoring the state of compromise and paranoia that results from navigating options which all involve (or can be perceived to involve) significant risk.

Based on the workers' narratives, the culture of fear is actively shaped by the anti-immigrant legislation, increasing reports of raids, police harassment, and racial profiling, personal experiences with threats by employers, a perceived change in public treatment of immigrants (most often reported in my interviews as staring, insults, or worse service in stores), and the constant barrage of hate directed toward them in the media.

Creating a Culture of Fear: Arizona Legislation, 2000-2010

Immigration has been a topic of significant concern in the 21st century. Conflated with terrorism, immigration and border enforcement gained wide spread attention after the horrific events of September 11th 2001.[31] Civil liberties

[31] See Welch, *Ironies of Social Control and the Criminalization of Immigrants;* Johnson and Trujillo, *Immigration Reform, National Security After September 11, and the Future of North American Integration;* Lytle Hernández*, Migra! A History of the U.S. Border Patrol*

of all minority groups were restricted with the passage of the Patriot Act within a month of the attacks, and Mexican immigrants were largely targeted as the federal government instigated record numbers of deportations, aggressively enforced immigration laws, and placed citizenship requirements for certain jobs (Johnson and Trujillo 2006).

Arizona followed the federal government's lead in tightening the border, removing undocumented immigrants, and restricting foreign nationals' access to the U.S. Alarmed at the large influx of undocumented migrants which was funneled through the Arizona border as a result of border enforcement measures in Texas and California, Arizona reacted harshly. (See Appendix B for a list of immigration-related laws and propositions introduced in Arizona between 2004-2010.) By the year 2004, almost two million immigrants crossed into Arizona per year, and between 2000-2008 the foreign born population increased 42.1%.[32] Larger numbers began to permanently settle in Arizona communities due to the availability of work, the construction boom, and the increased difficulty and expense of circular migration (traveling back and forth across the border). Feeling a strain on city and state budgets, Arizona residents blamed the deterioration of Arizona's fiscal health on the immigrants moving into the city, and in response, anti-immigrant activists put Proposition 200 on the ballot (Judis 2008). The proposition aimed to address the overextension of public services and deter

[32] According to the Migration Policy Institute, 33% of the immigrant population in Arizona entered the United States since the year 2000, causing a 42.1% increase from 656,183 to 932,518. In 2006, 34.9% of all Arizona construction workers were foreign-born Hispanic.

unauthorized entry by denying undocumented immigrants access to public benefits and requiring government employees to report anyone suspected of being in the country without authorization. The proposition also required the provision of extensive evidence of citizenship in order to vote in elections. [33] The proposition passed 56 to 44, inspiring over 2,000 anti-immigrant bills across the country between 2006 and 2007, according to the National Council of State Legislatures.

Arizona's recession, which according to the National Bureau of Economic Research began in December 2007, facilitated the spread of the anti-immigrant bills. As noted in chapter two, times of economic instability and recession are historically followed by anti-immigrant sentiments and divisive public discourse as immigrants are scapegoated for draining public services, contributing to high crime rates, and threatening national security.[34] At the onset of the recession and in following with the momentum of 2004, a rash of anti-immigrant laws and county wide enforcement measures worked simultaneously to round up those who did not leave of their own accord and to create an acrimonious climate that made life unpleasant and even unbearable for families.

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[33] MALDEF challenged the constitutionality of the voter registration and identification provisions of Proposition 200 and won in the U.S. Ninth Circuit Court of Appeals. For more information, see the National Immigration Forum, *2004 Election Analysis: Arizona's Prop 200*.

[34] For sources that challenge this common misconception, see ALCU of Northern California, *Costs and Consequences: The High Price of Policing Immigrant Communities*; Creciendo Juntos, *Latinos, Social Security & Taxes, Latinos & Crime*; Immigration Policy Institute, *Assessing the Economic Impact of Immigration at the State and Local Level.*

According to the legislative information compiled in Appendix B, between 2004 and 2006, 21 anti-immigrant ballot propositions and laws were proposed and passed through the House of Representatives and Senate; of the 21, five related to judiciary and law enforcement measures, four related to the criminalization of undocumented immigrants or border enforcement measures, four related to the denial of public benefits, and two focused on immigrant laborers.

Significant bills which passed in 2006 and impede the civil and human rights of immigrant workers include: Proposition 103 made English the official state language and rendered all communications in any other language within court rooms and government agencies unofficial and non-binding; [35] Proposition 102 stipulated that undocumented persons cannot receive punitive damages in civil lawsuits, which in turn limits sanctions against employers who intentionally abuse workers, and the likelihood of deterring repeat offenders; Proposition 300 made undocumented people ineligible for state-financed adult education classes and child care, rendered undocumented students as non-residents for tuition purposes, and denied them state-financed financial grants or assistance; and Senate Bill 1372 redefined human smuggling as transporting an undocumented person for profit.

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[35] In an October 2009 interview with the worker center director, she states: 'It used to be, until July 1 of 2008, most of the websites of the enforcement agencies in Arizona were bilingual in English and Spanish both. After this ballot initiative about English Only, all of the websites scrubbed their Spanish language (Spanish language complaint forms and information were removed), which means that if you're not strong in English or you don't speak it at all even if you were to get the number and call them, the message is in English. Now if you can finally get down there, they might have somebody that can translate. But, that's not even a guarantee. It's not a friendly system, even though the individuals that work there tend to want to help. They're not equipped to help.'

SB1372 became one of many bills that criminalized an undocumented person's physical presence in the United States; unlawful presence became a Class 4 felony offense, elevating the "crime" to the severity of aggravated assault or criminal damage of over $10,000, which is punishable by up to 3.75 years of incarceration and makes immigrants ineligible for bail based on the 2005 Proposition 100. In 2006, the human smuggling law was used against an undocumented immigrant, Juan Barragan-Sierra- who paid a coyote $2,000 for a ride to Everett, Washington. Maricopa County Attorney Andrew Thomas charged Juan with conspiring to smuggle himself into Arizona, and he was later convicted and deported. The redefinition and interpretation of human smuggling provides a legal tool with which the county can criminalize undocumented immigrants and allows county officials to misrepresent the effectiveness of its Human Smuggling Unit (HSU) in addressing trafficking and smuggling. HSU's initial target was the kingpins or upper-level operatives who profit from human smuggling. However, those arrested and prosecuted in 2006 and 2007 under the 2005 human smuggling law were low-level operatives, such as drop-house guards, and undocumented victims (Bolick 2008). In fact, 868 of 1,000 convicted persons were migrants who "smuggled themselves" (Sterling 2010, 49), a clear indication of the misguided efforts of the HSU to target human trafficking.[36]

At the same time as these early legislative assaults against the Latino immigrant community, the Maricopa County Sheriff's Office was leading vicious

[36] On a related note, according to the Immigration Justice Clinic, Maricopa County was recently found to have abused the power granted by provisions in the Secure Communities Program in order to sustain high levels of non-criminal deportations, despite the intention of the program to target high-threat immigrants.

physical attacks patrolling and terrorizing the community through their "crime suppression operations." In fact, in an interview with Terry Sterling (2010, 88), Sheriff Arpaio mentions that 'the fear factor was important because immigrants wouldn't want to settle in Maricopa County.'[37] Terry Greene Sterling, a Phoenix native and Writer-in-Residence at Arizona State University's Walter Cronkite's School of Journalism, has documented the attacks on immigrants in Arizona, including workplace and neighborhood raids, which she says began in 2006 and gathered speed in 2008. In her book, *Illegal: Life and Death in Arizona's Immigration War Zone*, Sterling (2010, 82-89) describes her experience during a two-day raid in the town of Guadalupe, which is home to 5,500 people, many of whom are Indigenous Yaqui and Latino. She recalls the psychological distress in the community, describing the attack for her readers:

> 'Residents had long complained that the sheriff's office failed to adequately investigate crimes and took way too long to respond to their emergency calls…But on the afternoon of April 3, 2008, the sheriff's office wasn't shorthanded in Guadalupe…Deputies [swept] into town in dark SUVs with tinted windows, in unmarked cars, in marked cars, on motorcycles, in a helicopter, on horseback, and on foot…the air smelled of motor exhaust and horses… Deputies stopped cars for infractions as minor as cracked windshields and broken taillights' (Sterling 2010, 83).

Forty-seven people were arrested in the two-day attack on the Latino community, and only nine were undocumented immigrants. Characteristic of the sheriff's

[37] Despite the insinuation that his office is effectively removing undocumented immigrants through its wide-sweeping enforcement measures, the direct influence of the raids cannot be separated from other factors that influence a family's decision to leave, such as the economy, anti-smuggling enforcement, employer sanctions and stepped-up federal detention policies (Wagner 2008).

many efforts to "suppress crime," the raids were costly and ineffective,[38] though successful in creating a palpable fear in Latino immigrant communities, and destroying families and communities.[39]

According to Clint Bolick of the Goldwater Institute (2008, 9), the Maricopa County Sheriff's Office (MCSO) has channeled substantial resources away from other law-enforcement activities to the immigration sweeps and the human smuggling unit, a tactic that has been largely unsuccessful and inefficient in identifying undocumented immigrants for deportation and has had no effect on human smuggling. Though Russell Pearce[40] claims that immigrants are largely responsible for a majority of the crimes being committed in Arizona, in actuality overall crime rates have dropped in recent years and reports show that immigrants (including the undocumented) do not commit crimes at a greater rate than non-immigrants (Arizona Latino Research Enterprise/ ASU 2009, 35-36). In addition to the inefficiency and cost of the raids, these reports demonstrate they are largely misdirected. For example, though proposed as a measure to suppress crime, Sheriff Joe Arpaio boasts they have actually contributed to the exodus of

[38] For more information on the inefficiency of MCSO's crime suppression sweeps, see Bolick, *Mission Unaccomplished: The Misplaced Priorities of the Maricopa County Sheriff's Office*.

[39] For more information on the impact of raids on communities, see Sterling, *Illegal*; Jensen and Boehnke, *Sheriff's SE Valley Sweeps Log 36 Arrests Thursday*; Wagner, *Impact of Arpaio's Crime Sweeps is Unclear.*

[40] Russell Pearce currently serves as an Arizona State Senator representing the city of Mesa (District 18), and is most well known for sponsoring a rash of anti-immigrant bills.

undocumented people from the county through the creation of a less-hospitable climate (Bolick 2008, 8).

Both legislative and physical attacks on the community have shaped the culture of fear, especially in the second half of the decade. However, a discussion of this culture would not be complete without mention of the 287g agreements with the U.S. Immigration and Customs Enforcement (ICE),[41] which the Maricopa County Sheriff's department and the Phoenix police department signed in 2007 and 2008 respectively (around the same time as the crime suppression sweeps gained momentum). The agreements granted power to enforce U.S. immigration law, allowing the sheriff's department to patrol the status of immigrants in their jails, and the Phoenix Police department to verify the immigration status of any person they might encounter, for example, during routine traffic stops. The willingness and resolve with which the sheriff's office enforced this agreement- especially in the form of neighborhood road blocks and raids- created a perception among the immigrant community that police officers were going out of their way

[41] The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), effective September 30, 1996, added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act (INA). This authorizes the secretary of the U.S. Department of Homeland Security (DHS) to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement (MOA), provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn ICE officers. Agreements between ICE and city/state agencies were signed in the following years: 2005- Arizona Department of Corrections- Jail Enforcement; 2007- Arizona Department of Public Safety- Task Force; 2008- City of Phoenix Police- Task Force; 2007- Maricopa County Sheriff's Department- Jail Enforcement (See: U.S. Immigration Customs and Enforcement, *Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act.)*

to identify those who might be in the country illegally (identifiable by the type of music they listen to, how they look, or the type of car they drive) by creating pretexts under which to stop them (broken tail lights, cracked windshields) so that they could legally verify their immigration status, detain, prosecute and deport them.

Attacks against undocumented workers continued throughout the decade. The 2008 Legal Arizona Workers Act (HB 2779) (also known as the Employer Sanctions Law) aimed to deter undocumented settlement and uproot the undocumented immigrant community through the systematic denial of employment. As written, the law targets employers who "knowingly hire" unauthorized workers by imposing heavy fines and removing their business licensure; employers were required to verify all employees' work authorization using the E-Verify system. However, similar to the federal employer sanctions of IRCA, in practice the law targets undocumented workers who are rounded up in workplace raids. For example, in June 2009 a former car wash manager initiated a raid by notifying the sheriff that undocumented workers had presented false documents in order to secure work. The raid was authorized under the auspice of an employer sanctions investigation, though it resulted that 14 employees were arrested and the employer who hired them faced no repercussions, despite the obvious complicity in the offense (Sterling 2010). In fact, since implementation of the Employer Sanctions Law on January 1, 2008, as of early 2010 only one employer has been successfully prosecuted in Arizona, and the prosecution was

more of a symbolic action as the company had already closed (Sterling 2010, 50; Hensely and Kiefer 2009; Chishti and Bergeron 2008).

In 2009, the immigrant community was further shaken by SB1282- which redefined human smuggling to include those who have attempted to enter, entered, or remained in the United States without authorization- and by HB2008. The latter further denies public benefits to the undocumented and, more significantly, requires all government employees in Arizona to report any undocumented immigrants who request a public benefit, and allows taxpayers to sue government employees, city and state agencies who do not comply with the provision. This bill has created the perception among immigrants that all government employees are required to report them to immigration authorities, which has deterred undocumented people from requesting public benefits for their citizen children, and utilizing state and federal government agencies, such as Occupational Safety and Health Administration (OSHA) and Department of Labor (DOL), and the courts for fear of discovery and deportation.

The culmination of the legislative attacks on immigrants was Senate Bill 1070 in 2010. Russell Pearce's omnibus bill was written by Kris Kobach, an attorney affiliated with the Federation for American Immigration Reform (FAIR), an organization identified by the Southern Poverty Law Center as a hate group (Beirich). The law contains numerous provisions, the most contested being the obligation of police officers who have contact with a person who they reasonably suspect[42] to be in the country illegally to verify his or her documentation status. It

[42] HB 2162 amended SB 1070, stipulating that officers may not use race as

also stipulates that officers may arrest without a warrant for any offense that would require deportation, and make it a state crime to be in the country illegally, to stop a vehicle in the road to hire a day laborer if it impedes traffic, and to transport, harbor, conceal or shield an illegal immigrant while committing a separate criminal offense. A chief concern among the bill's opponents is the expected increase in racial profiling and police harassment, which will affect documented immigrants as well as Latino citizens.[43] The overreaching nature of the bill and its support among Arizona voters has intensified the culture of fear among immigrants, forcing greater numbers further into the shadows.

Such is the reality for Mateo, a documented immigrant with a mixed status family. Mateo is one of the four workers I interviewed who is considering relocating outside of Phoenix. Unlike the others, SB1070 is his only motive. During the interview, he recounted a running joke between he and his employer, a fellow immigrant:

> I tell him "when the law goes into effect, don't worry if I arrive late to work, because they are going to stop me three or four times." I live on 74th Ave and lower Buckeye and I come all the way to 24th avenue. "I don't look like a German," I tell him. "They are going to stop me and ask me for papers. If I arrive late it will be because of something," I tell him. He only laughs, saying, "They are also going to stop me."

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justification for "reasonable suspicion" and that they should verify status of those whom they will "stop, detain or arrest" as opposed to those with whom they merely have contact.

[43] As of April 2011, the 9th U.S. Circuit Court of Appeals supported Judge Bolton's injunction against SB1070, issued on the basis that 'immigration is the bailiwick of the federal government, not individual states' (Beard Rau and Kiefer).

Aside from the perceived threat of racial profiling, one real consequence that has resulted from the passage of SB1070 is that immigrants are scared to call the police when they are victims of crimes themselves, justifiably assuming that they will become the subject of investigation by the police who are supposed to protect them.[44] During an interview, Diego shared:

> I just had $1,500 worth of tools stolen from my house and I am almost positive I know who it was, but what we want least is to have contact with the police. I preferred to lose $1,500 worth of tools and work without all my tools right now than have to make this a public problem with the police in which they will see me as involved and, in any given moment, they will ask me for my social security number.

Mateo similarly shares concerns of the safety of Latinos in the community:

> The other day a black guy stole a purse from a Hispanic girl that doesn't have papers. She did not want to call the police. She didn't want to call the police because she was afraid they would detain her or would ask her for her papers. Even though they shouldn't ask, [she is] already scared. She prefers that they steal her bag with her week's wages than call the police to report it. And this is happening more. Now, the people prefer not to call the police, not do anything...

Just as recent legislation has extended additional power to police officers to enforce immigration law, it has similarly extended these powers to city and state government officials. As it is often unclear to those I interviewed what agencies and officials are and are not charged with immigration enforcement, there is a common assumption that officials in the court system will investigate status. Seven of the workers claimed that fear of discovery in the court was an obstacle or deterrent for filing a claim against their employer. However, it must be noted

[44] See Beard Rau, *Arizona Immigration Law has not Lived up to Reputation.*

that there are varying levels of oppressive insecurity or fear reported by the undocumented workers, though the majority live in constant fear; important factors that explain the variance include knowledge of civil and workplace rights, English language proficiency, and to an extent formal education, and length of residence in the United States.

The multi-prong effort to control migration of undocumented persons has created a "spillover effect," victimizing both legal immigrants and minority citizens in the process. Daniel Ortega, a local civil rights attorney and community activist, states:

> The hostility has spilled over to citizens in the form of racial profiling, which is occurring in all levels, whether it involves getting services or public benefits, finding a job or in areas of law enforcement. The color of your skin and how you look now make [Latinos] suspect. People are afraid of their government. Employers are afraid to offer jobs. We are not only suspect, but we have to be afraid of being suspected [of violating the law], even if we've done nothing wrong (Arizona Latino Research Enterprise/ ASU 2009, 36).

The interpersonal and institutional racism at play here is not limited to those without legal immigration status, an important point to note for its implications for immigrants in the workplace. In several interviews, workers mentioned that, in work places in which work authorization is not verified, all workers are presumed to be undocumented, and therefore their treatment is often the same.

The propositions and legislative bills discussed in this section together shape a harsh anti-immigrant climate in which immigrants and citizens must live and work. The oppressive insecurity and fear created by both systemic and interpersonal attacks on Latino immigrants have deleterious effects on community

and work life. As illustrated in Mateo's story at the beginning of the chapter, immigrant adults are dissuaded from fully participating in their communities as consumers, parents, workers and residents, which affects the community's civic and economic health, safety, culture, education, and the future participation and integration of their children. As workers, the oppressive insecurity becomes an obstacle to asserting their rights to legally mandated protections and pay, and accessing recourse once their rights have been violated. Because labor and employment law is largely enforced based on complaints rather than proactive independent investigations, workplaces and industries that have disproportionately high numbers of immigrant workers are less likely to be regulated, cultivating an atmosphere that is conducive to illegal activity and abuse by employers.

Employer Criminality and the Culture of Impunity

The legislative and physical attacks on Latino immigrant workers facilitate the maintenance of a docile, unquestioning and undemanding workforce, and employers further the power imbalance by emotionally and physically degrading workers. With limited access to recourse and the labor market and facing real obstacles to the recognition of rights in the workplace, the government places employees in a situation in which they must depend on the goodwill of employers to comply with labor law. Encouraged by the ease of exploitation and profit maximization, employers are evading labor laws. They force employees to work longer hours, and refuse to pay them, provide benefits, or observe labor

protections. The culture of impunity takes form as employers engage in greater civil and criminal employment-related offenses without fear of employee complaints, government oversight or sanctions.

Bernhardt and collaborators (2009) claim that the evasion and non-compliance with labor is systematic and they identify four strategies utilized to erode normative workplace standards and avoid compliance. The two strategies used by the employers/contractors of study participants were "evasion strategies" through which an employer 'evades core workplace laws by creating legal distance between employee and employer' and "violation strategies" through which an employer 'outright [violates] the laws governing the employment relationship' (Bernhardt et al. 2009, 39). The violations that workers were able to identify were the outright violations of the Fair Labor Standards Act (FLSA), Occupational Safety and Health Act (OSHA), Title VII, and contract law, pay violations[45] being the most commonly cited. Marco explained how his employer cheated him out of more than $4,000 in wages.

> They were making partial payments, and nothing more, payments of $100, $200. If we received on average $500 per week, they were giving us half or a little less than half, 40% of our wages to keep us more or less content. They were saying there was no money and that they still had not received the pay from the client.

Other violations workers noted that occurred during their employment or in pursuing recourse, include gender, race, and language-based discrimination,

[45] The most common pay violations include not being paid on time or in full (Arizona law stipulates workers must be paid on the pre-determined pay dates and that there must be at least two pay dates per month that are no more than 16 days apart.), not being paid minimum wage or overtime, asking workers to work "off the books" (In these cases, workers were paid cash and employers generally did not maintain records of hours worked), and illegal deductions.

perjury in the courtroom, provision of inadequate or no safety equipment, verbal assault, and the provision of fraudulent social security numbers to employees.

Employers also utilized evasion strategies[46] to avoid the expense and liability inherent to the employment relationship. Though not nearly as common, several workers were subject to the tactic of misclassifying employees as independent contractors. This tactic is a profitable way to evade overhead expense as contractors are not entitled to minimum wage, overtime pay, workers compensation, unemployment insurance, and other employee benefits.

What was striking about the workers' stories was the sense of impunity and security employers felt while knowingly violating the law, and the ease with which employers prioritized profit over employee wellbeing despite having mutually trusting and affectionate personal relationships, in some cases. Because of an established relationship of trust, employees were inclined to remain in their positions and accept little or no pay, trusting the employer or contractor would live up to their promises. On average, the employees/contractors I interviewed worked without complete pay for 8.93 weeks before ending their employment. Though workers who did not have a trusting relationship with their employer also waited for their pay for lack of options, those who had maintained a trusting relationship were more likely to experience paranoia and greater emotional distress, as a result of the wage theft.

For example, Emilia felt betrayed when her employer of 12 years lied to

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[46] See Foo, *The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation;* Bernhardt et al, *Broken Laws, Unprotected Workers;* Bernhardt et al, *The Gloves Off Economy: Workplace Standards at the Bottom of America's Labor Market.*

her about receiving payments from clients in order to justify not paying her. She noted, however, how easily she had seen him mistreat and deny pay to the undocumented workers.

> He told me bluntly, "I don't have any [money]." And he does the same to the people that don't have papers. He fires them and then, when he wants, he would bring them back to work. He would say, "I am not going to pay you because you didn't do the work well" and he didn't pay them…. And he was not paying them what he has to pay them. I think that by knowing the guys didn't have papers, he was able to tell them "I am going to pay you at $6, $7 per hour, if you want the work." And because of necessity, I think, the guys accepted.

Juan describes the ease with which his employer violates the law, even passing legal responsibility to his workers by asking them to commit fraud:

> He knew that no one had work. Well, no one had papers. And when the government notified him that the social security number was wrong, he would tell you "hey, they are telling me this number is wrong, just change it." Because as I mentioned to you, he has experience since he had the other company where we all worked before.

Fernando describes a less evasive strategy his employer used on payday, which he felt demonstrated his complete disregard for workers and their emotional and financial wellbeing:

> All of a sudden he tells you, "I am not going to pay you. I am not going to give you anything." Well, if you had high self-esteem, then now it is on the floor because they do not value your work, as if you don't exist. They say, "I won't pay you. Do with me what you want. You're nobody here."

Though employers blatantly denied workers legally mandated pay and protections, knowledge of the violations did not immediately translate into action on the employee's part as workers were often tied to their employers by a lack of other employment opportunities. After the passage of SB1070, workers reported

that more employers began to utilize the E-Verify system as required by the Legal Arizona Workers Act and demand verification of work authorization, a clear break from prior business practices. Marco claims:

> The laws are being modified and they are making them more rigid against undocumented people. Before, since there was a high demand for construction, the construction companies needed labor. So, the federal government did not demand that they verify the status of their workers. Since there was no requirement, the companies opted for convenience. It is convenient for them to not verify the legal status of workers and they see that they can employ Hispanic people who they can pay less and who will sacrifice more to work. But after, they started changing the rules. Some companies, out of fear of being punished, started putting up certain requirements and would not contract undocumented people even though they will have to pay other workers more… they opt to integrate themselves into the E-Verify system that the federal government implemented on the national level, and which is voluntary. All the companies are employing it out of fear. Many companies are starting to use it so that's where the person that doesn't have papers confronts the reality of not being employed.

As will be explored further in the next chapter, Mateo's experience exemplifies the fact that, for undocumented people, work opportunities have become limited both because of the recession and a drop in construction work, and the fact that more employers are complying with work verification requirements. Faced with limited access to the labor market, employees are effectively tied to their employers and are unwilling to challenge or confront them for fear of retaliation and job loss, after which they may be faced with a period of unemployment.

Though initially SB1070 compelled employers to comply with immigration laws by verifying status, employers are no longer under the illusion that SB1070 (or the Legal Arizona Workers Act) will be enforced. In October 2010, three months after the enactment of SB1070, *The Arizona Republic* reported

the law was "all bark and no bite" (Beard Rau 2010). And, though employer compliance with E-Verify reporting requirements may have improved as a result of the threat of increased enforcement, SB1070 had a negative influence on compliance with labor and employment law once the worker enters employment.

In essence this has created a labor environment in which workers have no recourse and employers live outside the law, clearly exemplified in the 14 cases I study. The worker rights center has proven to be an important resource for these workers, educating them about their rights, identifying labor law violations in the workplace, outlining possible methods of recourse, and providing support and assistance as the worker pursues his or her chosen method. However, even workers who received legal assistance and translation services through the worker center did not challenge their employers in a meaningful way. The principal method of recourse[47] for three of the 14 workers was to negotiate with the help of a worker rights center advocate. Six workers chose to sue their employer in court, three pursued complaints with the state Department of Labor, and two workers filed complaints with the Registrar of Contractors (the agency that regulates contractor licenses) and the contractor's insurance bond. In the end, five workers won judgments through the courts and the Department of Labor, which could not be collected due to company insolvency or closure, or the high cost of initiating the collection process through the court. Two received a percentage of wages

[47] Several of the workers utilized multiple strategies to pressure their employers into payment. The principal recourse, in these cases, refers to the last action or strategy they used. Also, only one worker (who happened to be undocumented) chose to protest at or picket his employer's business, though this tactic was not his principal method of recourse.

owed (10% and 50%), and two entered into payment plans with their employers, which will take between one to two years to pay off, if the employer continues paying at all.[48] One worker lost her case in court, two decided not to follow through with recourse, and one employee- the only to be paid in full- was, by luck,[49] assisted by the Department of Economic Security in recovering wages. Not a single employer was fined, or sanctioned in any way, and only one employer was forced to pay his employee's wages in full. Essentially, all employers got away with violating laws with no risk to self or profits.

What is perhaps even more dismal about the outcome of these cases is that the business practices of abusive employers remain unchanged. No worker- regardless of documentation status or citizenship- challenged his or her employer/ contractor's evasion and violation strategies. The workers sought to recover individual pay in the form of a last paycheck rather than also recovering wages lost from ongoing violations or additional damages. As workers noted, methods of recourse which would have challenged employers' business practices and created a more substantial financial risk to abusive employers (such as industry or workplace organizing, class action lawsuits or an investigation by the federal Department of Labor) require much more time, financial resources, and the

[48] No government entity exists to assist workers in collecting debts or follows up to make sure that employers pay according to the arranged payment plans, and the worker rights center is limited by access to legal services and support.

[49] The Department of Economic Security is not charged with enforcing wage and hour law; however, when Gloria was not able to provide a copy of her last few pay stubs as is required to apply for health insurance, a concerned receptionist called her employer everyday until Gloria was paid.

support of co-workers, [50] and increase the risk of exposure and detection. Many of those interviewed were after quick solutions to their problems, as most live paycheck to paycheck and in a day-to-day mentality. This trend of seeking individual reparations rather than changes to business practices can also be partly explained by the fact that only one worker (the only one to receive full back pay) continued her employment with the abusive employer after resolving her problem; the others would not be directly affected if their employers' business practices had changed. These results demonstrate the little deterrence that exists to dissuade employers from violating workplace rights, and the impunity they are afforded given little regulation or oversight and no sanctions.

Living in the Intersection

Of great significance in this study is the impact that the intersecting cultures of fear among immigrant workers and impunity among employers have on workers' ability to assert their rights and access recourse. It is important to note that the intersection of the two cultures in the workplace only exists for the undocumented workers.[51]

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[50] For example, the federal Department of Labor has a one-year waiting list before your case is even reviewed. Filing a claim in civil court (for lawsuits between $2,500 and $10,000) will cost the worker $80 in addition to process service and other applicable fees, and the process will last approximately one year; for superior court cases (over $10,000), the cost to file the claim alone is over $300, and legal representation and other fees add to the expense for a case that will last several years.

[51] All workers represented in this study reported employer criminality and the perception that their employers worked as though above the law. Though a culture of fear in public life was reported among the undocumented workers and those

Within the intersection lies an oppressive insecurity. Workers whose rights are constantly violated must choose between alternatives that all involve risks, such as: 1) confronting an employer to request compliance, with the risk of retaliation (job loss, cut in pay or hours, or threats of personal violence/deportation), 2) continuing in the same work with no protections and no guarantee of pay (a risk to their health and socio-economic wellbeing), or 3) leaving one's current employment to seek other work, which in times of recession and harsh social climate is more difficult to secure. Only one of these alternatives provides for a change in abusive business practices, and though all workers in this study confronted their employer in some way, none resulted in a change in business practices, or in most cases, the full recovery of wages owed.

The fear of retaliation that deters workers from confronting an employer or pursuing recourse allows workplace abuse to become an underreported epidemic. With fewer immigrant workers reporting employer criminality, unscrupulous employers are free to continue abusing countless other workers, and there is no justice for the worker or his or her family. In the following chapter, I will continue to unpack the obstacles to recourse faced by workers, and the function of status in the workplace.

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workers with a mixed status family, the culture of fear in the workplace was only reported among undocumented immigrants.

Chapter 4

CITIZENSHIP, STATUS, AND WORKER WELLBEING

The complexity of workers' lives and identities is evident throughout their narratives, as they navigate numerous public and private spaces. Their layered social positions and characteristics- such as their gender, age, or socio-economic status, or their identity as a single parent, or a worker- influence their everyday life. I assert in this chapter that legal status is a master status,[52] or the primary characteristic with which a person identifies, as it determines how he or she behaves and reacts to societal interactions, and how others react and respond to them. Essentially, this master status influences the type of work they are able to secure, their working conditions and pay once employed, and their access to recourse once their rights have been violated.[53] Because the socio-political climate reinforces the importance of documentation status, and status shapes workplace experience and worker identity, an in-depth discussion of citizenship and legality is warranted.

Scholars have unpacked the concept of citizenship in numerous ways.

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[52] For other studies that suggest documentation status is a master status, see Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making;* Enghceren, *The Undocumented Outsider Class: Illegal Status in Dutch Society*.

[53] For further information on how documentation status affects workplace rights and recourse, see Foo, *The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation;* Cleveland, *Legal Status and Rights of Undocumented Workers: Advisory Opinion OC-18/03*; deCastro et al*., How Immigrant Workers Experience Workplace Problems: A Qualitative Study;* Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*; Smith, Avendaño, and Ortega, *ICED out: How Immigration Enforcement has Interfered with Workers' Rights.*

Kenneth Karst (1997) suggests the key elements of equal citizenship are formal legal status, rights, and belonging, and Susan Coutin (2000) and Jennifer Gordon (2005) add that citizenship is as much political and social as legal, as citizenship claims are often based on territorial presence and social participation. Saskia Sassen (2003a; 2003b) describes how unauthorized persons enter into informal social contracts with the government and the rest of the community when they engage in citizenship practices and develop a sense of belonging, and in return are granted certain rights and protections. The tension between distinct articulations of citizenship (as a formal legal status as opposed to a normative project or aspiration) are exemplified in the reality of those who raise a family, educate their children, work, save and invest, maintain good conduct, and become integral to the life and strength of their communities, but who are denied the recognition and enforcement of their rights due to the lack of legal status. The legal definition of citizenship excludes entire segments of humanity- such as refugees, undocumented immigrants, aboriginal communities, and stateless people (Sassen 2003a). Though not citizens, they are extended equal human, civil and labor rights through international and federal law, however in practice, their rights remain unenforced despite social and political participation.

The federal government and the American public have further distinguished those deserving and undeserving of social entitlements and rights based upon a person's "legality" or "illegality," a distinction which complicates an unauthorized person's claims to citizenship based on social worthiness and participation. The reference to persons who are in the United States without

authorization as “illegal,” effectively makes them undeserving and unworthy of citizenship, as criminals (or persons who have engaged in illegal activity) are not viewed as productive and contributing members of society. What is overlooked is the context in which “illegality” as a political status was socially and legally produced. Foucault (1979, 280) asserts that illegality is created through ‘the existence of a legal prohibition [which] creates around it a field of illegal practices.’ “Illegal” immigrants and the illegal act of entry without authorization were created through the imposition of immigrant quotas in 1965, which closed the borders to workers, and which do not take into consideration natural migratory patterns or the changing socio-political or economic climate in either country. The criminalization of undocumented immigrants has created a subhuman group, which is seen as undeserving of the human, civil, and workplace rights reserved for citizens. Because unauthorized migrants are excluded from putative social contracts and the institution of citizenship, they are more vulnerable to the evasion and subversion of legal obligations by the government and employers (Coutin 2000, 43-44). Illegal status effectively displaces people, making them subject to de facto or functional statelessness, a political situation in which they are without representation of a government that can enforce their supposedly inalienable rights. When one’s rights are not enforced or one’s access to recourse is blocked, he or she is essentially rightless.

Patrick Hayden (2009, 53) argues that ‘to be rightless means to have lost one’s place in the shared public world, to be divested of political and legal standing, and to be denied recognition of one’s humanity.’ Alluding to Hannah

Arendt's work, Hayden concludes that human rights and dignity are citizenship entitlements, premised upon nationality rather than humanity (Hayden 2008). And, as Jacqueline Bhabha (2009, 414) recognizes, being functionally stateless renders a population extremely vulnerable, predisposing it to economic, social and psychological dangers. The vulnerability of the undocumented population manifests in the workplace as the lack of recognition of basic labor protections related to pay, fair treatment, safety, retaliation, and claims making.

Through the denial of government protections, undocumented persons experience both systemic economic violence (as victims of a larger economic system and laws that protect employers and make immigrants vulnerable) and interpersonal violence (as victims of verbal, emotional, and physical violence and employer abuse) in the workplace. They are further degraded and dehumanized by the capitalist system, which encourages employers to profit from the workers' creativity and labor by paying less, overworking them, and denying them safety protections and benefits. The constant exploitation and lack of consideration for their physical, emotional and financial health as workers, makes them a disposable labor pool that is viewed as unworthy of long-term investment.[54] The dehumanized immigrant worker, without political and legal standing, remains subject to employer abuse, though, as I will assert later, they are not passive victims.

Arguably, citizenship and authorized entry have become the determining factors in deciding a person's worthiness to have their human, civil, and

[54] See Bales (2004) for an argument of worker enslavement and disposability.

workplace rights recognized. This trend is made evident, as Jacqueline Bhabha (2009, 418) points out, in the fact that 'curtailments of social rights for irregular migrants in host countries have become essential components of restrictive immigration policies.' The state of rightlessness represents a fractured, liminal or semi citizenship in which rights are not recognized and protections are not guaranteed, though the unauthorized person may fulfill his responsibilities to society as would a citizen. Both the documented and undocumented workers in this study articulate a fragmented citizenship. Similar to Sassen's (2003a, 50) observations, the unauthorized workers in this study claim worthiness of legal status and recognition due to their civic involvement and national loyalty to the United States, and, throughout the narratives, they distinguish themselves from other workers who do not exude American values, such as hard work, strength, commitment to family, faith, socio-economic mobility, and independence.

Study participants put forth three reasons for their worthiness of legal status and recognition of their rights. First, workers referenced citizenship practices- such as buying a home and car, having a business and being an ethical employer, and paying taxes- as justification for legal status and of rights as these activities demonstrate their investment in the community, their sense of responsibility for and accountability to their families and communities, and their upward socio-economic mobility.

Another common justification is good behavior or the lack of vices. Workers commonly reported being wary drivers, and not engaging in risky behavior, such as drinking alcohol or doing drugs, which might compromise them

in any way. Carlos said: “One tries more than anything to use the five senses in order to not make mistakes and to try to notice what laws are in place… One comes to this country for work, to work, not to cause problems.” Fernando added, “Neither of us deserve this [wage theft], when we always try to get ahead at work and progress.” Being without vice and of good character is seen as an exemplification of American values, and contradicts the “illegal” status inscribed upon them.

Finally, being a hard worker was viewed as reason to earn legal status or, at least, the recognition of rights, a finding similarly articulated by other scholars (see Gomberg-Muñoz 2011; Gleeson 2010; Gordon and Lernhardt 2008). Gomberg-Muñoz (2011), in her ethnography of Chicago restaurant workers, posits that through their hard work, Mexican immigrants feel a moral claim to citizenship by constantly working to improve their lives. Mateo similarly reasoned: “The people that don’t want to work, it’s okay that you take them (deport them) and those that have done crimes, it’s alright (to deport them), but not the good people, the people that are working.” The workers express a need to earn or being deserving of citizenship, rather than viewing the freedom of migration and work as a human right. In this way, they accept a fractured citizenship in that they fulfill responsibilities of citizens without the benefit of having their rights enforced.

In the following sections, I will use the workers’ narratives to answer my research questions related to survival strategies, access to recourse, and the effects of wage theft on workers and their families, paying special attention to the

differences in experiences between documented and undocumented immigrants, and immigrants and citizens.[55]

Workers' Access to Recourse

Numerous factors influenced workers' decisions of whether or not to confront an abusive employer or pursue recourse. Documentation status and fear of discovery were principal considerations, though knowledge of laws, community resources and recourse, the presence of support networks, and whether the worker had access to other income were significant factors.

As outlined in chapter three, lack of authorized status serves as a deterrent to workers whose rights had been violated and who want to pursue a legal remedy for reparations. Though only one worker explicitly stated his assumption that legal status is a precondition for accessing recourse through government agencies and courts, the misconception that labor enforcement agencies work in collaboration with ICE was prevalent. Workers voiced a deep concern and fear that their status would be discovered through the course of an investigation or court hearing, or upon entering a government building at which time they would be asked for identification and that, as a result, they would be apprehended. The undocumented workers argued that the risk and danger of apprehension and deportation would increase with the passage of SB1070.

Apart from the danger of apprehension, several workers suggested that

[55] As mentioned in chapter one, this analysis is based on a small, non-representative sample (eleven undocumented immigrants, two documented immigrants, and one U.S.-born citizen), though the analysis I offer should serve as a call for future research on these issues.

one obstacle to justice is a flawed and discriminatory court system; several also voiced that the judge would be unsympathetic to immigrants and partial to citizens. Alfonso explained his perception of the court process:

> A person who does not have papers is not used to being in court. Only when the police detain you or something similar do you have to do go and present yourself in court. So, there exists fear above everything else in that they will not listen to you, because you are undocumented… There are times when you think you are nobody… We feel even more inferior, worse… That is why you say to yourself it's better to leave the problem as it is.

Rocio, who lost her case in court for lack of evidence, similarly reasoned that the judge sided with her employer because he was a U.S. citizen, fluent in English, and well spoken. This reflection points to obstacles shared by both documented and undocumented immigrants, including English language proficiency and formal education.

English language proficiency was the second most frequently cited obstacle to pursuing recourse both with the courts and government agencies. Mateo, who describes himself as 60% fluent, notes that even though he understands, speaks and writes English, he was often confused by the court terminology, which made it difficult to understand the steps he was to follow.

> In the court sometimes I didn't know the terminology that they use… I felt bad because I didn't understand what I had to do or say... like one time I didn't understand the terms that [the court official] was saying and I told her "I don't understand what you want me to say." She told me "well look for someone that speaks English." She said it like that! I understood what she was saying but I don't know the terminology, the words about the law. To her, finding someone that speaks English meant getting a lawyer, which was a whole other problem.

Similar to the immigrant workers, Jorge, a citizen, claimed that before he sought

assistance from the worker center he was unaware of which government agencies or other entities enforce labor laws, or the steps to take to initiate the process; he also claimed he lacked the confidence to properly file the complaint.

> [I don't think I could have done it with the worker center] probably because of a lack of confidence … Doing the footwork nobody likes to do and dotting your I's and crossing your t's, you know…it's easier said than done because you have to have some kind of knowledge of the law and where to dot your I's and cross your T's cause if you don't, they don't accept it. That's where a lot of people get discouraged, even myself...

Other less common obstacles to recourse that the workers cited, include: employer intimidation, lack of knowledge of labor laws and recourse, the costs associated with the court and hiring an attorney, and the long duration of court and government processes. These findings are consistent with numerous other studies that document obstacles to recourse (Gammage 2008; General Accounting Office 2002; Fine 2006). Aside from the fear factor, other cited obstacles, such as unfamiliarity with laws and recourse, frustration with length and expense of government processes, and few resources exist regardless of status.

Worker Resilience and Effects of Wage Theft

Scholars (Bobo 2009; Bernhardt et al. 2008; Gammage 2008) have reasoned that the government should combat labor abuse due to its implications for ethical business owners who cannot compete, and the inevitability of falling standards within and across industries. To complement and buttress these justifications, I aim to humanize and put a face to the issue of wage theft, and show the consequences of abuse on the emotional, physical and financial wellbeing of workers and families. By drawing attention to the human cost, I

show that wage theft is not simply an immigrant issue or a worker issue, but a human rights issue.

The degree to which wage theft affected a worker's life depended, first, on the amount of wages stolen, and how easily the worker could access other income or assistance. Single parents and families with one income earner tended to suffer greater financial, emotional and physical effects, though these effects were mitigated if the worker was able to quickly access other income (such as through a side job, or a loan from a friend or family member). Another determining factor of the degree to which a person suffered effects of wage theft was the presence (or lack of presence) of a social or familial support network; workers with a greater social network utilized their connections to find work, to learn about community services and resources, to borrow money, or share household costs, such as housing, food, or transportation. Finally, indicators of the severity of emotional and psychological effects were the severity of the financial impact, whether or not workers had experienced multiple situations of wage theft (When workers experienced multiple situations of wage theft, they viewed the abuse as more systematic, and were less hopeful about future interactions with employers.), and whether or not the worker had a relationship of mutual trust with the employer (Workers who had good relationships with their employers were often shocked and hurt at the lack of regard employers showed for them.).

Financial problems were the biggest concern of all study participants. For those who lived paycheck to paycheck, the wage theft greatly disrupted their lives. Eleven of the 14 workers claimed it was hard or they were unable to meet

their monthly expenses for food, rent, utilities or phone service, and several workers had to drain their savings account to maintain their lifestyle and survive. Maribel, a single mother, explained how, after draining her savings account, she had no choice but to move in with her sister:

> I had to leave my apartment, everything. I cut off everything (all services, utilities). I gave up my phone. I went to live with my sister and, well, we are helping each other as much as we can. In the beginning, they were buying food and everything because I couldn't… After two months of being unemployed, I started to work again and to buy food, and help with the rent. A little at first and then soon I was making more at the job and, well, things got better.

Similarly, Jorge, a contractor with several employees, found that he was unable to support himself after several clients refused to pay him for his services; he was able to maintain his housing only through the support of a friend who supplemented his rent for eight months.

Apart from the inability to pay monthly bills, seven workers found themselves unable to cover emergency expenses that arose (for example, funeral costs or health-related bills). An emergency expense was the driving reason Rosario confronted her employer for her pay:

> I wasn't going to fight him for the money, but my daughter got sick. She got a tumor in her womb. They cut her tubes, they took out her ovaries. I needed $20 in order to have enough for the medicine. I went and I told [my employer that] he owed me.

For those workers who financially supported friends or family in Mexico, workers claimed that wage theft compromised their ability to support dependents and send money home. And, in extreme cases, wage theft resulted in loss of housing or a vehicle, and/or being unable to feed oneself or one's family.

The effect of wage theft on the health of entire communities is alarming. Without the ability to satisfy one's physiological needs, individuals and families are unable to adequately invest in their health and safety, relationships, self-esteem, and self-actualization, elements that are integral to healthy families and communities. The workers' (those who were unable to meet their basic needs) experiences exemplify this theory, as wage theft affected their physical and emotional health, and family relations.

A change in emotional health was the second most commonly cited effect of wage theft. Commonly expressed feelings and reactions included desperation, sadness, depression, feeling worthless or helpless, embarrassment, low morale, self-esteem issues, and anger. Marco, an undocumented immigrant in a two-wage earner family, described his experience this way:

> Well emotionally, I felt bad. One feels as though repressed or worthless. One feels less valuable. One feels as though you aren't worth anything. I think that one comes here to work out of necessity like everyone else. All of us have, but yes I felt uncomfortable. I felt bad in not being able to do anything. One feels, how can I explain it, well frustrated… To begin, I have problems with my wife because we are fighting due to the lack of money. I was counting on these wages but did not receive them. It delays many pending things that I have to do. One's health deteriorates. I begin to feel stressed as if I'm sick and without enthusiasm.

Rocio, a contractor who had been refused pay by several clients (though was owed among the least of all workers) suffered greatly emotionally:

> I was angry. I felt impotent. I felt a lot of anger and sadness because they didn't have any humanity… I felt a lot of anger, a lot of impotence, sadness and as if it was something that I could not overcome. I could not overcome. I believe months passed before I felt a little better. I locked myself in the house for hours. I only wanted to sleep and forget the problem.

In the most severe cases of emotional distress, symptoms of trauma existed such

as social isolation, depression, paranoia, loss of sleep, and impaired family relations. This finding supports other scholars' (Ryan, Gee, Laflamme 2006; Gee 2002; Smedley, Stith, and Nelson 2003; Bryant-Davis and Ocampo 2005) research that suggests perceived and institutional racial discrimination influence mental health, blood pressure, and a person's perceived physical health, and contribute to psychological distress.

Other less commonly reported effects of wage theft include physical health issues caused by stress (which in three cases led to high blood pressure), and impaired family relations (Increased tension influenced both the relationship between partners, and the worker and his or her children.). Spirituality was generally not affected by wage theft, though several workers note that they found comfort in their religious beliefs.

Personal Agency and Survival Strategies

Scholars (Gomberg- Muñoz 2011; Lee 2008; Gordon 2005) assert that though undocumented workers may often be silenced in the workplace, they are not passive victims. Gomberg-Muñoz (2011, 9) highlights, in her ethnography, how workers assert their agency- or the 'human capacity to exert some control over the conditions of one's existence'- in order to navigate work and public life in the United States. Though workers expressed numerous ways in which wage theft affected their life, it is important to note the personal agency each worker exercised both to confront his or her employer, and mitigate the effects of the abuse. Without naming their activities as exercises of personal agency, workers

reported numerous ways in which they take control over their lives. They confronted their employers to demand their pay. They warned co-workers of the employer's abusive practices, and informed them of their rights. They investigated various types of services and assistance offered in the community, including at the worker rights center. They change their own ways of doing business to better protect themselves, such as getting the employer or contractor's personal information, requesting all contracts and agreements in writing, and leaving a job or place of employment as soon as the contractor or employer denies pay, rather than waiting and hoping for things to change.

Of particular interest to me were the survival strategies workers utilize after their wages were stolen. Workers utilized a creative, piecemeal approach in order to endure the financial effects of wage theft; the selection of survival strategies was influenced by several common factors: documentation status, knowledge of community resources, and the presence of support networks. Though not the focus of my research, it is important to note that not a single worker employed tactics to specifically deal with the emotional, psychological, familial, or health related effects of wage theft, though these effects tended to ameliorate as the worker recovered financially.

The most common survival strategy workers utilize to mitigate the sudden loss of income is to secure another source of income. Four of the workers (who represent both employees and contractors) began to compensate for their loss of income by finding side jobs through friends or previous clients, or by soliciting work at the Home Depot as day laborers. Four workers, who were working as

independent contractors at the time of the theft, were already managing several jobs at a time, and had access to multiple sources of income. Though in their case, the wage theft did not represent a loss of all of their expected monthly income, the contractors faced an additional obstacle in that each paid his or her own workers out of pocket. Gloria claims that, more than a year later, she has still not recovered from this setback:

> I paid them. I never owe them anything. It was around Christmas, and I paid them all their hours, all the time they worked. Here the only one that lost was me. Well, they were not at fault, I took them (to the job site). What would I have said? "I am not going to pay you because they didn't pay me." No, I paid them their money and I was the one that didn't earn anything. I lost, and I have still not recuperated.

Though Gloria maintained several consistent clients, the denial of her expected pay set her back significantly.

Contracting became an appealing alternative to two of the employees who, after the theft of four and five months worth of wages respectively, began working as unregistered, unlicensed contractors both to avoid abusive employers, and have more control over their work and hours. Of the remaining employees, two were offered work immediately by other companies, one remained at her place of work since her problem was resolved, and three workers experienced a period of unemployment before able to find other work. Mateo, a naturalized citizen, was the only employee who already had two full time jobs at the time of the theft. As the only income earner in his family, he creatively started several side businesses to compensate for the three months of full time pay he never

received from his second job; he taught air conditioning classes out of his garage, found and resold parts, and secured small service jobs in his profession.

Though all workers experienced financial difficulties as a result of the sudden loss of income, undocumented workers faced more obstacles in securing additional income or assistance for their survival. Interestingly, all workers, regardless of status or citizenship, reported that even if and when able to find other work, they would not be guaranteed better conditions or pay, and that due to the recession, most contractors are forced to underbid on jobs and employees must agree to sub-standard working conditions or pay as a condition of accepting unskilled work. Due to the recession, workers found themselves competing against many other workers in the low-wage labor market for the few available jobs. The undocumented employees (as opposed to contractors) were further disadvantaged because they found more employers requiring work authorization, and therefore spent longer periods unemployed or without consistent work, and were driven into less regulated work, such as landscaping and day labor, in which employers often failed to comply with wage and hour laws. The undocumented were further disadvantaged because they were unable to access public benefits, such as food assistance, or child-care or housing subsidies.

In addition to securing additional income, five workers mitigated the sudden loss of income by eliminating extra spending and minimizing the family budget. Marco shared how he and his family managed without his salary:

> So then I have to, we had to cutback on our budget and plan on only having my wife's salary, which was very little. So then we scarcely make ends meet to care for our basic necessities, the rent payments, the light, water, gas and insurance for the car, gas, food

> and telephone… Simply limit myself of my things and my expenses in every sense, that is, limit my food, my expenses, cut expenses, cut a phone. If I had a cell phone and a house phone, cut one of the two. Minimize the use of the vehicle to not waste gas or the tires. That is, all the bills I cut back on and adjusted myself to the budget that we had and nothing more.

Eight workers, all who had strong support networks, were able to borrow money from friends or family members to offset the impact of wage theft, and five workers shared housing, utility, or food costs with friends or family members to survive. Other, less commonly used tactics included getting food stamps (only the citizen used this tactic), using family savings, asking for food and clothing assistance from church groups, relying on a spouse or partner's income, pawning personal belongings, or hosting car washes or yard sales to raise funds.

The worker's gender had little significance over the survival strategies chosen, as family members worked together to make ends meet. Gendered difference in survival strategies can partly be explained by the fact that all female participants (three of the five of whom were single moms) had dependents as opposed to three of the male participants who lived without dependents. However, though single moms were financially impacted in a similar way to male-headed single-income earning families, women tended to combine more survival strategies and more creatively access resources.

Documentation status was a significant factor in the type of survival strategies workers utilized. As opposed to the misconception that undocumented immigrants drain public services, I found that, instead, they exhausted personal networks and resources and utilized more creative strategies than the other workers. This is an important finding as it suggests that the communities in which

wage theft is more prevalent are the same communities that are collectively mitigating the effects of wage theft for its members, resulting in a drain in physical and human capital and financial resources.

Though differences existed between documented and undocumented workers, it is clear that the wage theft had a tremendous effect on the lives and wellbeing of all workers. The impoverishment many of them face challenges their humanity as much as the working conditions they suffered had. The blatant disregard for workers, their wellbeing, and their humanity makes wage theft as much a moral and human rights issue as an issue of greed, racism, and sexism as it represses an entire segment of the American population.

Chapter 5

CONCLUSIONS AND RECOMMENDATIONS

The historical relationship of conquest and exploitation between the United States and Mexico continues to reproduce an asymmetrical relationship that results in the racialization and dehumanization of Mexican migrant laborers. Fear mongering, racial institutional orders, greed, disposability, and inadequate and unenforced labor laws continue to evolve and become more integrated into public discourse, our legislation, and our political system. Without an ideological and discursive shift and structural change, migratory patterns will continue to meet our demand for labor, but our immigration system will continue to ignore the humanity, needs, and rights of migrants. Immigrants will continue to be scapegoated for state budget crises and national security issues. Pro-employer, anti-immigrant and anti-worker legislation will continue to be passed. Immigration law will continue to be enforced at the expense of workers' rights. And, our communities will continue to bare the burden of oppressive insecurity and a two-tiered racialized system of workers. Without an ideological shift, the effects of mistargeted and ineffective immigration and labor policy will further damage our country, our economy, and the health of communities as documented and undocumented immigrant workers comprise greater percentages of labor growth.

As has been outlined in this study, the socio-legal climate, the culture of fear among workers, and the culture of criminality and impunity among

employers have had deleterious effects on the state of labor, and on family and community life. I show that the racialization of workers allows for the subjugation and dehumanization of Latino immigrants, and the violence, which manifests in the form of wage theft, has real consequences for the financial health and emotional, psychological, and physical wellbeing of workers, their families and their kinship networks.

Without the support of public benefits, workers who fall victim to their employer's no-pay schemes must heavily rely on their immediate networks of friends and family members for financial and emotional support. These networks can become strained and over-extended as communities exhaust their social and human capital and financial resources to collectively mitigate the effects of wage theft. The health and vitality of these same communities are further compromised as the culture of fear and effects of wage theft limit residents' ability to engage in citizenship practices and invest time, energy and resources into their own communities. Apart from the burden wage theft bares on communities, it also negatively affects local businesses and the economic and fiscal health of the city. When unethical employers fail to meet standards for pay and working conditions, they are able to cut their overhead costs and offer lower prices to clients, giving them an unfair advantage over law abiding businesses. These same employers, by failing to pay their employees, also evade the legally required business, payroll, and other taxes that support public coffers. With less business tax revenue and a heavier dependence on communities to supply the resources cities fail to provide, entire cities are impacted by wage theft. Unless the rights of immigrant workers

are equally enforced and recourse is made equally accessible, not only will the standards for pay and working conditions continue to collapse, but the health of Latino communities and of cities will continue to deteriorate.

I argue that to realize substantive socio-political transformation we must reform the current legal regime so that all workers have the same rights, that those rights are equally enforced, and that all workers have equal access to recourse. For the structural reform to take root, public discourse and ideology must also reflect the value of equal human rights and liberties.

Structural Changes to Address Structural Problems

Numerous scholars, independent research institutes, and government entities (Bobo 2009; Bernhardt et al. 2009; Bernhardt et al. 2008; General Accounting Office 2002; Foo 1994; Bernhardt et al. 2007; Zatz 2008; Smith, Avendaño, and Ortega 2009; United Nations Human Rights) have offered valid structural recommendations to address weak labor laws and protections, ineffective law enforcement, and lack of easy access to state and federal government agencies, many of which address the concerns raised in my own study of immigrant workers in Phoenix. The recommendations fall into five main categories.

First, scholars suggest that the federal government address statutory exclusions from labor and employment law protections by closing coverage gaps (United Nations Human Rights; Bernhardt et al. 2009; Bernhardt et al. 2008; Sugimori 2008). In other words, our strongest labor statutes- such as the Fair

Labor Standards Act (FLSA), Occupational Safety and Health Act, National Labor Relations Act, and Title VII of the Civil Rights Act of 1964, and the Family Medical Leave Act- do not protect all workers. For example, the Family Medical Leave Act only applies in workplaces in which there are at least 50 employees, and employees are only covered after they have completed a year of full time employment. Another example is the Fair Labor Standards Act, which does not guarantee home health and childcare workers, small farm workers, and state and local government officials the rights to minimum wage and overtime pay, nor do the recordkeeping and youth employment standards apply (Bernhardt et al. 2009, 18). By closing the coverage gaps, workers in all industries, and all sizes of business would have equal rights to enforced minimum standards.

The second recommendation scholars often suggest is to prioritize equal protections and equal status for immigrant workers in national immigration reform and ensure a status-blind enforcement of laws (Smith et al. 2011; Bernhardt et al. 2007; Bernhardt et al. 2009; United Nations Human Rights; Sugimori 2008). Scholars assert that the government can create a firewall between immigration enforcement and labor law enforcement by establishing Memorandums of Understanding between ICE and government enforcement agencies that delineate the agreement to protect workers' rights in the context of immigration enforcement in all agency investigations (Smith et al. 2009). The actualization of this kind of agreement would encourage more workers to file complaints and participate in agency investigations of their employers.

The third recommendation is to strengthen state and federal government enforcement through a) proactive investigation driven enforcement (as opposed to complaint driven enforcement) so that all employers will be subject to regulation and be held accountable for compliance with minimum standards, b) stricter penalties for violating worker protections such as heavy fines and jail time, which would serve as a deterrent to non-compliance, and c) collaborations between government agencies and local community groups who have already developed relationships with community members in order to educate and access hard to reach and diverse populations (Bernhardt et al. 2007; Bernhardt et al. 2009; Bobo 2009; Sugimori 2008). Bobo (2009, 129-132) advises that state and federal government agencies also engage in a worker education campaign to inform workers about their rights, the government agencies that enforce those rights, and how to initiate claims. She suggests creating a series of questions and answers for use in daily, labor, and weekly radio press, developing and distributing nontechnical pamphlets, sponsoring a weekly worker rights column for ethnic media, showing worker rights videos at one-stop centers, and making public service announcements.

The fourth category or recommendation relates to the capacity and efficiency of state and federal government agencies to enforce the statutes in a timely fashion. Researchers suggest that government agencies need restored funding and significantly more investigator staff in order to effectively investigate cases; they also claim that more bilingual staff and translated materials are needed to adequately serve workers (Bernhardt et al. 2009; Bernhardt et al. 2008; Bobo

2009; Sugimori 2008). This set of recommendations addresses issues related to access to recourse (i.e. language barriers), workers' willingness to utilize the system (before, workers complained about the long duration of investigations and the lack of results), and the number of cases the agencies are able to investigate. Finally, the last recommendation is to strengthen legal standards to the 21st century to include greater provisions that hold employers accountable (Bernhardt et al. 2007; 2008; 2009).

Wage theft is an issue that affects all workers, and structural changes that improve access to services and recourse and provide for additional oversight and regulation will benefit both marginalized groups and mainstream workers. While immigrant workers are among the most vulnerable to exploitation and workplace abuse, and are disproportionately affected when not paid minimum wage or not paid at all for their work, native-born white and black workers have the largest dollar amounts stolen from their paychecks in overtime violations (Bobo 2009, 7). However, it is important to acknowledge the ways in which low-wage workers and immigrant workers specifically are disadvantaged, and develop alternative methods of enforcement and resistance to address workplace issues when the government fails them again. Structural changes are important and necessary, but insufficient in dealing with the culturally, linguistically and ideologically embedded discrimination against low-wage immigrant workers.

Addressing Public Discourse, Sentiments, and Ideology

Though structural policy change and enforcement is an important and effective way to change abusive employment practices, I assert that they are superficial changes unless a strong political will exists to enforce them. Political will is subject to and shaped by national public discourse and ideology. Fairclough (1992, 63, 3) writes that discourse is a 'form of social practice' that does 'not just reflect or represent social entities and relations, [it] construct[s] or constitute[s] them.' Social discourse both influences and is influenced by social structures, and for social structures to take root, employers and communities must be personally tied to the values and principles upon which they are based. In other words, to maximize the effectiveness of structural change, we must also push linguistic, cultural, and ideological change on the national stage.

Currently, the anti-immigrant discourse and sentiment is reflected in our social structures and our policy. Lakoff and Ferguson (2006) outline numerous anti-immigrant frames utilized within public debate, including: the illegal frame, the security frame, the undocumented worker frame, and the temporary worker frame. Each frame is value laden and defines the problem of immigration, and its solutions, in a constrained way. In chapter four, I briefly address the framing of immigrants as "illegal," which suggests that the fundamental problem is a legal one, and that illegal persons are criminals, bad people who must be punished. This frame has severe implications. Those immigrants without documentation are criminalized and punished through legislative attacks, physical assaults, and constant intimidation and harassment, and the American public fears for their own safety and wellbeing as the "criminal" population continues to grow and settle in

their communities. Each acts accordingly to its perceptions of reality, and in this way discourse influences social relationships and public ideology.

Fairclough (2001, 8) suggests that public discourse can be used to project 'imaginaries for new forms of social life narratives which construe a more or less coherent and plausible relationship between what has happened and what might happen in the future.' I propose that progressive organizations and scholars transform discourse to help the American public imagine a new way of being.

There are distinct types of discourse: rhetorical, instrumental, challenging and truth-seeking (Bhatia and Coleman 2003). The latter two offer progressives a way to shift discourse by appealing to facts and broad social values. Bhatia and Coleman (2003, 720) suggest that 'challenging' discourse is language that attempts to persuade an audience to "switch allegiances" or change their ideas or opinions about a certain policy based on facts or new information. Given that fear of immigration and immigrants is often based upon common misconceptions that immigrants steal jobs, drain public services and benefits, do not pay taxes, and threaten national security, extensive myth-busting public education campaigns on the local, state, and federal levels could alleviate fear and persuade Americans that immigrants benefit our economy and our communities. Through the public education campaign, references to the forced migration of Mexicans and the effects of NAFTA, for example, could help popularize a new framing of immigrants as economic refugees who are fleeing their country due to economic insecurity. Lakoff and Ferguson (2006) suggest that this alternate frame draws upon the common perception of refugees as people worthy of compassion and

acceptance, political stability and equal rights, and, if this perception were extended to economic refugees, such as undocumented Mexican immigrants, it would create a new willingness to reexamine interpersonal social relationships as well as laws that systematically oppress, criminalize and marginalize refugees and immigrants.

The second transformative discourse is referred to as "truth-seeking;" the consequence of this discourse is the 'fundamental debate about core principles of the dominant policy frame' (Bhatia and Coleman 2003, 721). Arguably, Americans perceive and pride themselves on being a country and a people dedicated to human rights and civil liberties. In reshaping the discourse to include a moral or principle based argument for worker justice or equal rights for migrants, progressives can draw upon international covenants, the Universal Declaration of Human Rights and the United States Constitution for a socially just norm on which to base U.S. immigration or labor policy. By framing worker issues and immigrant issues as a matter of human or civil rights, the audience becomes more inclusive to religious or political conservatives who may not support a worker rights or fair immigration agenda, but who believe in recognizing the basic human rights and liberties of all people.

By changing the frame of the discourse into one of equal human rights we adopt an ideology of transnational citizenship, in which basic human rights and civil liberties are recognized beyond nation-state boundaries (Fox 2005). By calling for the protection of rights beyond political boundaries, I do not propose the disintegration of those political boundaries or the convergence of sovereign

power. Instead, transnational citizenship refers to the enforcement of international human rights on federal, state and local levels for all persons. Social inclusion and the recognition of rights become rights based on one's humanity as opposed to one's nationality or place in the world.

If the United States were to acknowledge a transnational citizenship, workers would be more willing to assert their rights and demand change in the workplace. Alfonso explains how, if he were able to assert his rights with the guarantee of protection, he would have addressed his workplace problem differently:

> [My employer] takes advantage of the fact that I do not have papers, because if I had papers and a [contractor's] license I could talk more and I would go to court. But right now I do not have anything, so she wins. It's like she's making fun of me, and it's humiliating that she would steal so openly from me. If this was Mexico, she would not do this to me. No, she would not do this because I would feel more free or comfortable to speak up in my own country. You have to pay me in my country, or give me something, but here you cannot do any of that.

In addition to breaking down traditional barriers to claims making, the recognition of a transnational citizenship would address the issues of statelessness and rightlessness because the sovereign power would be held accountable to protecting the labor and human rights of all persons temporarily or permanently residing within its geographic jurisdiction.

For the ideology of transnational citizenship and equal rights to become mainstream, citizen workers and the middle class must recognize their common interests with undocumented workers, and how the exploitation of undocumented workers negatively affects the community at large. It is imperative to develop

class-consciousnesses among workers who share a similar interest in increasing their ability to get what they want and need- specifically higher wages, power, comfort, safe working conditions and structural change. Together, working people can create an environment conducive to alliance building, solidarity, and organizing through which workers have historically demanded substantive change.

Research shows that in times of strong union membership density, the standards for rights and protections related to wages, benefits and safer working environments improve drastically as unions educate workers, monitor worksites for compliance with labor and employment laws, and organize workers (See Bobo 2009; Bernhardt et al. 2009; Milkman 2008). Whether through formal or informal organization, united workers can hold employers accountable and improve labor standards; they can also demand a culture of respect, dignity and worker empowerment, which has important implications for workers' quality of life and their feelings of self worth in the workplace.

Adopting an alternate progressive frame of immigrants and the ideology of transnational citizenship would enable the political will of individuals, communities and political actors to uphold and enforce the structural changes to immigration and labor law and promote justice for all workers.

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APPENDIX A

INTERVIEW GUIDE

Do I have your consent to participate in this study and record the interview?

Classification/ Demographic Questions:

When did you arrive in the United States and from where did you come?

What was the highest level of education you received either in your country of origin or in the United States?

How well do you speak/ read/ understand English? If you had to describe your fluency as a percentage, what percentage of English do you speak, read, and understand?

Why did you decide to settle in Phoenix?
(Follow-up: Do you have family that lives here in Phoenix? In what ways does your family support you?)

With whom do you live? Are you the only wage earner?

Do you have documents/ authorization to live and work in this country? Are the members of your family documented?

Experience with/ impact of Wage Theft:

As if I didn't know anything about your case, tell me what happened. What brought you to the worker rights center and how did you hear about it?
(Follow-up: How much does your employer owe you? Can you tell me how it came to be that you were owed so much?)

How did you feel when you realized your rights were being violated? What did you do?
(Follow-up: How long did you put up with the wage theft before you acted/ came to the center? Was this the first time this has happened to you?)

How do you think wage theft affected your life? What changed as a result for you and your family? (spirituality, housing, health, psychologically, esteem??)

During the time that you were not receiving wages from your employer, how did you survive economically? What strategies did you use to pay bills, transportation costs, and for food?

Access to Recourse:
At that time, were there any obstacles you faced in confronting your employer/ contractor or filing complaints against him/her?
(Follow-up: Would you have tried to file a complaint or confront your employer if the Worker Rights center was not available to help you?)

How does your status affect the recourse you have and the options you are willing to consider? Were you ever threatened with deportation/ were you afraid of it? Are you fearful of the police or Sheriff Arpaio? Why or why not? How does this affect your everyday life and your work?

Do you feel like you have the same access to resources, resource or justice as U.S. citizens that were born here? What would need to change for you to have equal access?

How do you think the anti-immigrant sentiment in Phoenix affected the situation you were in with your employer? (Follow-up: Have you lived in other U.S. states? What was different about living and working in those states?)

APPENDIX B

ARIZONA PROPOSITIONS AND LAWS, 2000- 2010

BILL	TOPIC	ACTION	DESCRIPTION
Prop 200	Elections/ Public Benefits	2004 ballot, passed but found unconstit-utional	Would require proof of US citizenship in order to vote; deny public benefits to undocumented; require public officials to report undocumented people.
SB 1372	Trafficking	passed, 2005	gives local law enforcement the ability to arrest smugglers and to penalize human trafficking
SB 1118	ID/ elections	vetoed, 2005	would have enhanced voting requirements and prohibited use of ID cards issued by Mexican consulates as valid identification
SB 1167	English	vetoed, 2005	made English the state's official language and required that all government functions be conducted in English
SB 1511	ID/ public benefits	vetoed, 2005	would have required the use of federal, state, or tribal identification to receive state services
HB 2592	Labor	passed, 2005	prevents cities from constructing day labor centers if the centers assist unauthorized immigrants.
HB 2259	Judiciary	signed, 2005	allows immigration status to factor into sentencing
HB 2709	Enforcement	vetoed, 2005	would have constructed a prison in Mexico to house unauthorized immigrants who commit crimes in Arizona
SB 1306	Law Enforcement	vetoed, 2005	would have allowed local law enforcement to enforce immigration laws
Prop 103	English	2006 ballot, passed	English as AZ State Official Language
Prop 100	Law Enforcement	2006 ballot, passed	Prevent bail for those charged with a serious felony offense if the person was in the U.S. illegally
Prop 102	Judiciary	2006 ballot, passed	Illegal aliens can't receive punitive damages in civil lawsuit
Prop 300	Public benefits	2006 ballot, passed	Deny public funding to illegal immigrants

HB2448	Public Benefits	signed, 4/24/2006	Requires U.S. citizenship or legal immigrant status to receive health benefits
SB 1157	Trespassing	vetoed, 4/17/2006	would have criminalized illegal entry into Arizona and allowed trespassers to be prosecuted
HB 2577	Legal status	vetoed, 6/6/2006	would have criminalized illegal immigration status, provided $160 million in aid to law enforcement agencies to stop flow of immigrants, established fines for businesses who continue to hire undocumented workers after warnings, required law enforcement agencies to train employees in immigration enforcement procedures, and denied education benefits to immigrants.
HB 2701	Border enforcement	vetoed, 3/9/2006	would have allowed the governor to mobilize the National Guard to enforce the border if the state issues a state of emergency resulting from an excessive number of illegal border crossings.
HB 2030	Education	vetoed	would have prohibited unauthorized immigrants access to adult basic education, ESL instruction, in-state tuition, financial aid, and child care assistance.
SB 1137	Public Benefits	signed 6/1/2006	limits eligibility for the Comprehensive Care for the Elderly program to citizens and those with legal alien status
HCM 2018	Labor	adopted 4/12/2006	urges Congress to include an agriculture commuter worker permit program as part of immigration reform legislation to allow foreign workers to commute across the border daily to work if they fulfill certain security-related requirements.
HJR 2001	Border enforcement	signed 4/28/2006	requests the United States Congress and the United States Department of Homeland Security to supplement ICE with state auxiliary reserve units under the Coast Guard.

HB2779	Labor	Signed 07/02/2007	prohibiting employers from hiring undocumented workers. The law requires all employers to use the Basic Pilot Program. Businesses who do not comply face suspension or revocation of their business licenses.
HB 2474	Labor	Signed 04/24/2007	Relates to overtime compensation including certain aliens and minors permitted to work for hire.
HB 2391	Licensing	Signed 05/08/2007	Relates to spirituous liquor licensees. Requires that licensee shall be a citizen of the United States and a bona fide resident of this state or a legal resident alien who is a bona fide resident of this state.
HB 2016 - Act 178	Law Enforcement	Signed 05/04/2007	Provides for the detention of a material witness if testimony of a person is material in a criminal proceeding and if it is shown that it may become impracticable to secure the presence of the person by subpoena because of the immigration status of the person.
HB 2181 – Act 255	Law Enforcement	Signed 06/25/2007	Provides funds for immigration law enforcement in the state of Arizona.
HB 2787 – Act 261	Law Enforcement	Signed 06/25/2007	Amends Arizona law to deny release on bail for a felony if there is probable cause that the individual is an illegal alien.
SB 1265	Law Enforcement	Signed 07/02/2007	Relates to the determination of an individual's country of citizenship after that person has been brought to the agency for incarceration; requires the agency to transmit any information regarding the individual's country of origin and criminal record to the court and the prosecuting agency for the purpose of determining whether that person is lawfully present in the United States and whether that person should be given the option of bail.

HB 2403	Voting	Vetoed 07/02/2007	This legislation instructs county recorders in Arizona to reject any application for voter registration that is not accompanied by satisfactory proof of citizenship and furnishes a list of documents that satisfy the requirement.
HCM 2012	Border enforcement	Signed 4/18/07	Urging the President of the United States to Change the Rules of Engagement for National Guard Troops for Defense of the Border with Mexico. This memorial requests that the rules of engagement for National Guard troops on the Mexican border be changed to allow soldiers to defend against, engage, pursue and apprehend illegal entrants and that the National Guard should be placed in a primary enforcement role until the Border Patrol receives its full complement of officers as approved by Congress.
SM 1004	Law enforcement	Signed 4/30/07	Encouraging the United States Congress to Continue the Funding and completion of SBInet, a program that assists in the apprehending and processing people who cross Arizona's border illegally; facilitates legitimate cross-border travel and commerce. This memorial requests that the Congress continue funding and completion of SBI-net by the target date of 12/31/08.
Prop 202	Labor	2008 ballot, didn't pass	Increases penalties on cash-based businesses who bypass current laws as well as employees who engage in identity theft to verify employment eligibility
SB 1001	Law enforcement	Enacted, 01/31/2009	This Act appropriates $10 million for the multi-jurisdictional task force known as the gang and immigration intelligence team enforcement mission (GIITEM).
SB 1188	Funding	Action Unknown. 2009	This bill specifies appropriations, including funds for the arrest of illegal aliens.

HB 2306	Licensing/ Labor	Enacted, 07/13/2009	This bill requires that an applicant for a business license in the state execute a statement of citizenship or alien status prior to the issuance of such license. Individuals who have proven citizenship or permanent work authorization do not have to provide subsequent documentation for a license renewal.
HB 2008	Public Benefits	Enacted, 09/04/2009	Provides for general government budget reconciliation, identifies documents to demonstrate lawful presence for federal public benefits eligibility.
SB 1035	Funding	Vetoed, 07/01/2009	This bill relates to budget reconciliation and eligibility for public benefits, requires a state driver license, identification license, birth certificate, certificate of birth abroad, passport, I-94 form, refugee travel document, employment authorization document, certificate of naturalization, certificate of citizenship or tribal certificate of birth or blood.
SB 1282	Smuggling	Enactd, 07/13/2009	This act extends the definition of human smuggling to include those who have attempted to enter, entered, or remained in the United States in violation of law.
Prop 113	Labor	2010 ballot, passed	Extend the right of Arizonans to use a secret ballot in union elections
SB 1027	Border enforcement	04/16/2010 - Enacted	This law requires the department of public safety to seek grants to implement a one-year pilot program that would use seismic sensors to monitor rural airport runways and other rural areas of this state where illegal drug traffic and illegal alien traffic or human smuggling are likely to occur.

SB 1043	Health care	Enacted, 05/06/2010	This law relates to the Children's Health Insurance Program. In order to be eligible, an individual must be a resident of Arizona and must meet requirements for U.S. citizenship or qualified alien status. Also, in determining eligibility for qualified aliens, the income and resources of a person who executed an affidavit of support for the individual and that of the sponsor's spouse will be counted at the time of application and for the redetermination of eligibility.
SB1070	Immigration	Enacted, 4/23/2010	This law covers multiple issues related to illegal immigration in the state of Arizona. The provisions include establishing state crimes and penalties for trespassing by illegal aliens, failure to carry alien registration documents, stopping to hire or soliciting work under specified circumstances, and transporting, harboring or concealing unlawful aliens.
HB 2001	Funding	Enacted, 03/18/2010	This law appropriates funds to state agencies in Arizona. It includes $1,213,200 in funding to county attorneys for immigration enforcement in communities with a population over 1.5 million people. The law also includes $4,110,300 to the Arizona Department of Education to provide English language acquisition services.
HCM 2005	Funding	Enacted, 04/28/2010	This resolution urges the U.S. Congress of the United States to reauthorize the Section 1011 program of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which allocates funds to reimburse states for providing emergency health care to undocumented aliens.

HB 2162	Border enforcement	Enacted, 04/30/2010	This law amends Arizona SB 1070 to specify that law enforcement officials cannot consider race, color or national origin when implementing the provisions of the original law, except as permitted by the U.S. or Arizona Constitution. Additionally, the law clarifies the original law's language around "reasonable suspicion" by requiring state and local law enforcement to reasonably attempt to determine the immigration status of a person involved only while in the process of a lawful stop, detention, or arrest. It lowers the fine for state or local entities sued by legal residents and found guilty of restricting the enforcement of federal law from $1000 to $500 for each day the policy is in effect. The law also lowers the fine for individuals that fail to complete or carry an alien registration document from $500 to $100 for the first offense.
Sources: Ballotpedia.org; National Conference for State Legislatures			

APPENDIX C

UNIVERSITY HUMAN SUBJECTS IRB APPROVAL

ASU ARIZONA STATE UNIVERSITY
RESEARCH AND ECONOMIC AFFAIRS

Office of Research Integrity and Assurance

To:	Madelaine Adelman WILSN
From:	Mark Roosa, Chair Soc Beh IRB
Date:	03/08/2010
Committee Action:	**Exemption Granted**
IRB Action Date:	03/08/2010
IRB Protocol #:	1003004874
Study Title:	Latino Immigrant Experiences of Wage Theft in Phoenix, AZ

The above-referenced protocol is considered exempt after review by the Institutional Review Board pursuant to Federal regulations, 45 CFR Part 46.101(b)(2) .

This part of the federal regulations requires that the information be recorded by investigators in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects. It is necessary that the information obtained not be such that if disclosed outside the research, it could reasonably place the subjects at risk of criminal or civil liability, or be damaging to the subjects' financial standing, employability, or reputation.

You should retain a copy of this letter for your records.