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Keywords

undocumented immigrants, worker claims, labor rights, restaurant workers, working conditions

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Labor Rights for All?

The Role of Undocumented Immigrant Status for Worker Claims Making

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Law & Social Inquiry (2010), 35(3), 561-602.

Abstract

Drawing on forty-one interviews with both documented and undocumented Latino restaurant workers in San Jose, California, and Houston, Texas, this article examines how documentation status shapes the legal consciousness of immigrant workers. I identify three common narratives that undocumented workers provide to justify not making claims on workplace protection. First, I highlight that an ever-present fear of deportation inhibits any formal confrontation. Second, I demonstrate how undocumented status leaves undocumented immigrants with a particularly pragmatic and short-term understanding of their working life in the United States, rendering their working conditions temporary and endurable to them. Third, I expand Gordon and Lenhardt's (2008) discussion of the centrality of work to the American conception of citizenship. I reiterate that this particular sense of belonging is situated vis-a-vis other low-wage workers. These findings provide sociolegal scholars important theoretical contributions for crafting a research agenda on the role of undocumented status and legal mobilization.

INTRODUCTION

Currently one in nineteen civilian workers in the United States is undocumented. These more than 8.3 million workers are concentrated in sectors ranging from construction to food services to janitorial work (Silbey 2005; Passel and Cohn 2009), industries known to be particularly subject to workplace violations (Department of Labor 2007a). While comprehensive immigration reform has drifted on and off the national agenda over the last decade, reform has been unsuccessful and politically dangerous. Meanwhile, the current Obama administration remains committed to “interior enforcement” efforts such as workplace raids and employment verification programs (Preston 2009). Simultaneous with this campaign to strengthen immigration laws, the federal government has also launched efforts to address rampant workplace violations. The recent appointment of Hilda Solis to head the Department of Labor was seen as a reinvigoration of this commitment.

Meanwhile, ample research has documented the challenges associated with low-wage work and highlighted the particular vulnerability of immigrant workers (for wage and hour abuses, see Greenhouse 2005; Williams 2006; Orey 2007; for lack of safety protections, see Loh and Richardson 2004; Quandt et al. 2006; Nissen, Angee, and Weinstein 2008; for sexual harassment, see Velios 1996; Gonzalez-Lopez 2006). Law and society scholars have also understood that most individuals, regardless of nativity or other ascriptive characteristics, are reluctant to engage in claims making (Miller and Sarat 1980; Kritzer, Vidmar, and Bogart 1991; Bumiller 1992). Critics of the existing labor standards enforcement regime point to a shortage of investigators, inordinate processing times, and ineffective employer penalties as additional obstacles for would-be worker claimants (Bobo 2008). Nonetheless, despite significant

challenges to the contrary, federal and state labor standards enforcement agencies have remained generally committed to protecting the rights of all workers, regardless of legal status (Equal Employment Opportunity Commission 2002; Department of Labor 2007b; California Department of Industrial Relations 2009).

Yet, scholars have recognized that challenges remain for legal mobilization. The vulnerability of undocumented workers stems in large part from their contradictory legal position. While most undocumented workers find employers ready and willing to hire them, and rights are made available to them, they are fundamentally restricted from living or working in the United States. Researchers have highlighted several effects of this contradictory situation, which exacerbates the vulnerability of undocumented workers and their reluctance to make claims on their existing rights. First, it is clear that immigrant workers, like the average low-wage worker, often lack sufficient knowledge about the laws governing work in America. Language barriers and lack of culturally appropriate information intensify this barrier. In response, agencies have launched campaigns directed at the immigrant workforce in the hope of improving this situation (Nash 2003; Occupational Safety and Health Administration 2003, 2007). Second, the very nature of the temporary and contingent occupations in which undocumented workers often find themselves are characteristically difficult to enforce (Velios 1996; Valenzuela et al. 2006). Third, advocates continue to uncover egregious instances of employer intimidation in which the immigration status of a worker is often wielded as an overt threat against would-be claimants (Human Rights Watch 2005; Avendano and Hincapie 2008). To be sure, each of these obstacles prevents undocumented workers from engaging in legal mobilization. However, in this article I argue that undocumented workers confront a more essential challenge to claims making that makes efforts such as worker education, strengthening labor laws, and targeting abusive

employers absolutely necessary but ultimately insufficient. Through an analysis of interviews with forty-one Latino¹ immigrant workers in the mainstream restaurant industry, I highlight the ways in which immigration status may affect the legal consciousness of immigrant workers, ultimately shaping their approach to claims making.

Immigration and sociolegal scholars have emphasized the effect of immigration status on identity and patterns of legal mobilization (Salcido and Adelman 2004; Menjivar 2006; Abrego 2008). I offer that illegal status shapes the voice, purpose, and future that undocumented workers may believe they have a right to, irrespective of the extent of the rights offered to them. While Leisy Abrego (2008) and others offer innovative analyses of the impacts of *new* rights-granting laws for undocumented immigrants, I contend that we can still learn a lot from the relationship undocumented workers have toward the existing rights that they “enjoy.” Building on a long line of scholarship on legal consciousness, I also argue that undocumented status constitutes an increasingly significant factor shaping individuals’ interpretation of the law and claims-making behavior. Much like the holistic experiences of race, class, and gender (Merry 1990; Bumiller 1992; Collins 1998; Suh 2000), I contend that undocumented status is similarly a *master status* that is constructed by the law and that in turn shapes an individual’s relationship to the law (Enghceren 1999).

The remainder of this article proceeds as follows. In Part I, I take readers through the theoretical foundations of my argument, which is anchored in the work of sociolegal, labor, and

¹ In this article I refer to “Latino” immigrants. This is a term of self-identification, which the US Census, as well as other research institutes such as the Migration Policy Institute in Washington, DC, and most social science researchers, employ to refer to individuals of Latin American origin (whether native or foreign-born) residing in the United States. See Rodriguez (2000) and Mora (2009) for a historical overview of how the term has become institutionalized in the United States.

immigration scholarship. In Part II, I provide an overview of the logic of my methodology, which focuses on interviews with forty-one Latino immigrant restaurant workers in San Jose, California, and Houston, Texas. In Part III, I describe three patterns that I uncover in my data, and I suggest that these patterns offer insights into how undocumented status may shape the legal consciousness of workers. I end with Part IV, which is a discussion of the possible implications of these findings for how we understand legal consciousness, the effects of undocumented status for immigrant incorporation, and the prospects and potential limitations of current efforts to protect undocumented workers from workplace abuse.

I. THEORETICAL FOUNDATIONS

Legal Consciousness and Claims Making

The study of legal consciousness has taken a front seat to sociolegal research in recent decades. Several definitions have emerged, though Susan S. Silbey (2005) summarizes it as “a theoretical concept and topic of empirical research developed to address issues of legal hegemony, particularly how the law sustains its institutional power despite a persistent gap between the law on the books and the law in action” (323). Two strains of research have emerged. Austin Sarat and Thomas R. Kearns (1995) contrast the “instrumentalist” and “constitutive” perspective on the law; the former focuses on the *external* force of causality and the effects of the law, whereas the latter focuses instead on the *internal* meaning individuals derive from the law (see McCann 2006 for a comprehensive summary of this debate). Although scholars have tended to separate these two perspectives on legal consciousness, Sarat and Kearns urged scholars to synthesize the two. More than a decade later, Silbey (2008) bolsters this call,

arguing that researchers must “redirect studies of legal consciousness to recapture the critical sociological project of explaining the durability and ideological power of law” (358). In general, current sociolegal scholarship has decentered the concept of legal consciousness, focusing on the experiences of “everyday life” (Ewick and Silbey 1998) rather than the courts and other legal institutions.

Scholars have also found a variety of ways of operationalizing and discussing legal consciousness. Some suggest that legal consciousness has varying relevance in individuals’ lives. For example, David M. Engel (2005) argues that Thai legal consciousness has indeed *occurred*, and Mary E. Gallagher (2006) examines the *rising* development of the legal consciousness of plaintiffs in Shanghai. Others, most notably Patricia Ewick and Susan Silbey (1998), suggest that legal consciousness simply takes different *forms* and offers a typology of its manifestations. Yet other researchers discuss different *moments* of legal consciousness. For example, Gallagher (2006) offers two dimensions for the development of legal consciousness: (1) feeling of efficacy and competency toward the legal system (for example, “How well can I work the law?”) and (2) perception/evaluation of the legal system (for example, “How well does the law work?”) (783). In general, these schemas have been lauded for their development of the field but also criticized for their rigidity, ambiguity, and lack of explanatory power (McCann 1999; Garcia-Villegas 2003; Pelisse 2006).

Common to each of these efforts is a general consensus that legal consciousness must be evaluated not only by what people *say* but also by what they do. Indeed, understanding individuals’ attitude toward their rights and the process of making claims is essential, as William L. F. Felstiner, Richard L. Abel, and Austin Sarat’s (1980) classic model of “naming, blaming, claiming” tells us. Yet what people say about the law, and how they ultimately act toward it, can

often be contradictory (Merry 1990; Ewick and Silbey 1998; Silbey 2001; Hoffmann 2003; Jacobs 2007). The varying effects of legal consciousness, that is, what people *say* and *do* vis-a-vis the law, has required some form of comparative research across different segments of the population. These include contrasting individuals with different ascriptive characteristics. For example, Laura Beth Nielsen (2000) focuses on race and gender to compare individuals across varying positions in the social field; Lesley A. Jacobs (2007) examines various professions in a public health crisis intervention; and several scholars have examined differences across organizational and regulatory environments (Edelman 1992; Hoffmann 2003; Hirsh and Kornrich 2008).

Thus, the term “legal consciousness” has been discussed in a dizzying array of ways. Drawing on this extensive scholarship, I invoke the term as a way to examine how legal status shapes the relationships Latino immigrants have to their workplace rights. Based on my interviews with restaurant workers, I examine the workers’ narratives about their decision to come forward when workplace abuse occurs. While a small sample such as this cannot be generalized to the broader immigrant population, I argue that it offers several counterintuitive findings to existing instrumentalist understandings of the effect of undocumented status on legal mobilization. Before outlining my specific framework for understanding the relationship between immigration status and the legal consciousness of workers, I first review what existing labor and immigration scholarship offers the subject.

Low-Wage Work in America

Michael McCann (2006) argues that before law and society scholars turn to any analysis of legal consciousness, we would do well to first “situate subjects in terms of traditional theory of relational hierarchy” (xxii). Indeed, there is a rich social stratification literature with a lot to say about the effects of *ascription* and *achievement* on relations of power. This includes the effects of class. Therefore, before turning to an analysis of immigration status and claims making, it is essential to first understand what undocumented workers share in common with the broader low-wage workforce. Juliet M. Brodie (2006) reminds us that “unlivable wages, lack of job security, wrongful terminations, lack of benefits and unsafe working conditions are common in the low-wage workforce, whether the workers are undocumented or not” (204). It should come as no surprise then that undocumented workers, like all immigrant and native-born low-wage workers, are reluctant to engage in claims making. Therefore, a primary justification that is often offered is that potential claimants simply fear jeopardizing their job and, as a result, these rights remain “idle” (Marshall 2005).

Yet, McCann (2006) also critiques the extant scholarship on legal consciousness for sometimes ignoring the relevance of macrocontextual factors such as class, and a wide range of other bases of inequality. Though race and gender have been the hallmark focus of social stratification scholars (Seron and Munger 1996; Collins 1998), countless other topics have also garnered significant attention from sociologists and legal scholars alike. Immigrant and immigration status are prime among these, particularly in the context of the workplace.

***Birds of Passage* and Employer Preference for Immigrant Workers**

Significant research has emerged over the last several decades on the experience of immigrant workers in the American economy. Two important findings inform the research presented here: (1) the “dual frame of reference” of immigrants and (2) some employers’ preference for immigrant workers. Regarding the first, we know from Michael J. Piore’s (1979) classic *Birds of Passage* that immigrants often possess a dual frame of reference in evaluating their migrant experience. An early review sums up Piore’s findings:

According to Piore, migrants are ideally suited for these jobs because (a) they are target wage-earners and (b) their social status is determined by their position in country of origin rather than the host country. As target wage earners they have a fixed income objective and, thus, are unconcerned about the lack of advancement possibilities. Because they judge themselves by their position in their home country, they are unaffected by the lack of status their job entails in the host country. (Cherry 1981, 70)

Though Piore’s economic thesis and subsequent recommendations have been critiqued over the years, his central theoretical shift is a critical one: immigrant workers not only are affected by the social and economic conditions in their host country, but they also refer *back* to the work conditions in their home country in order to evaluate their current position and look *toward* their return home when considering their aspirations for mobility. The dual frame of reference has been reaffirmed by several contemporary studies of employers, most notably Roger D. Waldinger and Michael I. Lichter’s (2003) research in Los Angeles, which compares the employment experiences of African Americans and immigrants. Through interviews with employers, the authors complement Piore’s thesis by concluding that employers *prefer* immigrant workers because they view them as a pliant workforce willing to withstand

substandard working conditions.² While education and English reading and writing skills are seen as desirable at the high end of the job market, this was not so at the lower end. The authors argue that it is this difference that makes immigrant workers enticing to employers, thus calling into question predictions about ultimate assimilation. Recent scholarship in new immigrant destinations reiterate these findings, and offer the volatility of the labor market as an additional factor making immigrants attractive employees (Donato and Bankston 2008).

Taken together, these immigrant-specific factors—dual frame of reference, employer preference, and market volatility (prevalent in the current recessionary period)—take us a long way toward understanding the subordinate structural position of immigrant workers, as well as their subsequent claims-making behavior. While documented immigrants certainly share in this experience, the virtual nonexistence of paths to legalization means that the majority of low-wage immigrants are undocumented, and their prospects of being able to return to their jobs if they quit are slim (Reyes, Johnson, and Van Swearingen 2002; Durand and Massey 2006). In order to understand the factors driving claims making for this group of individuals, we must first understand the legal framework surrounding undocumented work, which I present next.

The Legal Terrain for Undocumented Workers and Claims-making Patterns

Sociolegal scholarship has commented extensively on the contradictory legal position of undocumented workers in the United States (Coutin 1999; Calavita 2005; Bosniak 2006). Barred from residing or working here, these workers are nonetheless afforded “on paper” many of the

² Some researchers have also argued that temporary labor programs may exacerbate the effects of this dual frame of reference (see Binford 2009).

same legal workplace protections as native-born workers. This is due in large part to the efforts of unions and reformers, which have rallied for the right to wage and hour protections, protection from discrimination, and a safe and healthy workplace (Gordon 2007, 23-24). To this end, labor standards enforcement agencies such as the National Labor Relations Board (NLRB), the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC), and the Occupational Safety and Health Administration (OSHA) (as well as their state and local counterparts) enforce workplace protections for all workers, generally regardless of immigration status.³ Though strong protections still remain, legal challenges have been filed. Most notably, in *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board* (2002), the Supreme Court concluded in a five-to-four decision that undocumented workers were barred from receiving back pay. The majority on the Court argued that the Immigration Reform and Control Act of 1986 (IRCA), which explicitly barred employers from hiring undocumented immigrants, ultimately prevented the NLRB from awarding back pay to an undocumented individual who had never been legally authorized to work in the United States in the first place.

Post-*Hoffman*, the two major issues that courts continue to debate are an undocumented worker's formal right to back pay for work *not* performed and reinstatement. Courts have examined issues ranging from whether immigration status should be relevant at all,⁴ whether illegal entry constitutes commission of a crime and thus precludes compensation,⁵ and what level

³ Throughout this article, I use the terms "immigration status," "legal status," and "documentation status" interchangeably to refer to whether or not an immigrant is residing in the country legally. While certain categories of legal immigrants (such as students and visitors) also lack proper work authorization, they are not the topic of this discussion.

⁴ See *Flores v. Amigon* (2002); *Rivera v. Nibco* (2004); *Fermin Colindres v. Quietflex Mfg.* (2006); *Wudson Rosa v. Partners in Progress, Inc., et al.* (2005); *Rodriguez v. The Texan, Inc.* (2002).

⁵ See *Sanchez v. Eagle Alloy Inc.* (2003); *Jane Doe v. Kansas Department of Human Resources* (2004).

of compensation should be allowed for undocumented workers.⁶ Yet, despite the flurry of issues *Hoffman* has raised, strong protections remain (Fisk, Cooper, and Wishnie 2005).⁷ In fact, following *Hoffman*, every major federal labor standards enforcement agency issued a public statement that clarified the limited scope of *Hoffman* as it relates to their agency and reaffirmed their agency's commitment to protecting the rights of all workers regardless of documentation status (Equal Employment Opportunity Commission 2002; Department of Labor 2007b). As a result, undocumented workers remain entitled to a wide array of workplace rights. Employers must abide by wage and hour standards, are prohibited from engaging in discriminatory practices, and are compelled to provide safe working conditions for all workers. While undocumented workers enjoy the majority of formal workplace protections, they also share the challenges associated with accessing them. In her recent book, organizer Kim Bobo (2008) discusses this reality, highlighting the dismal state of enforcement for wage and hour violations, the most prevalent and largest sector of workplace abuse. According to Bobo, the current apparatus of wage and hour enforcement relies on 50 percent fewer DOL investigators than it did when the DOL was created in 1941, despite a 900 percent increase in the size of the US workforce.

Though information on workplace violations is limited, several well-crafted surveys of the immigrant population provide some insight into the nature of workplace violations facing

⁶ See *Ulloa v. AVs All Tree Serv., Inc.* (2003); *Sanango v. 200 East 16th Street Housing Corp.* (2004).

⁷ Most recently, the Supreme Court denied a certiorari petition in *Agri Processor Co. v. the NLRB* (2008), where previously both the NLRB and a District of Columbia circuit court had upheld the definition of undocumented workers as employees under the National Labor Relations Act.

undocumented workers (Valenzuela et al. 2006⁸; Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition 2005⁹). Common violations include paycheck irregularities, wage and hour abuse, and lack of access to safety equipment.¹⁰ Existing studies also confirm that undocumented workers often lack basic knowledge about their workplace rights. This is particularly true for contingent workers. For example, Kelly E. Smith (2003) found that only 53 percent of the homeless day laborers surveyed in Tucson, Arizona, could correctly state the minimum wage, and Valenzuela et al. (2006) found that 70 percent of the day laborers they surveyed did not know where to report workplace abuses. Additionally, immigrant advocates often denounce employer intimidation as a main culprit for why workers are afraid to come forward and complain (for example, the oft-cited threat, “If you speak up, Ell call the immigration authorities”). Human rights groups have documented egregious incidences of retaliatory practices against workers who chose to speak up (Human Rights Watch 2005; Paoletti et al. 2006). This tendency was made clear in the opinion issued in *Rodriguez v. The Texan, Inc.* (2002), where the employer raised the issue of the plaintiff’s status. The judge’s order read,

[It] surely comes with ill grace for an employer to hire alien workers and then, if the employer itself proceeds to violate the Fair Labor Standards Act (which this Court does not of course decide, but must assume for purposes of the present motion), for it to try to squirm out of its own liability on such grounds. (7)

⁸ In their national study of 2,660 day laborers, the authors find that while less than 1 percent of day laborers get paid less than the minimum wage, 49 percent report they have experienced nonpayment of wages, 27 percent were left to their own devices to find a way home, 44 percent have been refused food or breaks, and 28 percent have experienced being insulted by their employer.

⁹ This survey of New York City restaurant workers finds that 59 percent have experienced overtime wage violations, 57 percent have worked more than four hours straight without a paid break, and 13 percent have experienced minimum wage violations.

¹⁰ See McGrath (2005) for an excellent overview of surveys providing information on labor law violations in the United States.

My findings do not minimize these three challenges, that is, the limitations of an underresourced labor standards enforcement bureaucracy, lack of knowledge about rights, and employer intimidation. However, in this article I argue that efforts toward reducing these barriers, while certainly necessary, may be insufficient to ameliorate the fundamental challenge that undocumented status poses some workers. These data extend the perspective provided by critical legal scholars such as Jennifer Gordon and Robin A. Lenhardt (2008), who highlight how “key features of the Mexican migrant path—financial obligation, illegal status, and shifting orientation toward the home country—play out in powerful ways with regard to migrants’ experience of work in relation to citizenship understood broadly as belonging” (1211). I similarly find evidence that some migrants “facing few options for meaningful advancement may choose to work their identity in a way that would refute negative stereotypes and ‘exploit...positive stereotype[s]’” (1224).¹¹

I argue that illegal status likely intensifies the economic insecurity and dual frame of reference these and other authors discuss. Furthermore, work becomes central to the sense of belonging and, I argue, to the *legitimacy* that these workers feel. I also emphasize that while scholars have investigated effects of the interactions between Latino immigrants and other low-wage workers (primarily African Americans), in fact actual proximity and interaction (either residentially or at the workplace) may not be necessary for immigrant workers to invoke stereotypes and to use them to shape their work ethic.¹² In San Jose the entire African American population hovers around just 2 percent, and the workers I spoke to work in highly homogenous

¹¹ Carbado and Gulati (2000) argue that workers who are “outsiders” indeed have agency and may work their identities to fit in and get ahead (cited in Gordon and Lenhardt 2008, 1223).

¹² For additional data on the work experiences of African Americans and Latino immigrants, see Zuniga and Hernandez-Leon (2006) and Marrow (2009).

restaurant kitchens. Yet negative stereotypes were still invoked by many respondents, despite little to no direct interaction with the black community. I also provide examples where undocumented workers compare themselves to *documented* workers, as well as native-born Latinos and whites. Through this process, an extreme work ethic becomes not only an economic asset that renders workers attractive to employers but also a fundamental aspect of workers' understanding of their utility and belonging in US society and, in turn, their views about claims making.

While emerging studies have examined how undocumented immigrants contest immigration restrictions, either individually or collectively (Coutin 2000; Ryo 2006), we also know less about the ways immigration status shapes individuals' relationship to existing rights (Abrego 2008; Salcido and Adelman 2004; Van Hook and Bean 2009). My goal in this article is to examine the effects of illegality on the ways that some Latino immigrants relate to the wide array of workplace rights that they have been afforded and how this may shape claims-making behavior. I take as a point of departure the well-established finding that undocumented workers are less likely to come forward than are other workers (Velios 1996; Valenzuela et al. 2006; Gordon 2007; Holmes 2007). To this end I argue that the case of undocumented workers contributes to our understanding of the constitutive effects of the law in an era where significant segments of the population face the conundrum of lacking the "right to have rights" (Somers 2008, 5).

II. METHODOLOGY

I present the research for this article as a case study of legal consciousness of undocumented immigrants. I draw on forty-one interviews with Latino immigrant restaurant workers conducted in two traditional immigrant destinations: Houston, Texas (13), and San Jose, California (28). My discussion of the labor policy of these two sites is also informed by sixty interviews with labor standards enforcement agents, union officials, and other community organizers in the two cities. All worker respondents held positions in the “back of the house” at well-known restaurant chain locations,¹³ with posts ranging from dishwasher to preparation to cook. Each respondent participated in an in-depth semistructured interview regarding their work experience and any challenges they may have faced in responding to workplace irregularities. These data were collected from October 2005 to June 2007, and although these interviews are certainly not representative of the broader (documented or undocumented) Latino immigrant population, I argue that these findings can offer important theoretical insights for future research. In the following section, I provide the methodological rationale for this case study, and I review the interviewee recruitment strategy used.

¹³ As noted, most respondents worked at a well-known restaurant chain located near a heavily trafficked shopping center. These employment sites were middle-range, “tablecloth” (i.e., dine-in) venues.

Case Study Selection: Two Poles of a Continuum—California and Texas

For this study I conducted interviews in two ideal-typical states. I chose two places with divergent labor policy regimes in order to test whether the narrative offered by undocumented workers varied across policy context. I also aimed to compare two cities that were emblematic of the regulatory dynamics in each state but that were not radically divergent in terms of local innovations and resources. While several excellent studies have chronicled the shift within the labor movement toward a more inclusive culture for immigrants, they tend to focus on high-profile success stories in global cities (Milkman 2000, 2006). For these reasons, I excluded capital cities (such as Sacramento and Austin), global cities such as New York and Los Angeles (which, in 2006, were listed, respectively, as the first and second largest cities in the United States,), and border cities such as El Paso and San Diego (which have a distinctive demographic character). I settled on Houston and San Jose because of their similar demographic and economic profiles.¹⁴ (See Table 1 for a more detailed demographic profile of each city.)

Insert Table 1 Here

However, each city is also located in a distinct state labor policy context- Texas state laws are some of the weakest protections for workers in the nation, while California's laws are among the most stringent. States are generally allowed to create workplace policies that improve upon the federal standards but that cannot go below this floor. Whereas Texas wage and hour

¹⁴ Bridges (1997) provides an excellent discussion of the political landscape of San Jose and Houston within the context of other key cities in the Southwest region.

standards generally replicate federal minimums, California standards are much stronger.¹⁵ Texas is a “Right to Work” state, where labor union membership is just one-third of that in California (5.3 percent versus 16.5 percent, respectively, in 2005).¹⁶ California also provides more strenuous discrimination protections than the federal antidiscrimination statutes, which are enforced by the EEOC.¹⁷ Worker health and safety standards in California are governed by a state agency, the California OSHA, whereas Texas relies on the federal OSHA agency.¹⁸ Furthermore, Texas is the only state in the nation where employers are not required to carry workers compensation insurance.¹⁹ (Table 2 provides more detailed information on the labor

¹⁵ The Fair Labor Standards Act states that “covered nonexempt workers are entitled to a minimum wage of not less than \$5.15 an hour.” In 2005, according to the California Industrial Welfare Commission (IWC) orders, the minimum wage was \$6.75 an hour and was increased to \$7.50 in January 2007, then to \$8 in January 2008. California overtime provisions are stricter than the federal standard, requiring any time after eight hours in a day to be paid at a premium, compared to the forty-hour/week federal minimum.

¹⁶ Employees in Right to Work states do not have to formally join a union (i.e., pay union dues), even after the union is recognized by the company through an election or other negotiations. Those workers, however, still remain protected if a union is elected to represent workers. This difference changes the dynamics of union organizing in that it makes recognition potentially more difficult, in addition to reducing the resources a union would have through membership.

¹⁷ In addition to protection from employment discrimination based on race, color, religion, sex, or national origin, as well as several other statutes that prohibit discrimination on attributes such as age and disability, the state of California also provides protection from discrimination on the basis of sexual orientation.

¹⁸ The federal OSHA sets standards for working conditions. Some states have created their own state OSHA programs, which receive 50 percent of their enforcement funds and 90 percent of their funds for consultation services from the federal government. States are encouraged to form their own state programs, though fewer than half have done so. State OSHA standards must be at least as effective as federal standards but can include additional regulations as well, as does California’s.

¹⁹ The workers compensation system provides a full range of benefits for the injured worker, including medical benefits and lost wages. This is a state-administered no-fault system in which the implicit agreement is that in exchange for these benefits, employees cannot sue their employer if they are injured. If workers compensation is not provided, employers are required to notify their employees, and if a worker is injured, he or she has the option to sue the employer. However, a civil tort case such as this can be a lengthy and costly process that is likely prohibitive for most low-wage workers, particularly those who are undocumented.

policy context of each site.)²⁰ Therefore, these differences suggest that an immigrant worker's experience is shaped not only by federal immigration policy but likely by state and local workplace policies as well.

Insert Table 2 Here

Certainly, public opinion in each city varies as well. Comparatively, Houston has a more conservative political climate in which unions have less power, and anti-immigrant sentiment is stronger. Despite these differences, interviews with labor standards enforcement agents and immigrant advocates in San Jose and Houston confirmed a general commitment to protecting the rights of all workers, regardless of immigration status. Though my small sample does not permit broader generalization, I also found that despite the more generous workplace provisions in San Jose as compared to Houston, undocumented workers in both places related strikingly similar experiences and narratives regarding their workplace rights.

What's for Dinner in the American Restaurant Industry?

After selecting these two cities, I chose to focus on one specific industry in order to focus the analysis. Restaurants are the largest private sector employer for both native-born and immigrant workers (National Restaurant Association 2006), and the industry is largely unregulated and nonunionized. While excellent labor and immigration research has been

²⁰ I was unable to obtain specific data on the expenditures of each set of labor standards enforcement offices, or on personnel.

conducted in the informal economy (Morales 1997; Valenzuela et al. 2006; Hondagneu-Sotelo 2007) and in other important immigrant-heavy sectors such as agriculture and construction (Peck and Theodore 2002; Holmes 2007), the booming service sector has become a prime destination for new and existing flows of immigrant labor. Undocumented workers are particularly overrepresented in this sector; an estimated 12 percent of all workers in the food services industry are unauthorized (Passel 2006). Restaurants are also incredibly segregated workplaces. In my case studies, the “front of the house” was typically American born and English speaking, while the “back of the house” was commonly all Latino and Spanish-speaking immigrants (mostly men).

Restaurants have been the focus of several workplace violation scandals and public policy innovations (Greenhouse 2008). The DOL has launched special initiatives in this industry (Department of Labor 2003a), and local governments have enacted innovative policies such as New York City’s “Responsible Restaurant Act,” which suspends city permits for establishments that repeatedly violate state wage and hour laws (Brennan Center for Justice 2007). One of the largest studies on restaurant workers, conducted by the Restaurant Opportunities Center in New York, conclude that “[w]hile there are a few ‘good’ restaurant jobs in the restaurant industry, the majority are ‘bad jobs,’ characterized by very low wages, few benefits, and limited opportunities for upward mobility or increased income” (Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition 2005, ii). Fifty-nine percent of the 530 workers the center surveyed experienced overtime violations, and 13 percent reported minimum-wage violations (ii). Therefore, by focusing on restaurants, I felt confident that there would be an abundance of workplace irregularities that might potentially spur claims making.

Recruitment Strategy

The recruitment strategy I followed for this study was designed to capture the perspective of individuals in the workplace rather than those already engaged in the claims-making process. This approach has been advocated by sociolegal scholars such as Elizabeth A. Hoffmann (2003), who similarly examines “legal consciousness in the workplace rather than in a dispute-processing institution such as a court or a neighborhood mediators’ office” (695). Consequently, Hoffmann argues that she is able to “eliminate certain biases from subjects’ perceptions of harm, blame, and appropriate remedy” (695). Following similar examples, I draw on interview data with workers to examine perspectives on both formal and informal forms of claims making (for example, approaching an employer at work to informally discuss a problem but also formally filing a claim with the labor commissioner).

My approach also differed markedly from those used in much of the existing scholarship, which tend to rely on convenience sampling and are more likely to capture workers who are engaged in the community (Mehta et al. 2002; Jayaraman and Ness 2005; Fine 2006; Solari 2006; Cho et al. 2007; Gordon 2007; Hondagneu-Sotelo 2007). I argue that this common approach, which is useful in its own right, also potentially overestimates the role that social networks and community resources play in the process. My approach diverged in three important ways.

First, I chose to focus mostly on mainstream employment establishments, where information was likely available to workers, versus small and ethnic enclave businesses, where

resources are likely scarce.²¹ Certainly this approach overlooks the challenges that workers in small “mom and pop” establishments face. Significant barriers, such as lack of information and training, employer intimidation, and “under the table” employment, are also likely more present in these smaller workplaces. However, I contend that the establishments where I recruited workers represent “best-case scenarios” of establishments that had human resource departments and are likely to have adequate resources to provide training and information to workers. My intent is *not* to argue that these restaurants represent the industry “norm” but rather to highlight the challenges that may still exist in high-profile, well-resourced workplaces such as these.

Second, I recruited my interview subjects *at* the work site, approaching workers as they came or left their shifts or took breaks. Respondents were recruited as they entered or exited their work shift, *never* while “on the clock.” At no point did I speak with or interact with the restaurant manager. I found that for every five workers I approached, on average I was able to speak with one. Though no honorarium was provided, most respondents allowed me to purchase them a beverage and/or meal while we spoke. (In addition, at the end of each interview, I gave these workers an informational packet containing local community resources where they could go to for help with addressing any labor violations.) All but five respondents allowed me to tape-record their interviews, and all but one interview was conducted in Spanish, though I have translated all interview quotes here into English.

Third, these two approaches allowed me to interview *both* documented and undocumented workers. In doing so, I was able to identify trends between these two sets of workers. While excellent qualitative studies have detailed the experiences of undocumented

²¹ I recruited interviewees from major shopping centers in each city. I relied on the *Thomas Guide* of Santa Clara County and the *Key Map* of Harris County to identify these locations. (These two sources are the industry standard for mapping references in each city.)

workers (Chavez 1998; Grzymala-Kazlowska 2005; Vogel 2006) without an explicit comparison to documented workers, it is impossible to isolate more closely the specific impact of a variable.²² In sum, while this approach does not provide a robust sample that can generalize to a broader population, it does provide a wider range of experiences than do convenience sample approaches. I argue that my data provide a theoretical anchor for understanding the role of undocumented status, which can then inform a broader research agenda.

Interviews

The data presented in this article represent forty-one Latino immigrant workers. (Table 3 provides a more detailed overview of interview characteristics.) Eight of the thirteen workers interviewed in Houston and twenty- three of the twenty-eight San Jose respondents were undocumented. All of the workers in San Jose were from Mexico. All but two Houston workers were Mexican; the two were from El Salvador. All of the undocumented workers I spoke with lacked both formal work permits and permission to legally reside in the United States. I refer to all the workers in this article using pseudonyms and do not mention any work establishment specifically by name.

The vast majority of the workers I spoke with were men; only two workers in Houston and five in San Jose were women. This corroborates other studies that describe the restaurant industry as predominantly male (Fine 1996; Adler 2005; Restaurant Opportunities Center of New

²² For example, often due to lack of data, health and other stratification researchers tend to focus on the outcomes of the native-born compared to the foreign-born rather than on disaggregate results by legal status. While arguably all immigrants are likely to confront the challenges of adjusting to a new society and to sets of bureaucracies, the focus of this study is to examine how undocumented workers in particular navigate these obstacles.

York and New York City Restaurant Industry Coalition 2005). Therefore, this analysis does not allow me to make any consistent determinations on the basis of gender. While research has shown that women indeed face distinct challenges at the workplace, such as sexual harassment (Velios 1996; Sunnucks 2008), the data presented here are not well suited to address these points. Furthermore, I found no distinct trends between the ways women I spoke to discussed their workplace rights vis-a-vis their equally positioned male counterparts. That said, future research should certainly examine whether men and women engage in claims making in distinct ways.

Insert Table 3 Here

Immigrant Rights Marches of 2006

It is important to address the timing of my study. The vast majority of these interviews took place during the latter part of 2006, following the immigrant-rights protests that took place across the nation, including in Houston and San Jose. The catalyst of these protests was the Sensenbrenner bill, which had been recently passed in the House (H.R. 4437). This legislation, officially dubbed the “Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005,” would have rendered undocumented immigrants felons and would have sanctioned anyone who assisted them. The bill ultimately failed in the Senate, also spurring two consecutive attempts at immigration reform in 2006 and 2007, which also ultimately failed. Social movement scholars such as Bada, Fox, and Selee (2006) have described the marches as the first time “Mexican migrants [had] taken such a visible role in a national policy discussion” and

represented one of the first efforts by immigrant workers “to pursue a right to full membership in US society” (5). Therefore, though this study was certainly not timed with this event in mind, one must be cognizant that it is marked by the political period.

Though not reflected in detail here, one of the last questions I asked respondents before concluding the interview was their knowledge of the marches and then their opinions of and involvement in them. I received a wide spectrum of responses, ranging from enthusiastic support to cautious cynicism. Yet the majority of the workers I spoke to actually did not *participate* firsthand in the marches, citing work obligations as a primary motivator. One pessimistic Houston worker, for example, explained, “I think it is actually not a good thing [the marches]. Lots of people lost work time, many lost their jobs even, and what really does the future hold for us? Nothing but promises.” Another San Jose worker echoed a similar sentiment, “Yeah, I was here, but I didn’t go. I think that they [the protesters] were asking that they give them papers. But, me, I’m not interested. I’m interested that they give me work. I’m not interested in papers.” While the purpose of this analysis is *not* to offer conclusions on immigrant sentiment toward the marches or the immigrant rights movement, it is clear from my findings that the marches alone did not catalyze legal mobilization among the workers, documented or undocumented, that I spoke with.

III. FINDINGS

I offer three dominant narratives that emerged from my interviews with these restaurant workers. As previously mentioned, I argue that the perspective my data offers broadens instrumental understandings of the impact of the law. Certainly, as previous studies have found, undocumented immigration status presents a practical barrier to those individuals whose employers choose to wield it as a tool of coercion. Furthermore, for workers who are unaware of their workplace rights, it is understandable that they may assume that workplace rights do not extend to them. Yet, as I explain, neither of these barriers were common experiences to the workers in *this* study. Each of the workers I interviewed in these mainstream restaurant establishments had at least a basic understanding of the rights afforded to them (for example, minimum wage, overtime provisions, meal breaks, medical attention in the event of an injury) and had not experienced direct threats of “calling immigration.”

Without minimizing the real problem these explicit barriers pose, I also suggest that our way of understanding undocumented status in the current era should parallel the shift that critical legal scholars have made in understanding the mechanisms that drive other forms of discrimination. For example, Lucas (2008) offers that discrimination should be thought of not simply as a relationship between two actors but rather as a “pervasive social relation” (202) that permeates social and work environments. To this end, these findings echo the call for sociolegal scholars to employ a more *constitutive* understanding of the law (Fleury-Steiner and Nielsen 2006). Abrego (2008) similarly discusses the “unintended constitutive functions” that higher education rights provide undocumented college-bound students (730). I argue that undocumented status also has constitutive effects that can undermine the expansive instrumental effects of

workplace rights and that while the workers I discuss in this article each have complex identities (country of origin, race, gender, age, etc.), immigration status operates as a *master status* at the workplace (Enghceren 1999).

After discussing the general workplace dynamics of my respondents' experiences, I present my findings as three distinct narratives that undocumented workers I spoke with offered regarding their workplace rights. First, I discuss the understandable fact that undocumented workers likely possess a fervent desire to avoid any processes that would reveal their status. I highlight that explicit employer intimidation is not the only factor driving these workers' decisions but that rather an ever-present implicit fear of deportation can also inhibit claims making. Second, I examine the dual frame of reference that Waldinger and Lichter (2003), among others, have discussed as a common immigrant experience. However, I contend that the slim prospects of immigration reform, coupled with the trend away from circular migration that border enforcement has fueled, leaves undocumented immigrants with a particularly pragmatic and short-term understanding of their working life in the United States. Third, I expand the discussion offered by Gordon and Lenhardt (2008) on the ways in which *work* has become central to the American conception of *citizenship*, which in turn shapes undocumented workers' sense of legitimacy in society vis-a-vis other low-wage workers. I stress, however, that these comparison groups need not be present in the workplace to still play a strong role in the work ethic undocumented workers craft for themselves. Below I provide comparisons in the form of interviews from documented restaurant workers in these two cities. I reiterate that the findings presented here are not meant to be generalized to the broader immigrant worker population but, nonetheless, provide sociolegal scholars important theoretical contributions for crafting a research agenda on the role of undocumented status and legal mobilization.

State of Affairs

My interviews reiterate findings from other restaurant industry studies that highlight wage and hour violations,²³ lack of safety equipment, and common burns and falls (Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition 2005; Tsai, Salazar, and Cohn-S 2007). Workers I spoke with also cited many unpleasant, though wholly legal, workplace conditions such as infrequent raises, no rights to paid vacation or sick days, and erratic schedules.²⁴ My findings also reveal a surprisingly high level of knowledge among the workers regarding workplace protections and resources for filing claims. For example, Alejandro, an undocumented San Jose prep cook, clearly articulated to me his rights under California wage and hour law:²⁵ “Well, normally, according to the law, it says that there are two ten-minute breaks, but they don’t give them to you.” He learned this from the training manual he received (in both English and Spanish) when he started his position. Bartolome, an undocumented Houston dishwasher, also recited a litany of safety standards he has learned from

²³ The DOL has reported several high profile cases in both California (Department of Labor 2003b, 2004b, 2005b, 2007c, 2008b) and Texas (Department of Labor 2004a, 2005a, 2006, 2007d, 2008a).

²⁴ Within the restaurant industry, one of the most prevalent practices is to send workers home early when business is slow, thereby reducing hourly workers’ take home pay—a practice that is entirely legal in most cases but still incredibly inconvenient for workers.

²⁵ Section 12 (a) of the IWC wage order #5 (which covers restaurants) states that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages” (Industrial Welfare Commission 2007).

the paid training assemblies he regularly attends. He explained, “You have to use special nonslip shoes for working in the kitchen, and a knife glove they give you so you don’t cut yourself.”

Yet, with the exception of only a few workers (including a young prep cook who was a recent arrival and on the job less than three months), the overwhelming majority of the workers I spoke with in both cities were reluctant to mobilize their rights. In the same breath that workers would impart their legal knowledge to me, they would also admit their decision to “leave things be.” Take the examples of Alejandro and Bartolome, the workers I discuss above. Alejandro has received only two raises totaling \$2 in his eight years of working at a chain restaurant. He now earns \$11.50 per hour (compared to \$13.52, which the City of San Jose has deemed the living wage). Alejandro also complains that he never receives the breaks he knows the law provides for, and has to endure constant insults from his manager. He has chosen not to pursue a claim, saying that “I just don’t think that it will do any good.” Similarly, despite his years of experience and knowledge, Bartolome has chosen not to complain about his situation. He is not allowed to take a formal meal hour or any breaks and is regularly sent home early when business is slow. He laments the inconvenience but concedes that he, and others like him without papers, “just have to obey.”

My findings conclude that even when equipped with the knowledge of existing protections and resources, undocumented workers, in particular, may still feel reluctant to come forward and demand better workplace protections. To be sure, increased outreach to vulnerable workers and more robust labor standards enforcement are needed, as several advocates have justly argued. However, I argue that though these efforts are necessary, the underlying dilemma of undocumented status may require a broader set of solutions. The remainder of this article focuses on three narratives that frame the dilemma facing undocumented workers. I argue that

contradictions between what workers like Alejandro and Bartolome say and do stem (at least in part) from their particular legal consciousness as undocumented workers and *not* from a lack of knowledge. As *low-wage* workers, they share most of the same labor protections and confront many of the same motivations and barriers as low-wage documented workers. However, *undocumented workers* also have a unique relationship to these rights, and they consequently draw on them in different ways than do their documented counterparts.

“Quiero Evitar Problemas” (I Want to Avoid Problems)

When a workplace issue arises, any form of claims making requires that workers draw attention to themselves. Approaching an employer is understandably unpleasant for all strata of workers. Low-wage workers, in particular, may be reluctant to come forward for several reasons, including fear of retribution, particularly if they are in a precarious economic situation. I argue that several factors may exacerbate this trend for undocumented workers. Primary among these are the inability to find new employment and the desire to avoid soliciting attention that would risk discovery of their immigration status. To this end, I argue that not all undocumented workers are uninformed, passive individuals living in perpetual fear, but rather strategic agents who have a calculated plan for their time in the United States. By maintaining a low profile and “avoiding problems,” many undocumented workers choose to not deploy their knowledge of workplace rights in order to maintain a modicum of certainty in their lives.

One oft-cited barrier to claims making among undocumented immigrants has been the cost of “being discovered,” sometimes due to direct tips from employers (Avendano and Hincapie 2008). Yet my findings imply that the threat of discovery is perhaps more implicit than

explicit for some workers. None of the workers I spoke to recounted *current* employers who wielded threats of calling immigration authorities, though almost all workers had experienced these threats in the past or known co-workers and family members who had. Nonetheless, these workers were not ignorant of the role their status played and were cognizant of the vulnerable position it placed them in. Julian, a barbecue pit worker in Houston explained, “I imagine the owners *know* that we work with bad papers, and I imagine that this is why we earn such a low wage.” This is not to say that employer abuse was not uncommon. However, explicit references to immigration status were uncommon, and a hostile environment could be maintained even without such threats.

Alejandro recounted how his manager regularly curses his workers. “He’s the type of person that screams at waiters in front of clients, tells the dishwashers that they are stupid, curses them, and tells them that they are worthless...I think he doesn’t like Hispanics...Someone called the Labor Commissioner once. A young woman came, and nothing eventually happened.” Alejandro explained that to speak up would surely get him fired, as he saw this happen to a co-worker.

There was a cook. One Saturday we were very busy...He [the manager] was pressuring us and pressuring us. The cook told him, “I’m doing my best,” and the manager told him, “Fine, then, go home, you’re fired!” The ones that stand up get fired...In fact, he fired another worker who simply told him to *relax*.

Alejandro had not always been complacent. He had tried coming forward once during one of his manager’s tirades. “I told him [in English], ‘I respect you, I want you to respect me.’” His manager simply retorted, “Fine, if you want to forgive me; if not, you know where the door is.” Throughout this entire exchange, Alejandro never once mentioned a direct threat from his employer regarding his immigration status. With a lack of faith in the labor standards enforcement mechanisms, coupled with his fear of losing his job (with two young children at

home), Alejandro simply made a decision to stay. “In reality, I just really need the job, so I stayed.”

It is certainly the case that undocumented workers, just as other precariously placed low-wage workers, fear losing their job. Alejandro admitted, “The treatment is bad; the pay is low.” When I asked if he was fearful due to his immigration status, he retorted that it was not so much *fear* but rather the anxiety of not being able to find another job. “We all know that right now to find another job is difficult.” Unlike another worker who might be willing to take his chances on the open market, Alejandro was reluctant to go through the gamut of verification again. “They go over everything, now that it’s the law. They have to check your Social [Security number] and everything.” With eight years on the job, and only a \$1-an-hour raise in the interim, Alejandro admitted that he earns at least \$2 an hour less than he should. He also never takes breaks and is indignant because he knows the law says he should. In the end, he conceded that sometimes his decision is due to fear, but mostly it is just to “avoid problems.”

Legend of discovery is always in the back of the mind of undocumented workers, along with the fear of getting fired, even without their employers needing to discuss it openly. This is also true for the threat of workplace raids. Both San Jose and Houston are large cities with comparatively little history of immigration raids. None of the workers I spoke with had directly been impacted by a raid.²⁶ Yet the overarching political climate of immigration enforcement in the nation certainly affects some workers. Honorato, an undocumented ten-year restaurant industry veteran in Houston, explained his perspective.

Well, I’ve seen the news, and, well, the position that Mr. Bush is taking, in terms of us illegals. I, more than anything, am afraid that in one of these [raids], they’d get me...I’m

²⁶ Certainly both cities have hosted high-profile immigration raids (Evans 2008; Theriault 2008), but based on interviews with community advocates, this was not perceived to be an immediate or ongoing threat in either city.

not afraid that they would get me and throw me back to my country...but the fear would be to leave my daughter.

Similar sentiments were voiced by undocumented workers in San Jose, an arguably more immigrant-friendly destination and home to one of the largest immigration marches in the country. Aparicio, a prep cook in San Jose, explained, “It’s like a double-edged sword [the marches], because they [the government] already have us, and in that moment could remove us...and then there may start to be more raids.”

Employers are not always the source driving workers’ fear. In fact, several of the workers I spoke with preferred to keep a low profile around their *co-workers*. For example, Aparicio explained that he and others in the kitchen “knew” who had papers and who did not. He described his documented co-workers as “stuck up” and “despotic.” Problems stemmed not from his manager but from his co-workers who had at times even confronted him regarding his immigration status. “They never directly threaten us, but it’s presumed. But what can we do?” Bartolome recited the need to “always respect my co-workers, in order to ‘avoid problems.’” The need to “keep the peace” was not always directed just at the fear of discovery, but at economic insecurity as well. Robledo, an Italian restaurant worker, explained his perspective.

Suppose, for example, three co-workers got in [a] fight, and they go report it at the [human resources] office, and they make them sign some form saying there was a fight, and *that goes into their record*, so when they go to ask for a raise, surely they will look over that.

As a result, keeping a low profile and avoiding problems simply brought a level of stability to what was otherwise a very unpredictable existence exacerbated by economic vulnerability *and* a fear of discovery. For example, Roman, an undocumented San Jose dishwasher who has worked on and off in the United States for over twenty years, explains his approach to minimize conflict and keep a low profile. “The times I’ve come to the United States,

I've tried not to get involved in problems with anyone—not to cause them, nor let people cause me any.” Following this plan, he has been able to come into and leave the United States as he wishes. He admits, however, that his circular existence is becoming more difficult and that the last crossing with his wife left him skeptical that he would want to make her endure the increasingly arduous, and expensive, journey again. For other workers, particularly those who are young and single, it was not the fear of never being able to return to the United States that kept their guard up. It was the fear that they would have to leave before they had reached their goal (either to save a set amount, sustain an ailing parent, or even experience American life). Julian's initial goal, for example, was to earn \$1,700 to pay the *coyote* who had smuggled him across. For now, he explains, “I imagine working, *echarle ganas* [really go for it], save money, and then later, if I want to go back, I'll go back.”

In sum, immigration status is an “unspoken” reality that always hovers, never really needing to be directly articulated. This dovetails with and intensifies the economic insecurity of undocumented workers, rendering claims making an unattractive decision. To draw on Felstiner, Abel, and Sarat's (1980) three-part process of legal mobilization (“naming, blaming, claiming”), the need to “avoid problems” is a strategy that emerges in the “claiming” stage. Oftentimes, workers identify that there is a problem (such as a hostile environment), and are aware that their managers are at fault (for example, Alejandro clearly understood that his manager was not justified in his actions), and yet may make a strategic decision to stop short of confronting their employers or even proceeding with formal claims. Therefore, it is necessary to emphasize that undocumented workers do indeed share with documented workers the need to avoid “rocking the boat.” Claims making is an uncomfortable and risky process. Like other low-wage workers, the undocumented workers I spoke with are economically vulnerable and are most interested in

keeping their job. Yet, I also argue, undocumented status presents a very real instrumental barrier that intensifies the consequences of job loss and presents a distinct risk of discovery. The fear of being “outed” to immigration authorities need not be prompted by an explicit threat but, as just described, can also be catalyzed by hostile co-workers or by a broader political context that puts undocumented workers on alert.

Uncertain Futures

In addition to the practical decision to avoid problems, some undocumented workers may also use their country of origin as a yardstick for measuring whether it’s “worth it” to come forward. Immigration research has long discussed the impact of the immigrant dual frame of reference on work experience (Piore 1979; Waldinger and Lichter 2003).²⁷ When considering their aspirations for mobility, immigrant workers refer *back* to the work conditions in their home countries in order to evaluate their position and look *toward* their eventual return home. Though the dual frame of reference is certainly a shared immigrant experience, my findings show it may play a distinct role for undocumented workers. I argue that the country of origin is not only a point of reference that immigrants may use for “naming” potential grievances but that it also shapes how undocumented workers understand the possibility for investing in a future anchored in the United States. With many obstacles in place, the lack of a viable path to legalization makes it very difficult for undocumented immigrants to envision a solid future in the United States. In the case of the undocumented workers I spoke to, not only did they envision retiring “back

²⁷ Indeed, others have also argued that the dual frame of reference is applicable not only to immigrants but to other legal internal migrants, such as Puerto Ricans (Aranda 2006).

home,” but some even emphatically explained that their careers would not end as low-wage kitchen workers in the United States. In these scenarios, workers recounted a future of entrepreneurship that contrasted drastically from their current positions. In turn, current abuses became endurable in the service of these future dreams.

This is not to say that some undocumented immigrants have not made steps toward investing in a future in the United States. For those undocumented immigrants who have chosen to craft a future in the United States, such as those whose children are US-born, the calculus for claims making has, in fact, intensified their desire to preserve this fragile future. Take, for example, the experience of Benjamin, a San Jose prep cook, and Bonifacio, a Houston restaurant worker. Both men are in their thirties, are married, have young US-born children, and proudly purchased homes. Yet Benjamin is an undocumented immigrant, while Bonifacio is a legal permanent resident preparing to naturalize. Bonifacio explained his plans to me to me as follows:

I've put forth my plan, and well, up to now it's going well. It's been barely a month since I bought my own house, and I told them [my family in El Salvador] that I'm not sure how I am going to bring them. They are going to come, but I don't want them to come without having a place to stay, so my plan was to get a house so they had a place to arrive.

After working only six months at a chain restaurant, Bonifacio asked for a transfer to a location closer to his house. After two years he asked for a leave of absence to visit family in El Salvador, and returned to his position. He has also managed to increase his wage from \$5.75 to \$7.50 per hour. In contrast, Benjamin describes his position quite differently. Though he declares that he is never afraid to tell his employer about an injury (“if it's grave”), and has no fear of impending raids, what he does fear is his ability to support his family long term.

Yeah, sure [I'm afraid]. Because, you know, if you have a family here, and they come and deport you?...People who have a family [like me], are afraid. Because at the end of it all, if you are single you can leave and return two or three times, but married guys have to make sure their family eats, and if you have bought a home, what will happen with your payments? Who ensures that you can even return? Those are the details I worry about.

There are also many other undocumented workers who either lack an “anchor” to or are otherwise unable to envision a future (albeit uncertain) in the United States. For these workers, future aspirations in their home country supplant any narrative that describes them as low-wage workers who have been taken advantage of. Therefore, while these findings corroborate previous studies that find that all immigrants employ a dual frame of reference when assessing their US work experience (Piore 1979; Waldinger and Lichter 2003), I argue that the lack of a viable path to success in the United States for undocumented workers intensifies this narrative, not only influencing aspirations for retirement but also transforming how some undocumented workers see themselves: not as low-wage victims of employer abuse but as strategic entrepreneurs.

Certainly, many older undocumented workers see retirement “back home” as their only option. In between his work shifts, Marco, an older undocumented worker in a popular restaurant chain in San Jose, bluntly explained that he knows he will be unable to collect on the years of Social Security that he has paid into and that retirement in the United States will be impossible. His plan is to eventually return to Mexico, and for now he will work to save up, “no matter what it takes.” Other workers were not waiting until retirement to return and had plans to spend a significant part of their careers back home, not as low-wage restaurant workers but as respected entrepreneurs and home owners. For example, Eduardo, a young undocumented prep cook in San Jose, explained that his goal is to stay in the United States for a few years, then ultimately return to Mexico to open an aluminum fabrication plant. Similarly, Daniel, also an undocumented prep cook in San Jose, left his position as a restaurant manager back in Mexico to work for a while here and put away some money. Like Eduardo, his plans are to save up enough cash to buy equipment and then open his own food venue when he returns to Mexico. While both of these undocumented workers understood that their current conditions were not ideal, and in many

cases illegal, they saw their time in the United States as fleeting, and they were resolved to endure those conditions in the service of a bigger cause. They would not always be dishwashers and cooks, but owners and managers in their own country; the tables would one day be turned. They would work “like a dog” for the time being in the United States and then return home in order to live out the American dream.

Research shows that these aspirations to return to home countries will likely not come to fruition. In fact, Jacinto, one San Jose worker who I have maintained contact with, had been working up to sixty-hour weeks (though mitigated in recent months by the economic downturn) while also attending a local junior college to study English and animation software. Jacinto studied veterinary medicine in Mexico but came to the United States to earn money for his family, whose coffee cultivation business had been devastated in recent years because of falling prices and free trade competition. He had planned to leave within six months of when we first met three years ago. Yet he has remained and continues to work and go to school. He fears that any decision he makes now will likely be permanent. To be sure, many of the workers like Jacinto who talked about returning never will unless forced to do so. Rather than stem the tide of migration, increased militarization of the US-Mexico border has led to a decrease in seasonal, circular, and temporary migration and to an increase in permanent (albeit undocumented) stays (Reyes, Johnson, and Van Swearingen 2002; Massey, Durand, and Malone 2003). But what is significant is that these aspirations to return shape how undocumented workers think about their lives in this country, in the future and in the present. With a hypothetical future centered elsewhere, current conditions may be seen as largely temporary and endurable, making complaining and filing a claim less urgent. To my surprise, I found evidence of this narrative

with workers I interviewed in both sites, despite the more labor-friendly policy context in California.

“*Venimos Para Trabajar*” (We Come to Work)

Finally, my findings suggest that in addition to posing a significant instrumental barrier to claims making via the desire to “avoid problems,” and by injecting sufficient uncertainty into a life in the United States (such that one chooses either to endure conditions in the service of a future back in the country of origin or to do everything possible to maintain a fragile one here), undocumented status may also play a fundamentally constitutive role in claims making by shaping a worker’s sense of belonging in the United States. This sense of belonging, I argue, is expressed most vividly in the *work ethic* many undocumented workers describe and demonstrate. This work ethic, workers I spoke to explained, is what sets them apart from their native-born and documented counterparts, and, in fact, ultimately justifies their undocumented presence here.

In a recent article in *Law & Social Inquiry*, Susan A. Munkres (2008) argues that sociolegal scholars need to understand not only the *rights* that the law provides but also the *obligations* that they imply. While the subject of Munkres’s study is privileged managers, not low-wage workers, this dialectical analysis is also germane to our understanding of how marginalized groups such as undocumented workers may understand the role of the law in their own lives. Rather than understand their legal position as *marginalized*, many of the undocumented workers I spoke with focused on the services their labor provided the United States. A common narrative offered was that “*uno se tiene que aguantar, por eso venimos, para trabajar*” (we have to bear it, because that is what we come for, to work). For example, Julian, a

Houston prep cook, regularly works sixty-hour weeks, sometimes ten hours a day, and up to fourteen or fifteen hours at a time. While he does get paid overtime (which he knows the law requires), with a base rate of \$5.15 an hour, he welcomes the extra hours and never says no. When asked whether or not he tires of this schedule and does he sometimes want a day off, he answered, “Well yes, one gets tired, but that’s what we come for.”

The role of “work ethic” for claims making is not a new subject for law and society scholars. Referring to the experience workers have with the Family and Medical Leave Act, Catherine Albiston (2006) states that “the material practices and cultural meanings of work operate together to define what work and being a good worker mean” (60). Gordon and Lenhardt (2008) offer what is perhaps the most comprehensive sociolegal analysis of the role that work can play for undocumented workers’ sense of belonging.²⁸ Drawing on the seminal work of Judith Shklar (1991), who situates the “right to earn” as central to American inclusion in the polity, Gordon and Lenhardt (2008) resituate this perspective to focus on the role of *work* for one’s sense of *belonging*. They argue, “Equally important to one’s dignity and self-respect is the ability to control how one’s labor is defined and to have some authority over the place and pace of that labor” (1192, note 136).

In particular, Gordon and Lenhardt point to the divergent understanding of belonging between African Americans and Latino immigrants—and the implications this has for conflict and solidarity—as Latino immigrants may juxtapose their own existence as “hard workers who are not criminals” to stereotypes of African Americans (1219, note 269). My findings certainly

²⁸ This research does not provide ethnographic detail on the lived tensions between African American and Latino immigrant co-workers, which are becoming increasingly relevant in new destinations in the South. However, other studies, including Gordon and Lenhardt (2008), provide excellent insight.

support Gordon and Lenhardt's conclusions. When asked why they chose not to come forward about long days or dangerous working conditions, many undocumented workers repeatedly explained that to do so would simply not be characteristic of a *good* worker, championing their willingness to do work others would not. For example, Benjamin contrasted his work ethic to his view of the work ethic of African Americans.

In this country, there are blacks not working...I've noticed that. The blacks are out there gang-banging, always in trouble with the police...involved in drugs. Mexicans too...instead of promoting our good culture, they are in the streets, drinking, smoking. These people have papers, they know English, [and] in fact they probably learned English as a child, so why didn't they invest their free time in something useful?

What is striking from these exchanges is that all of the workers I spoke to were employed in incredibly homogenous kitchens, where the overwhelming majority of their co-workers were also Latino immigrants. None cited an African American co-worker, and no worker I spoke to confirmed even interacting with African Americans or residing near them. Therefore, I argue that a multiethnic setting is not required for these dynamics to thrive (Oliver and Wong 2003). The popular hypercriminalized stereotype of African Americans, as well as of native-born Mexican Americans, was sufficient to fuel this image of what a good worker was not.

Furthermore, it is important to note that African Americans were not the only comparison point invoked by undocumented workers I spoke to. To complicate Gordon and Lenhardt's (2008, 1226) discussion of how Latino immigrants may ally themselves more closely with whites, my findings revealed that whites, too, were used as a point of comparison. For example, Federico, an undocumented San Jose restaurant worker, explained,

A lot of times, *los gabachos* [a derogatory term for Americans] just don't work hard; they just don't seem to have the capacity to work faster. You see, I have this job, and I may not be happy with it, but I need to work, I need the money. Plus the managers are always watching us, seeing who is a good worker and who isn't.

This certainly does not denote a uniformly negative relationship with whites, but it does make the relationship between the two communities more complex.

Moreover, my findings suggest that immigration status may cut across any sense of ethnic solidarity. This too is not a new finding. Immigration scholars offered early critiques on the limits to ethnic solidarity (Sanders and Nee 1987), and Gordon and Lenhardt (2008) also caution that the Mexican American experience should not be confused with that of new migrants (1210, note 239). Indeed, undocumented respondents compared themselves not only with native-born Latinos but with *documented* Latino immigrants as well, which some perceived to have become “complacent.” For example, Jaime, an undocumented Houston worker, explained, “If you want to work, and get ahead, you have to give it effort. We’re not like the people who have papers, who don’t hurry, and they just never move things forward.” When I asked another San Jose worker how he thought having papers might change his life, he responded tentatively that others would maybe think he thought he was better than everyone else. “Well, if I would get them, well, maybe I would become *presumido* [stuck up] like those who have them; I’m not sure if my attitude would change. I am not sure if it would be a positive or negative thing.”

Consequently, many of my undocumented respondents saw amnesty or legalization as not only unlikely but also as secondary to their more pressing need for steady work, regardless of the conditions. Antonio, an undocumented San Jose worker, similarly commented, “They [papers] don’t interest me. What interests me is that they give me work. Papers don’t interest me. . . . Sure, it would be good if they gave us papers, but if they don’t, at least we have a chance to work.” Armando also seemed skeptical about the benefit of an amnesty and even expressed concern about the many “undeserving” immigrants whom it would benefit. He explained, “In my case, no, I don’t want citizenship, just that they give me a work permit and a visa to come and go

freely.” These accounts demonstrate how undocumented status shapes the value some immigrant workers feel they have as members of US society. Rather than view themselves as equal workers, my respondents see their position in the United States as based on an understanding that they will work harder and longer than other Americans. As such, while rights and protections may be available, to access them would contradict their position as exceptional workers.

IV. CONCLUSION—THE DIFFERENCE THAT PAPERS MAKE

Throughout this article I have discussed three narratives that some undocumented workers employ when discussing their workplace rights, and I have argued that these represent not only instrumental effects of undocumented status but constitutive ones as well. While these findings do not negate the additional barriers posed by an underresourced labor enforcement bureaucracy, workers’ lack of knowledge, and direct employer intimidation, I have argued that undocumented workers may face a greater conundrum in the process of claims making. Undocumented workers are granted economic membership but not formal recognition as full civic members in the polity. They are not legally permitted to reside here, regardless of the rights and protections that federal, state, and local governments choose to extend to them. This creates a cognitive dilemma whereby undocumented immigrants lack the right to *live here*, yet are told that they have the right to be protected, and so are left wondering if, indeed, they have the *right to have rights* (Somers 2008).

In contrast, the documented workers I spoke to (ten of the forty-one) narrated a fundamentally different relationship to their rights. In general, the legal, permanent residents and naturalized US citizens were less afraid to speak up and believed that their actions would

produce some change. Even if past efforts had failed, these workers felt relatively more optimistic that their voices would be heard. For example, Delia, a young legal permanent resident who is eagerly preparing to naturalize one day, explained her experience with not getting paid for the full hours she worked, despite bringing the matter to the attention of her manager on an earlier occasion. She described a situation she was having at work with inaccurate paychecks:

I got so mad that I told the general manager, “Maybe half an hour is not that much, but simply that attitude is going to make me lose confidence in the other days. . . . What confidence am I supposed to have?” I told them [my co-workers], check your schedule, count the hours you work and the ones they are paying you for, because this happened to me. . . . No one should be giving away their time and not getting paid for it!

Delia eventually received the pay for the work she completed. Similarly, Tobias, a prep cook in Houston, who currently has a temporary work permit and is waiting for his green card to arrive, recounted several instances of his boss’s abusive behavior. He acknowledged that many of his undocumented co-workers “*se dejan*” [don’t stand up for themselves]. He explained himself this way, “If [the boss] talks to me that way, I’ll leave.... I don’t know about other people, they don’t say anything. I can find work wherever; most of the folks I know work in restaurants.”

These findings should not be taken to mean that documented Latino immigrants do not face challenges when confronting their employer. Certainly, even the documented workers I spoke with were uninterested in engaging in unnecessary conflict, and not all of the documented workers I talked with had actually spoken up regarding issues at work. For example, Apolo, a long-time cook in San Jose who has a green card, always takes his breaks and does not hesitate to come forward when an accident occurs. Yet, he concedes, he knows he should earn more. If his English were better, perhaps, it would be easier. He explains, “More than anything, my

problem is English. If you know English, papers come second [speaking of his co-workers]. You can communicate and go further.” For the time being, he relies on a friend to translate.

It is erroneous to imply that simply because two groups of individuals reach the same conclusion, that is, do not engage in claims making, their rationale and potential for doing so is the same. The key difference this article has attempted to highlight is the ways in which undocumented status intensifies existing barriers, creates new ones, and shifts the calculus of claims making for workers. Immigration status, indeed, is only one part of a greater web of problems that nonunionized low-wage workers face. Yet living in the shadows further marginalizes and blocks mobility at the workplace, while creating distinct understandings of membership and belonging (Coutin 1999). Bureaucratic and political barriers pose a looming threat as well (Bobo 2008), but these findings suggest that without addressing the underlying role of federal immigration policy, state and local efforts to improve access to rights may ultimately fall short.²⁹

It is also a mistake to conclude that all undocumented workers have the same relationship to their workplace rights, or that none engage in claims making. Ongoing research I am conducting with Spanish-speaking injured workers in the Silicon Valley in California has revealed that many workers do come forward to file workers’ compensation claims. Preliminary findings show that the extremity of the injury and access to legal counsel are mitigating factors.

²⁹ Furthermore, policy makers should be aware of the limitations of claims-driven enforcement paradigms, which place the weight of enforcement on those who are affected. A recently created taskforce in Britain, called the “Vulnerable Worker Enforcement Forum,” articulated a similar challenge by British labor standards enforcement agencies (Department for British Enterprise and Regulatory Reform 2007). Budgetary constraints, understandably, limit the ability of labor standards enforcement agencies to take a more proactive enforcement strategy. However, by placing the entire onus on the affected worker, not only are fewer workers likely to come forward, but as Bumiller (1992) argues, the act of claims making also requires that workers first self-identify as victims, an undesirable cognitive leap.

Knowing another similarly positioned claimant also seems to encourage workers through the process. Future research should continue to investigate why these workers decide to cross the threshold of filing a claim and what aids them in their efforts to do so.

In sum, this article has argued that one instrumental tool for employer coercion, even in the best-case scenarios where workers have knowledge of their rights, is that undocumented status may still fundamentally shape a worker's calculus regarding claims making. Certainly, as I have demonstrated, undocumented workers, like other low-wage workers, are risk averse and, in fact, the current recessionary climate may impact this trend.³⁰ I have also argued that undocumented status fundamentally shifts the legal consciousness of these workers, and any effort to improve their working conditions must also consider immigration policies that currently make it nearly impossible for most low-skill workers to legally enter the United States. I offered three ways in which these effects operate: (1) by intensifying this aversion to conflict due not only to a fear of job loss but also the looming risk of discovery and deportation; (2) by injecting substantial uncertainty into life in the United States, which in turn frames current work experiences as temporary and endurable; and (3) by placing *work* at the center of an undocumented worker's sense of belonging, thus rendering claims making antithetical to what becomes valorized as an extreme work ethic. Most surprisingly, despite the vastly different labor policies in the two states where I interviewed workers (California and Texas), I found experiences to be amazingly similar across these two contexts. Undocumented workers may

³⁰ However, other findings have also suggested that in looser economic climates (i.e., higher unemployment rates), legal mobilization may in fact increase, as workers have fewer alternative options for employment, and instead turn to the claims-making process to improve their current conditions (Donohue and Siegelman 1991; Wakefield and Uggen 2004).

indeed be the “canary in the coal mine” for uncovering the fragility of existing paths to claims making.

As stratification scholars move forward to examine the unequal structural position of undocumented workers, certainly additional aggregate data is also needed not only on economic outcomes but also on how workers do or do not actively shape their own reality through claims making, both formal and informal. Gaining a greater understanding of the role of legal status and citizenship must be central to this endeavor, given that more than one in six workers is foreign born, and over 5 percent of all workers are unauthorized. Aggregate statistical analyses have the distinct advantage of being able to isolate the net impact of characteristics, such as immigration status, but are ultimately unable to unpack the black box that leads to unequal outcomes. Therefore, sociolegal scholars should continue to uncover the mechanisms by which poor outcomes are institutionalized and perpetuated, and the role that the law plays in this process. This article has contributed to our understanding of the ways in which undocumented status shapes the work experiences of immigrant workers by specifying the structural and psychological barriers that illegality produces.

Table 1

TABLE 1.
Profile of Case Studies: San Jose and Houston (2005)

	San Jose, CA		Houston, TX	
Total State Population	36,457,549		23,507,783	
Total City Population	100%	916,220	100%	2,074,828
One Race (%) (Selected)				
White	47.0	430,286	52.3	1,092,677
Black or African American	2.9	1,581	24.7	4,310
Asian	30.5	279,350	5.0	103,557
Hispanic/Latino of any race (%)	32.2	294,694	41.9	868,782
Foreign-Born (%)	38.6	353,905	27.8	576,035
Europe	5.4	18,948	3.8	22,076
Asia	57.8	204,525	15.7	90,303
Africa	1.5	5,342	3.8	21,763
Oceania	0.3	967	.1	689
Latin America	34.0	120,387	75.8	436,352
Northern America	1.1	3,736	.8	4,852
Industry (%)				
Agricultural, forestry, fishing and hunting, mining	.2	692	2.1	20,419
Construction	7.6	33,798	12.0	116,914
Manufacturing	20.8	92,392	8.6	84,420
Wholesale trade	3.0	13,331	4.1	39,629
Retail trade	10.1	44,955	9.9	96,614
Transportation and warehousing; utilities	3.2	14,055	5.6	54,893
Information	3.4	15,301	1.5	14,246
Finance and insurance; real estate, rental, and leasing	5.8	25,787	6.8	66,390
Professional, scientific, management and administration; waste management services	15.1	67,268	13.9	136,268
Educational services; health care and social assistance	15.9	70,754	17.9	175,350
Arts, entertainment, recreation, accommodations, and food services	8.2	36,462	9.2	89,636
Other services, except public administration	4.3	19,232	6.1	59,751
Public administration	2.4	10,709	2.3	22,853
Median Household Income	\$73,804		\$39,682	
Family Purchasing Power*	\$45,354		\$53,233	
Families Living in Poverty (%)	7.7		17.0	

Source: 2006 American Community Survey (US Census Bureau 2009)

* Based on "Money Magazine Best Places to Live 2006" (Money Magazine 2006)

Table 2

TABLE 2.
Labor Policy Context in California and Texas

	Fed.	California	Texas
Minimum Wage (2005)	\$5.15	\$6.75	\$5.15
Minimum Wage (7/24/09)	\$7.25	\$8.00	\$7.25
Unemployment Rate, Seasonal Adj. (Feb. 2006)	4.8	5.0	5.0
Unemployment Rate, Seasonal Adj. (June 2009)	9.5	11.6	7.5
Union Membership (2005)	12.5	16.5	5.3
Union Representation (2005)	13.7	17.8	6.2
DOL, Wage and Hour Division (2005)		Back Wages Collected: \$166,005,014 Employees Receiving Back Wages: 241,379 Complaints Registered: 30,375 Enforcement Hours: 969,776	
Tot. DOL cases closed (2005)		14,249 employees	17,541 employees
State Wage and Hour claims process	~	In-person (21 CA Dept. of Labor Standards Enforcement, or DLSE, field offices)	Mail-in (1 TX Workforce Commission, or TWC, office in Austin, TX)
Total cases/claims by state agency (2005) [§]	~	Total # cases docketed: State: 40,277 San Jose office: 3,533	Total # of claims filed: State: 2,309 Houston office: 713
Total wages collected by state agency (2005)	~	State: \$43,635,207 San Jose office: \$6,916,177	State: \$219,677 Houston office: \$80,537
Workers Comp. required?	~	Y	N
OSHA state system?	~	Y	N
"Right to Work" state?	~	N	Y
Total Title VII charges filed with EEOC or FEPA ^{§§}	98,418	State: 6,585 San Jose (MSA 7400): 479	State: 8,071 Houston (MSA 3360): 2,011

Source: Data are from the Bureau of Labor Statistics and via public records requests submitted to the Equal Employment Opportunity Commission, the California Labor Commissioner, and the Texas Workforce Commission. The Department of Labor claims information are from author's tabulations of data from the Wage and Hour Investigative Support and Reporting Database for cases closed obtained via a Freedom of Information Act request.

[§] Federal and state wage and hour agencies use disparate reporting terminology and categorization, making statistical comparisons difficult. However, based on the legal and institutional differences between these two cases, it is clear that California has a more robust set of workplace protections.

^{§§} While the state wage and hour offices do not cross-file their claims with the Department of Labor Wage and Hour Division, state and local "Fair Employment Practices Agencies" (FEPA) do cross-file claims filed under federal protection with the Equal Employment Opportunity Commission.

Table 3

TABLE 3.
Profile of Interviewees

	City	Age*	Gender	Country of Origin	Status
1	Houston	18–19	F	Mexico	Undocumented
2	Houston	20–24	M	Mexico	Undocumented
3	Houston	20–24	M	Mexico	Naturalized Citizen
4	Houston	25–29	M	El Salvador	Legal Permanent Resident
5	Houston	25–29	M	Mexico	Undocumented
6	Houston	25–29	F	Mexico	Legal Permanent Resident
7	Houston	30–34	M	Mexico	Undocumented
8	Houston	30–34	M	Mexico	Undocumented
9	Houston	35–39	M	El Salvador	Legal Permanent Resident
10	Houston	35–39	M	Mexico	Undocumented
11	Houston	35–39	M	Mexico	Temporary Work Permit
12	Houston	40–44	M	Mexico	Undocumented
13	Houston	40–44	M	Mexico	Undocumented
1	San Jose	18–19	M	Mexico	Undocumented
2	San Jose	20–24	M	Mexico	Undocumented
3	San Jose	20–24	M	Mexico	Undocumented
4	San Jose	20–24	M	Mexico	Undocumented
5	San Jose	20–24	M	Mexico	Undocumented
6	San Jose	20–24	F	Mexico	Undocumented
7	San Jose	25–29	F	Mexico	Legal Permanent Resident
8	San Jose	25–29	M	Mexico	Undocumented
9	San Jose	30–34	F	Mexico	Legal Permanent Resident
10	San Jose	30–34	M	Mexico	Undocumented
11	San Jose	30–34	M	Mexico	Legal Permanent Resident
12	San Jose	30–34	M	Mexico	Undocumented
13	San Jose	30–34	M	Mexico	Undocumented
14	San Jose	30–34	M	Mexico	Undocumented
15	San Jose	30–34	M	Mexico	Undocumented
16	San Jose	30–34	M	Mexico	Undocumented
17	San Jose	30–34	M	Mexico	Undocumented
18	San Jose	30–34	M	Mexico	Undocumented
19	San Jose	30–34	M	Mexico	Legal Permanent Resident
20	San Jose	35–39	M	Mexico	Undocumented
21	San Jose	35–39	M	Mexico	Undocumented
22	San Jose	35–39	M	Mexico	Undocumented
23	San Jose	35–39	M	Mexico	Undocumented
24	San Jose	40–44	M	Mexico	Undocumented
25	San Jose	45–49	M	Mexico	Undocumented
26	San Jose	45–49	M	Mexico	Undocumented
27	San Jose	55–59	F	Mexico	Legal Permanent Resident
28	San Jose	55–59	F	Mexico	Naturalized Citizen

* I did not query interviewees for exact ages for reasons of confidentiality, but they were asked to self-identify with an age range.

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