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## The Plight of Immigrant Day Laborers: Why They Deserve Protection under the Law.

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**THE PLIGHT OF IMMIGRANT DAY LABORERS: WHY THEY  
DESERVE PROTECTION UNDER THE LAW**

**ANALIZ DELEON-VARGAS\***

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“No matter what you’re doing, you run. It doesn’t matter if you’re 100 feet or just two feet away, you run. Your life depends on it. Your life depends on a random stranger who could kill you, will probably disrespect you, and most likely will pay you much less than you deserve. But even those prospects are better than the ones you used to have.”<sup>1</sup>

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\* St. Mary’s University School of Law, Candidate for J.D., May 2008; University of Texas at Austin, Bachelor in Business Administration, December 2004. I want to thank all my family and friends for their constant love and support throughout my life. In particular, I would like to thank my husband and best friend Tony who always believed in me. I would also like to thank my parents, Blanca and Margarito DeLeon who are and will always be my heroes. Thanks too, to my sister, Blanca Nelly, who may not always agree with me but always encourages me. I love you all very much.

1. Gustavo Arellano, *Diary of a Day Laborer*, OC WEEKLY, Aug. 16, 2001, <http://www.ocweekly.com/features/features/diary-of-a-day-laborer/22473/> (displaying a quote from an immigrant worker). This quote was taken through an experiment by a journalist who posed for a week as an immigrant day labor for the article. *Id.*

## I. INTRODUCTION

The majority of Americans do not know *jornaleros*,<sup>2</sup> day laborers, exist. Day laborers constitute a portion of America's gardeners, home painters, waiters, and factory workers.<sup>3</sup> Not only do day laborers perform some of the heaviest labor at the cheapest price, but they also contribute to the economy by paying for housing, food, clothes, and taxes.<sup>4</sup> *Jornaleros* make up a substantial part of the American population and are continually in search of steady employment.<sup>5</sup>

## A. Demographics

In 2004, the UCLA Center for the Study of Urban Poverty released a survey that revealed "on any given day [in the United States], approximately 117,600 workers are either looking for work as day laborers or are working as day laborers."<sup>6</sup> Latino immigrants make up the majority of the day labor population.<sup>7</sup> Ninety-eight percent are male.<sup>8</sup> Fifty-nine percent of day laborers are born in Mexico; twenty percent are born in Central America; and seven percent are born in the United States.<sup>9</sup> Seventy-five percent of the day labor workforce is made up of undocumented

2. Bill Carder, *Day by Day Laborers Seek Work on the Westside*, BERKELEY DAILY PLANET, June 4, 2004, available at <http://www.berkeleydaily.org/article1.cfm?archiveDate=06-04-04&storyID=18994> ("There may be no easy answers to the problems faced by the jornaleros, but . . . the first step is relatively simple. 'When they treat us as human beings, with respect, as people trying to make a life for themselves, then things might change,' [a day laborer] said. 'We just want to be equal, to be treated like everyone else.'").

3. Ndlon.org, Declaration from the Day Labor Community Regarding Legalization, <http://www.ndlon.org/docs/legalizaEN.htm> (last visited Nov. 15, 2007) ("We the day laborer community, men and women, keep gardens green, homes painted, restaurants open, factories in production, and homes and buildings clean and safe. [We] are the hands that build this nation because we take on the dirtiest, most dangerous, and most backbreaking work.").

4. Ndlon.org Declaration from the Day Labor Community Regarding Legalization, <http://www.ndlon.org/docs/legalizaEN.htm> (last visited Nov. 15, 2007) (explaining that despite the backbreaking work immigrant workers partake in, they are still vulnerable and susceptible to inhumane working conditions).

5. See ABEL VALENZUELA, NIK THEODORE, EDWIN MELENDEZ & ANA GONZALEZ, ON THE CORNER: DAY LABOR IN THE UNITED STATES (2006), available at [http://www.sscnet.ucla.edu/issr/csup/uploaded\\_files/Natl\\_DayLabor-On\\_the\\_Corner1.pdf](http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf).

6. *Id.* at i ("This portrait of day labor in the United States is based on a national survey of 2,660 day laborers. These workers were randomly selected at 264 hiring sites in 139 municipalities in 20 states and the District of Columbia.").

7. *Id.* at iii.

8. *Id.* at 17.

9. *Id.* (stating that day laborers tend to be recent immigrants because of those surveyed, nineteen percent moved to the United States less than one year before being interviewed).

immigrants, and eleven percent of those illegal immigrants have an application pending for a change in their immigration status.<sup>10</sup>

While an ample amount of day laborers illegally enter the United States,<sup>11</sup> they do not migrate in an effort to hurt or undermine the laws of this country. In fact, day laborers cite job opportunities as their primary reason for immigrating to the United States.<sup>12</sup> In their home countries, most day laborers worked in the agricultural sector, which provided low wages and unstable employment.<sup>13</sup> As a result, they moved to the United States in an effort to afford better lives for themselves and their families. In many ways, day laborers resemble any average working American. Thirty-six percent of day laborers are married, and approximately sixty-three percent have children.<sup>14</sup> Day laborers are also active in society; fifty-two percent attend church regularly, and twenty-six percent participate in community work centers.<sup>15</sup>

Although they migrate for a chance to improve their lives, day laborers remain vulnerable in terms of pay and working conditions due to their immigration status.<sup>16</sup> One in five day laborers suffer a work-related in-

10. ABEL VALENZUELA, NIK THEODORE, EDWIN MELENDEZ & ANA GONZALEZ, *ON THE CORNER: DAY LABOR IN THE UNITED STATES* 17 (2006), available at <http://www.uic.edu/cuppa/uicued/Publications/RECENT/onthecorner.pdf> (“However, about 11[%] of the undocumented day-labor workforce has a pending application for an adjustment of their immigration status.”).

11. *Id.* (“Three-quarters of the day labor work force are undocumented migrants.”).

12. *Id.* at 18 (“The most common reason reported by day laborers for why they traveled to the cities and towns where they are now working as a day laborer is that they heard that job opportunities existed (46%).”).

13. *Id.* (“Throughout Mexico and Central America, [the agricultural] sector pays very low wages and has been undergoing a protracted period of industrial restructuring which has brought about mounting job losses across the region.”).

14. *Id.* (“A significant number of day laborers are either married (36[%]) or living with a partner (7[%]), and almost two-thirds (63[%]) have children.”).

15. ABEL VALENZUELA, NIK THEODORE, EDWIN MELENDEZ & ANA GONZALEZ, *ON THE CORNER: DAY LABOR IN THE UNITED STATES* iii (2006), available at <http://www.uic.edu/cuppa/uicued/Publications/RECENT/onthecorner.pdf> (“Day laborers are active members of their communities. Half (52[%]) of all day laborers attend church regularly, one-fifth (22[%]) are involved in sports clubs and one-quarter (26[%]) participate in community worker centers.”).

16. *Id.* at 10 (“Although the majority of day-labor assignments pays \$10 an hour or more, the monthly and yearly earnings of most day laborers place them among the working poor.”) “Perhaps the best chance for these workers to escape poverty-level wages is to improve their qualifications through on-the-job training in the day-labor market, thereby increasing their job opportunities over the long run.” *Id.* at 21. See also Gustavo Arellano, *Diary of a Day Laborer*, *OC WEEKLY*, Aug. 16, 2001, <http://www.ocweekly.com/features/features/diary-of-a-day-laborer/22473/>.

jury, and many continue to work in pain.<sup>17</sup> To some extent, the type of jobs day laborers accept explains this high statistic. Many day laborers work in the construction industry, a field recognized for high levels of worker injuries.<sup>18</sup> As construction workers, day laborers are exposed to additional harm because they work with poor equipment or hazardous chemicals, lack protective gear, and receive little or no safety training.<sup>19</sup> To further illustrate, many day laborers take jobs that consist of stripping lead paint or roofing a house in the rain, primarily because they need money or it is unfortunately too good of an opportunity to surpass.<sup>20</sup> As a result, day laborers fail to speak out when they experience injustice or inhumane conditions.<sup>21</sup>

### B. *The Centers and Hiring Sites*

Day labor centers serve as a useful resource to aid day laborers, either in an effort to fight injustice or as a locale to meet a potential employer. Approximately seventy-nine percent of day laborers congregate at informal hiring halls to look for work, while twenty-one percent of them use formal hiring halls.<sup>22</sup> Informal sites are best described as unregulated locations where workers gather outside of frequented businesses, parking lots of home-improvement stores, popular street corners, or gas sta-

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17. ABEL VALENZUELA, NIK THEODORE, EDWIN MELENDEZ & ANA GONZALEZ, ON THE CORNER: DAY LABOR IN THE UNITED STATES 12 (2006), <http://www.sscnet.ucla.edu/issr/csup/index.php> (“[S]ixty-eight percent of day laborers have worked while in pain, yet another indication of their dire need for employment.”).

18. *Id.* (noting the construction industry is a field recognized for higher risks of injury). “[T]he construction industry has always employed a large share of on-call workers who are hired on short notice for short-term projects.” *Id.* at 1.

19. *Id.* at 20 (stating day laborers suffer from exposure to additional harms than other construction workers). “A substantial segment of this workforce is marginalized and in a vulnerable position. Lacking legal immigration status yet in urgent need of earning an income to support themselves and their families, many day laborers find themselves exposed to the vagaries of a labor market that is rife with violations of basic labor standards.” *Id.*

20. *See id.* at 20–22 (noting that for some day laborers, high risk jobs serve as the best job opportunity available).

21. *See id.* at 20–22 (regarding day laborers’ failure to speak out against injustice). [Day labor is] the employment of last resort, a source of income following job loss, and pathway into the mainstream economy.” *Id.* “Even when employers do not make these threats overtly, day laborers, mindful of their status, are reluctant to seek recourse through government channels.” *Id.*

22. ABEL VALENZUELA, NIK THEODORE, EDWIN MELENDEZ & ANA GONZALEZ, ON THE CORNER: DAY LABOR IN THE UNITED STATES 4 (2006), available at <http://www.uic.edu/cuppa/uicued/Publications/RECENT/onthecorner.pdf> (“One-third of all sites are small sites (with 25 workers or less), 37[%] are medium sites (with 26 to 50 job seekers), 23[%] are large sites (with 51 to 100 job seekers) and 7[%] are very large sites (with more than 100 job seekers).”).

tions.<sup>23</sup> Formal sites, on the other hand, are usually designated buildings created by communities, governments, and religious organizations, where workers and employers can meet and provide basic accommodations and support.<sup>24</sup>

Central Texas Immigrant Worker Rights Center (CTIWoRC), based in Austin, Texas is a classic model of a day labor center. CTIWoRC works with day laborers to educate workers of their rights and address some of their concerns.<sup>25</sup> In June 2006, CTIWoRC represented several underpaid janitors in a suit against Target stores and an Oklahoma-based company, Jim's Maintenance & Sons Inc.<sup>26</sup> The defendants employed the janitors and failed to pay them the federally-mandated minimum wage of \$5.15 per hour or provide them with overtime pay.<sup>27</sup> Although the lawsuit does not address the workers' undocumented immigrant status, the suit reveals the unfair treatment the workers received.<sup>28</sup> In addition, CTIWoRC works with representing clients in similar cases and providing day laborers with the help and information they need and deserve.<sup>29</sup>

### C. *Immigration Debate*

Any current or proposed immigration law would greatly affect the rights of day laborers because day laborers are made up primarily of undocumented immigrants. A bill proposed in Congress in 2005, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005,<sup>30</sup> increased attention on immigrant workers and day labor centers. The bill makes it a criminal offense to provide assistance to undocumented immi-

23. *Id.* (describing different types of informal hiring sites frequented by day laborers).

24. *Id.* at 6–7 (providing additional information concerning formal day labor hiring sites). “Available amenities and services typically include restrooms, drinking water, places to sit, telephones, classrooms, outreach to employers and parking facilities.” *Id.*

25. See Austin Day Laborers' Big Victory, <http://www.equaljusticecenter.org/Stop-Austin-Day-Labor-Ban.htm> (last visited Nov. 14, 2007) (conveying the recent accomplishments this center achieved for day laborers).

26. Melissa S. Monroe, *Janitors File Suite Against Area Target Stores: Chain is Accused of Skirting Overtime and Minimum Wage Laws*, SAN ANTONIO EXPRESS-NEWS, June 30, 2006, at 1A (explaining a suit involving nine Target stores in San Antonio and five in Austin).

27. *Id.* (“The plaintiffs said they received no overtime pay for those long hours, even though federal law requires employers to pay overtime wages at [1.5] times the regular rate of pay for any hours over 40 per week.”).

28. *Id.* (describing the employees as “vulnerable and easily exploited”).

29. *Id.* (“Beardall, who represents the Equal Justice Center in Austin, said lawyers there have won about \$500,000 in unpaid wages in similar cases.”).

30. Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005) (as passed by House, Dec. 16, 2005).

grants and requires “entities that assist workers in finding jobs to verify the employment authorization status of all workers.”<sup>31</sup>

Additionally, the proposed reform led to a heightened level of scrutiny towards day laborers and their employers and sparked competing arguments concerning day labor centers. Opponents of day labor centers fail to see the need for immigrant workers and see immigrants work as a threat to the economy. Moreover, opponents of undocumented workers argue that illegal immigration lowers wages and deteriorates the working conditions for American citizens.<sup>32</sup> In fact, Wehirealiens.com is a website dedicated to exposing companies and individuals who hire illegal, undocumented immigrants.<sup>33</sup> The website represents merely one effort to put these companies out of business or change their hiring practices.<sup>34</sup>

At an Arizona day labor center, a group of “Minutemen,” a self-named, self-created, anti-illegal immigrant group, attacked day labor workers at the center.<sup>35</sup> Waiting outside the center, day laborers heard comments like, “This is America, not Mexico,” and “This is our country and we are under invasion.”<sup>36</sup> Many day laborers left the scene entirely, and others hid behind the gates of the center.<sup>37</sup> The Minutemen attempted to take pictures of the immigrants and pass the evidence along to

31. AMY SUGIMORI, NAT’L EMPLOYMENT LAW PROJECT, ANALYSIS OF CERTAIN KEY PROVISIONS OF H.R. 4437 (SENSENBRENNER-KING) IMPACTING WORKER CENTERS 6 (2006), available at <http://www.nelp.org/docUploads/analysis%20of%20certain%20key%20provisions%2Epdf>.

32. Katherine Young, *Business Group to Push for Immigration Changes*, HISP. BUS., Aug. 30, 2006, available at <http://hispanicbusiness.com/news> (quoting a director for the Federation of Immigration Reform) “We think that it unnecessarily drives down wages and working conditions for America’s poorest citizens.” *Id.*

33. WeHireAliens.com, <http://www.wehirealiens.com> (last visited Nov. 14, 2007).

34. *Id.* (displaying a website dedicated to exposing employers who hire illegal workers). “The biggest incentive for illegal aliens to come to the United States is to find work. If there are no employers willing to hire the illegal aliens, then the flood of illegal aliens will subside.” *Id.*

35. Terry McCarthy, *Stalking the Day Laborers: Border-patrolling Minutemen Turn Inland in Their Fight Against Illegal Immigrants, What’s the Real Goal?*, TIME, Dec. 5, 2005, at 12–13.

36. *Id.*

37. *Id.*

Until Congress decides, the Minutemen are likely to keep showing up at labor centers to take pictures, and the immigrants will keep coming to look for jobs. What happens between them will continue to make witnesses queasy, not just because of the looming risk of violence but also because of a sense that the system is badly broken. “This is America,” says Keenan Strand, owner of the McDonald’s restaurant across the street from the Macehualli center. “You can’t just walk up to someone with brown skin, photograph them and demand their papers.” For now, it appears, you can. *Id.*

the Internal Revenue Service and U. S. Immigration and Customs Enforcement.<sup>38</sup>

Despite the opposition, some immigrant workers are joining together and refusing to work for inadequate pay.<sup>39</sup> For instance, in Houston, Texas, some construction day laborers and contractors refused to work for any amount less than seven dollars an hour.<sup>40</sup> In response, a construction manager expressed his belief that the workers' new attitudes came from the advice of a work center employee.<sup>41</sup> He may be right; Central Texas Immigrant Workers' Rights Center serves as an example of day laborer centers that encourage immigrant workers to band together.<sup>42</sup> For example, the Center prevented Austin, Texas from passing an ordinance that banned day laborers from soliciting work on the street.<sup>43</sup> The center argued that day laborers contribute to the city and fill a need in the economy.<sup>44</sup> The center also argued that day laborers should not be criminalized for trying to provide for their families.<sup>45</sup>

As a result of the work centers public stand for day laborers' rights, critics of undocumented workers blame these work sites for encouraging immigrants to migrate to the United States. Detractors consider work centers magnets for undocumented workers. However, studies show that seventy-eight percent of day laborers are unaware of these centers prior to moving to the United States.<sup>46</sup> Also, testimonies show there is a need

38. *Id.*; see also Sara Olkon, *Day Laborers Get Mixed Signals: Cicero Home Depot Bans Solicitation*, CHI. TRIB., Sept. 28, 2006, at 1 (explaining that day laborers get different signals of what is expected of them in the community when stores that sued to welcome their presence and now police officers are called to remove them from property). "Not so long ago things were much more serene. *Id.* The day laborers—some illegal immigrants, others not—have been going there for years. *Id.* They offer their services laying tile, installing carpeting or painting a room to homeowners buying supplies at the store." *Id.*

39. Dan Lauck, *Day Labor Negotiations 101*, TEXAS CABLE NEWS, Aug. 30, 2006.

40. *Id.* (displaying an example of when a worker refused to work for five dollars an hour).

41. *Id.* (stating that some employers were outraged at the idea of having to increase day laborers pay).

42. The Equal Justice Center, <http://www.equaljusticecenter.org/> (last visited Nov. 14, 2007) ("The Equal Justice Center is a non-profit, non-partisan employment justice and civil rights organization.").

43. Equal Justice Center, *Austin Day Laborer's Big Victory*, <http://www.equaljusticecenter.org/Stop-Austin-Day-Labor-Ban.htm> (last visited Nov. 14, 2007) (advocating a productive way of banding together).

44. *Id.*

45. *Id.*

46. ABEL VALENZUELA, NIK THEODORE, EDWIN MELENDEZ & ANA GONZALEZ, ON THE CORNER: DAY LABOR IN THE UNITED STATES 18 (2006), available at <http://www.uic.edu/cuppa/uicued/Publications/RECENT/ontheCorner.pdf> ("[I]mmigrant day laborers usually reported having left their country of origin for economic reasons, and that they turn to day-labor hiring sites as a way to become integrated into the U.S. economy.").



and demand for immigrant workers. Bo Pilgrim, Chairman of Pilgrims' Pride Corporation, stated that immigrant workers are willing to do the jobs that many non-immigrant workers refuse to do.<sup>47</sup> For example, immigrant workers are willing to perform work that requires heavier labor or menial tasks like catching chickens and milking cows.<sup>48</sup>

Without the help of day labor centers, workers will be more vulnerable to employer abuse and the risk of not getting paid. Employers will more than likely violate labor laws, and as a result, workers' constitutional and civil rights may, in turn, be violated.

This comment seeks to increase the awareness of day labor contributions to the American economy and way of life. It provides a backdrop of immigration and labor law, which affect undocumented day laborers. It also discusses proposed changes to the current federal, state, and local laws and how these changes would affect illegal workers. By providing more comprehensive reforms, justice can be served both to Americans and immigrant workers.

## II. LEGAL BACKGROUND

### A. Labor Law

The U.S. Department of Labor regulates immigrant workers. The Department seeks to prevent immigrant workers from negatively impacting the United States labor market.<sup>49</sup> The Department also ensures that employed laborers in the United States are not victims of abusive employment.<sup>50</sup>

The Texas Labor Code defines the requirements and rules service agencies in Texas must follow, from prohibiting deductions for check-cashing fees<sup>51</sup> to requiring that facilities provide restrooms, food, and water.<sup>52</sup> Texas day laborers, the formalized work centers, and their employers are bound to abide by the labor laws of Texas, as addressed in the

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47. Katherine Young, *Business Group to Push for Immigration Changes*, HIS. BUS. Aug. 5, 2006 (quoting an employer who is searching for "available" not necessarily "cheap" labor).

48. *Id.* (explaining that a company was short 250 workers).

49. ELEANOR PELTA & A. JAMES VAZQUEZ-AZPIRI, *THE SHIFTING OUTLOOK FOR ILLEGAL IMMIGRATION TO THE UNITED STATES* MORGAN, LEWIS & BOCKIUS LLP (2005), available at [http://www.morganlewis.com/pubs/LEPG05\\_Shifting\\_Immigration.pdf](http://www.morganlewis.com/pubs/LEPG05_Shifting_Immigration.pdf).

50. *Id.*

51. TEX. LAB. CODE ANN. § 92.025 (Vernon 2006) (prohibiting certain charges and deductions).

52. TEX. LAB. CODE ANN. § 92.024 (Vernon 2006) (requiring basic necessities for day labor facilities).

Texas Labor Code.<sup>53</sup> The Texas Labor Code defines a common worker as “an individual who performs labor involving physical tasks that do not require: a particular skill; training in a particular occupation, craft, or trade; or practical knowledge of the principles or processes of an art, science, craft, or trade.”<sup>54</sup> Day laborers are categorized as “common workers”. Day labor centers fall into the labor hall category, which the Texas code defines as “a central location maintained by a license holder where common workers assemble and are dispatched to work for a user of common workers.”<sup>55</sup> Day labor service agencies in Texas must be licensed by the state.<sup>56</sup>

Similarly, city ordinances also regulate day laborers. For example, in Austin, Texas, the city council proposed an ordinance banning almost all day labor solicitation from the sidewalks and public spaces in the city.<sup>57</sup> Austin day laborers, with the help of community groups, campaigned against the proposed ordinance.<sup>58</sup> In response to the protests, the city decided to set up an advisory committee to balance the city’s need for labor with the need to protect the safety of day laborers and the public at large.<sup>59</sup>

Otherwise, employers would take advantage of immigrant workers and successfully shield themselves from accountability by arguing that an employee’s immigration status is relevant to an employer’s liability for a workplace accident.<sup>60</sup>

Unfortunately, the law currently provides employers of undocumented immigrants too much flexibility. For example, in 2002, the United States Supreme Court made a significant decision for employers of illegal immigrants in *Hoffman Plastic Compounds, Inc. v. National Labor Relations*

53. TEX. LAB. CODE ANN. § 92.001 (Vernon 2006) (stating the purpose and coverage of the statute).

54. TEX. LAB. CODE ANN. § 92.002 (Vernon 2006) (defining the term “common worker”).

55. *Id.* (defining the term “labor hall”).

56. TEX. LAB. CODE ANN. § 92.011 (Vernon 2006) (stating the Texas requirement of a license to operate a day labor agency).

57. Equal Justice Center, Day Laborers Win Big Victory at Austin City Council, <http://www.equaljusticecenter.org/Stop-Austin-Day-Labor-Ban.htm> (last visited Nov. 14, 2007) (summarizing Austin’s struggle with day laborers).

58. *Id.* (describing the actions taken by the Austin day laborers).

59. *Id.* (describing the final disposition of the city council).

60. NATIONAL EMPLOYMENT LAW PROJECT, IMMIGRANT WORKER SAFETY AND HEALTH: THE NEED FOR MEANINGFUL LEGAL PROTECTIONS (2004); *see also* Montoya v. Gateway Ins. Co., 408 A.2d 796 (N.J. Super Ct. App. Div. 1979) (stating that without facing any repercussions employers will prefer hiring illegal immigrants because they will not have to pay for industrial accidents of insure against the immigrant workers).

*Board*.<sup>61</sup> Mr. Castro, an illegal immigrant who falsified documents to get employment with Hoffman Plastic Compounds, was terminated after collaborating with union activity.<sup>62</sup> Mr. Castro was not entitled to back pay although he was illegally fired.<sup>63</sup> The Court based its reasoning on the fact that Mr. Castro was never legally authorized to work in the United States; therefore, if he were granted relief, it would be contrary to current federal immigration policy.<sup>64</sup> However, *Hoffman* does not mean that undocumented employees are not entitled to worker's compensation.<sup>65</sup> *Hoffman Plastic Compounds* only addresses whether an employee is entitled to back pay.<sup>66</sup>

### B. Current Immigration Law

In addition to labor laws, because day labor population is largely composed of immigrants, immigration laws are very important to the day labor community. Immigration law changed dramatically since the United States was attacked by terrorists on September 11, 2001.<sup>67</sup> Since 1952, the Immigration and Nationalization Service (INS), was responsible for enforcing immigration laws, but the INS's authority was terminated when the Homeland Security Act of 2002 shifted INS responsibilities to the Department of Homeland Security (DHS).<sup>68</sup> DHS is the new federal agency that exists to fight terrorism and locate terrorists and acts as the principal agency which controls and regulates the United States border.<sup>69</sup>

The Immigration and Nationality Act (INA) controls immigrants and their role in the United States. The Immigration Reduction and Control

61. See generally *Hoffman Plastic Compounds, Inc. v. Nat'l Labor Relations Bd.*, 535 U.S. 137, 137 (2002) (holding that undocumented immigrants are not entitled to unemployment benefits).

62. See *id.* at 138 (revealing the fact that Mr. Castro falsified documents in order to gain employment and was then fired for participating in union activities).

63. See *id.* at 137 (finding that illegal immigrants, and in particular Mr. Castro, are not allowed to collect a judgment for back-pay because they were never legally authorized to work within the United States).

64. See *id.* (concluding that since Mr. Castro was unable to legally work within the United States it would be against immigration policy to allow him to receive back-pay).

65. See generally *id.* at 142–44 (concluding that only on the issue of back-pay illegal immigrants should not be granted relief).

66. See generally *Hoffman Plastic Compounds, Inc. v. Nat'l Labor Relations Bd.*, 535 U.S. 137 (2002) (explaining that *Hoffman Plastic Compounds* should only control cases involving the issue of back-pay).

67. ELEANOR PELTA & A. JAMES VAZQUEZ-AZPIRI, *THE SHIFTING OUTLOOK FOR ILLEGAL IMMIGRATION TO THE UNITED STATES* MORGAN, LEWIS & BOCKIUS LLP 9–1 (2005), available at [http://www.morganlewis.com/pubs/LEPG05\\_Shifting\\_Immigration.pdf](http://www.morganlewis.com/pubs/LEPG05_Shifting_Immigration.pdf) (explaining what laws have changes since the terrorist attacks and their implications).

68. *Id.* at 9–4.

69. *Id.*

Act (IRCA), created in 1986, amended the INA by making it illegal for an employer to hire an illegal alien.<sup>70</sup> IRCA forbids anyone to employ or recruit an undocumented immigrant for employment in the United States.<sup>71</sup> Any person who knowingly violates IRCA is subject to penalties.<sup>72</sup> These civil penalties can range from \$100 to \$10,000, depending on the violation.<sup>73</sup>

Along with prohibiting illegal immigrants from seeking employment in the United States, IRCA obliges employers to verify that any employee who is hired after 1986 possesses work authorization through one of the following forms of documentation: an American passport, a United States citizenship certificate, a naturalization certificate, a resident alien card, or some combination of forms proving an employee's identity and ability to work.<sup>74</sup> IRCA applies to *all* types of employers hiring for jobs to be completed in the United States with no exceptions.<sup>75</sup> It also regulates any employment agencies recruiting for a fee.<sup>76</sup> However, IRCA's language remains unclear as to whether a day labor hall would fall under the category of an "employment agency recruiting for a fee." The uncertainty exists because day labor halls do not primarily recruit for a fee.

Nevertheless, day labor centers continue to operate. In Laguna Beach, California, a conservative group is suing the city, arguing that the city is violating IRCA by funding a day labor facility.<sup>77</sup> The city uses public funds to operate the Laguna Day Worker Center and provides services to day laborers, who are primarily Spanish-speaking illegal immigrants.<sup>78</sup> The group is asking the City to discontinue using public funds to violate federal law.<sup>79</sup> The lawsuit's outcome may help determine whether any labor facilities which provide services to illegal immigrants are in violation of the current federal laws.

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70. Federation for American Immigration Reform, *How Day Labor Hiring Sites Promotes Illegal Immigration*, [http://www.fairus.org/site/PageServer?pagename=iic\\_immigrationissuecenters192e](http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters192e) (last visited Nov. 14, 2007).

71. 8 U.S.C.A. § 1324a (2006) (describing the conditions which make the hiring of an alien illegal).

72. *Id.*

73. *Id.* (citing the numerous civil and criminal penalties available against violating employers).

74. U.S. Citizenship and Immig. Svcs., *IRCA and Employer Sanctions*, <http://www.uscis.gov/graphics/aboutus/history/sanctions.htm> (last visited Nov. 14, 2007).

75. See Robert C. Rice, *Alien Employment Control and Employer Compliance Under the Immigration Reform and Control Act of 1986*, 29 S. TEX. L. REV. 313, 316 (1988).

76. See *id.*

77. See Jennifer Delson, *Laguna Beach is Sued Over Day Labor Center*, L.A. TIMES, Oct. 4, 2006.

78. See *id.*

79. See *id.*

IRCA also requires that employers complete and retain an I-9 form.<sup>80</sup> The I-9 form is designed to ensure employers comply with IRCA by verifying employment eligibility and listing the document used for verification of citizenship status.<sup>81</sup> The I-9 form must be kept by the employer for three years from the date of hire, or one year after the date of termination, whichever is longer. The form must be available for inspection by immigration officials.<sup>82</sup>

Moreover, the I-9 form provides a three-day window from the date of hire in which an employer is obligated to complete the form.<sup>83</sup> However, in order to prevent abuse by day laborer employers, if an employee is hired for a period less than three business days, the Act requires I-9 completion by then end of the first business day.<sup>84</sup>

### C. *Additional Options: H-2A and H-2B*

Work visas provide a legal means for employers to hire immigrant workers in the United States.<sup>85</sup> Specifically, the H-2B visas are currently subject to immigration reform as they are related to day laborer employment.<sup>86</sup> In specific situations, these visas provide an employer the ability to hire foreign non-professionals for temporary work not of the agriculture sector.<sup>87</sup> The type of labor filled by these visas usually falls into one of the following categories: seafood, landscaping,<sup>88</sup> housekeeping, construction, and tree planting.<sup>89</sup> The H-2A program provides work visas for immigrations in the agricultural sector.<sup>90</sup> Similar to H-2B, the H-2A program is specifically designed for the agricultural field. The maximum

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80. U.S. Citizenship and Immig. Svcs., IRCA and Employer Sanctions, <http://www.uscis.gov/graphics/aboutus/history/sanctions.htm> (last visited Nov. 14, 2007).

81. *See id.*

82. *See id.*

83. Robert C. Rice, *Alien Employer Compliance Under the Immigration Reform and Control Act of 1986*, 29 S. TEX. L. REV. 313, 333–34 (1988).

84. *Id.*

85. WorkPermit.com, H-2B Visas, [http://www.workpermit.com/us/employer\\_h-2b.htm](http://www.workpermit.com/us/employer_h-2b.htm) (last visited Nov. 14, 2007).

86. *Id.*

87. *Id.* (noting that there must exist a “recurring seasonal need, intermittent need, peak-load need, or a one-time occurrence”).

88. NAT’L FOUNDATION FOR AM. POL’Y, H-2B VISAS: PROVIDING A LEGAL REGIME FOR U.S. EMPLOYERS 6 (2005), available at <http://www.nfap.com/researchactivities/studies/H2BVISAS2005.pdf>.

89. *Id.*

90. ELEANOR PELTA & A. JAMES VAZQUEZ-AZPIRI, THE SHIFTING OUTLOOK FOR ILLEGAL IMMIGRATION TO THE UNITED STATES (2005) available at [http://www.morganlewis.com/pubs/LEPG05\\_Shifting\\_Immigration.pdf](http://www.morganlewis.com/pubs/LEPG05_Shifting_Immigration.pdf) (stating the program available for temporary workers to fill agricultural jobs).

time allotted for H-2B work visas is one year and limited by the employer's need.<sup>91</sup>

To show need, an employer must demonstrate that the work to be performed is strictly temporary and no other unemployed worker in the United States is willing, nor has the ability to do the temporary type of labor.<sup>92</sup> Furthermore, the employer must engage in a labor certification process, whereby the employer must prove they recruited for the job and advertised in a local newspaper.<sup>93</sup> Employers who decide to employ immigrants through the use of work visas must also pay the "prevailing wage" for the type of labor being performed.<sup>94</sup> Moreover, a work visa application requires evidence that the immigrant maintains ties to his/her home country in order to show the immigrant will willingly leave the United States at the end of the job's duration.<sup>95</sup>

Although work visas help employ immigrant workers, there is a maximum yearly limit on the work visa applications that the United States will accept from employers. Currently, the maximum limit is 66,000 work visas per year.<sup>96</sup> Therefore, although these work visas can provide valid legal options for immigrant workers,<sup>97</sup> work visas are not always an alternative for illegal day labor. The yearly caps are normally filled rapidly; thus, immigrants continue to need, want and seek employment.<sup>98</sup>

### III. LEGAL ANALYSIS

#### A. *House Bill*

Change is possible. In December 2005, the United States House of Representatives passed the Border Protection, Antiterrorism, and Illegal

91. WorkPermit.com, H-2B Visas, [http://www.workpermit.com/us/employer\\_h-2b.htm](http://www.workpermit.com/us/employer_h-2b.htm) (last visited Nov. 14, 2007) (describing the work visa's limitations).

92. *Id.* (describing the requirements for establishing employers' need).

93. *Id.* (stating further the necessary requirements for employers to qualify for a H-2B program).

94. NAT'L FOUNDATION FOR AM. POL'Y, H-2B VISAS: PROVIDING A LEGAL REGIME FOR U.S. EMPLOYERS 1 (2005), available at <http://www.nfap.com/researchactivities/studies/H2BVISAS2005.pdf> (stating the wage employers' are required to pay immigrants using work visas).

95. WorkPermit.com, H-2B Visas, [http://www.workpermit.com/us/employer\\_h-2b.htm](http://www.workpermit.com/us/employer_h-2b.htm) (last visited Nov. 14, 2007) (stating another requirement the employer must fulfill to employ immigrants under the H-2B program).

96. NAT'L FOUNDATION FOR AM. POL'Y, H-2B VISAS: PROVIDING A LEGAL REGIME FOR U.S. EMPLOYERS 1 (2005), available at <http://www.nfap.com/researchactivities/studies/H2BVISAS2005.pdf> (expressing the yearly limit of immigrant work visas the United States accepts from employers).

97. *Id.* (stating the benefits of the work visas for immigrant employees).

98. *Id.* (stating the problems with immigrant work visas, specifically that there are not enough available per year for willing and able immigrant workers).

Immigration Control Act (H.R. 4437), which criminalizes all undocumented immigrants illegally residing in the United States as well as anyone assisting them; additionally, the Act proposes the building of a seven-hundred mile barrier along the United States-Mexico border.<sup>99</sup>

Under the Act, any immigrant illegally present in the United States would be guilty of a felony.<sup>100</sup> Moreover, provisions of the Act would make it a felony to assist, encourage, direct or induce a person to enter or attempt to enter or remain in the United States illegally.<sup>101</sup> The Act increases the fine levied on any employer who employs undocumented immigrant workers from the current \$10,000 to \$40,000.<sup>102</sup> Also, the Act fails to provide a path to legal residency, citizenship, or a new temporary guest-worker program.<sup>103</sup>

Under current law, unlawful presence in the United States is a civil crime, not a criminal one.<sup>104</sup> However, the Act makes illegal presence an aggravated felony, and consequently, provides a basis for deporting immigrants and preventing them from re-entering the United States.<sup>105</sup> Specifically, many of the amendments to the INA would affect day laborers by generating “new crimes and a new class of criminals.”<sup>106</sup> The Act broadly defines smuggling crimes and finds anyone providing assistance to undocumented immigrants guilty of illegal smuggling, which includes, deeds not done for economic gain, with the intent to cause harm, or in violation of the law.<sup>107</sup> The Act states it is crime to knowingly help an undocumented alien stay in the United States. The Act expands the defi-

99. House Bill, Border Protection, Anti-Terrorism, and Illegal Immigration Control Act, H.R. 4437, 109th Cong. (2005).

100. NAT'L EMPLOYMENT L. PROJECT, ANALYSIS OF CERTAIN KEY PROVISIONS OF H.R. 4437 (SENSENBRENNER-KING) IMPACTING WORKER 10 (2006), available at <http://www.nelp.org/docUploads/analysis%20of%20certain%20key%20provisions%20Epdf>.

101. *Id.* at 7.

102. *Id.* at 16 (“Entities also face penalties for paperwork violations – including failure to use the Employment Verification System. There is a minimum penalty of \$1000 and a maximum of \$25,000 for each individual involved.”).

103. *Immigration Reform Proposals*, WASH. POST, May 25, 2006 (highlighting provisions of House and Senate bills on immigration reform).

104. NAT'L EMPLOYMENT L. PROJECT, ANALYSIS OF CERTAIN KEY PROVISIONS OF H.R. 4437 (SENSENBRENNER-KING) IMPACTING WORKER 10 (2006), available at <http://www.nelp.org/docUploads/analysis%20of%20certain%20key%20provisions%20EpdfCenters> (arguing the extreme results that would result of this change). “This means that the approximately 11 million people who are here without some sort of lawful status are felons under the law. This is extraordinarily extreme.” *Id.*

105. *Id.*

106. *Id.* at 8 (stating that the new law effectively criminalizes almost any interaction with an undocumented person, regardless of intent).

107. H.R. 4437 109th Cong. § 274(a)(1)(A)-(C), (2005) (discussing the various forms of assistance provided to undocumented immigrants that would be considered illegal);

nition of smuggling and accordingly, criminalizes day labor center employees, who provide services to day laborers regardless of their immigration status.<sup>108</sup> The potentially criminal services the centers provide are as simple and harmless as providing an address or a telephone number for an employer.

To compare, current law makes it illegal for anyone to assist an undocumented immigrant to further violate the law, but the proposed Act expands illegality to include anything that will “aid or further in any manner the person’s illegal entry or illegal presence in the U.S.”<sup>109</sup> The slight change in the wording significantly impacts court decisions involving immigrants. For example, in *United States v. Moreno*,<sup>110</sup> the Ninth Circuit held Mr. Moreno not guilty of smuggling when he gave his co-worker, an undocumented immigrant, a ride to work.<sup>111</sup> The Court reasoned that the act of giving someone a ride was not assisting an immigrant to further violate the law.<sup>112</sup> Under the proposed Act, a person simply giving their neighbor a ride, even if not for economic gain, would automatically result in criminality.<sup>113</sup>

Moreover, the Act would also increase the number of people responsible for verifying employee eligibility. Under IRCA, employment eligibility must be completed by employers or anyone recruiting for a fee.<sup>114</sup> However, the Act extends this requirement to all agencies that recruit or refer; the result would include labor service agencies.<sup>115</sup> As a result, day

108. NAT’L EMPLOYMENT LAW PROJECT, ANALYSIS OF CERTAIN KEY PROVISIONS OF H.R. 4437 (SENSENBRENNER-KING) IMPACTING WORKER CENTERS 7 (2006), available at <http://www.nelp.org/docUploads/analysis%20of%20certain%20key%20provisions%20Epdf> (listing different persons and entities who would be considered smugglers for providing assistance under H.R. 4437).

109. *Id.* (listing different persons and entities who would be considered smugglers for providing assistance under H.R. 4437).

110. *United States v. Moreno* 561 F.2d 1321 (9th Cir. 1977).

111. *Id.* at 1323 (ruling that a substantial relationship must exist between the transportation provided and the furthering of the illegal immigrants presence in the United States for someone to be guilty of smuggling).

112. *Id.*

113. NAT’L EMPLOYMENT L. PROJECT, ANALYSIS OF CERTAIN KEY PROVISIONS OF H.R. 4437 (SENSENBRENNER-KING) IMPACTING WORKER 7 (2006), available at <http://www.nelp.org/docUploads/analysis%20of%20certain%20key%20provisions%20Epdf> (“[The changes are] so expansive they could be read to include family members, employers, domestic partners, friends, social service providers, worker centers, churches and religious institutions, lawyers and others who provide assistance, services, advice or even a ride to undocumented people.”).

114. *Id.* at 15.

115. *Id.* (illustrating that agencies which are for-profit or non-profit, public or private that dispatch, refer, or in some other way facilitate the employment of workers by a third party for any time period, regardless of remuneration).



labor centers and any other agencies, which assist undocumented workers in finding employment, would fall under these provisions, requiring the verification of the immigration status of every worker.<sup>116</sup> The change may prompt agencies to cease providing assistance to undocumented immigrants looking for work or trying the fight injustice in their employment. Therefore, an immigrant seeking help to report employer abuse would have nowhere to turn for assistance.

Although the intended purpose of the Act is to deter immigrants from migrating into the United States, the Act would likely increase the incentives for employers to hire immigrants under unsuitable conditions. The demand for immigrant workers will not disappear, and criminalizing day laborers will only drive immigrant workers a “bit further into the legal underground.”<sup>117</sup> Furthermore, immigrants will refrain from speaking against the injustices they face for fear of criminalization and facing charges of an aggravated felony. Even under the current protection options available, day laborers report being denied food, water, or breaks by their employers.<sup>118</sup>

In addition to affecting how day laborers respond to injustice, the Act would inhibit “cities from enacting ordinances that require businesses” to supply financial support or assistance to day labor centers.<sup>119</sup> Such a change would remove a city’s resources for improving the community and assisting its low income workers.<sup>120</sup> However, the removal of these resources unfairly hurts day laborers who continually contribute to the United States economy. In fact, Day laborers are respected more by their employers when they are hired out of centers in contrast to when employers hire them on the street or a parking lot.<sup>121</sup> A majority of workers who

116. *Id.* (showing that definition is so broad, it would seem to apply to internet services, school career services offices, or public billboards where people post job announcements or resumes even if none of these entities charges a fee).

117. Nathan Smith, *Build It and They’ll Still Come*, TECH., COM., SOC’Y DAILY, Oct. 3, 2006, <http://www.tcsdaily.com/article.aspx?id=100306B>.

118. Pablo Alvarado & John J. Sweeny *Alvarado and Sweeny: Day Laborers Fight For Rights*, AUSTIN AM.-STATESMAN (Sept. 27, 2006).

119. NAT’L EMPLOYMENT LAW PROJECT, ANALYSIS OF CERTAIN KEY PROVISIONS OF H.R. 4437 (SENSENBRENNER-KING) IMPACTING WORKER CENTERS 21 (2006), available at <http://www.nelp.org/docUploads/analysis%20of%20certain%20key%20provisions.pdf> (“Section 708 of H.R. 4437 prevents cities from enacting ordinances that require businesses, such as Home Depot stores [sic] to provide funding or support to day labor centers.”).

120. *See id.* (“This takes away a means that municipalities have to generate resources to provide centers that benefit the community in general and further limits the already scarce funding options for centers.”).

121. *See Showing Day Laborers Have the Power to Fight*, SOCIALIST WORKER, June 30, 2006, at 6 (2006), available at [http://www.socialistworker.org/2006-2/594/594\\_06\\_Carlos.shtml](http://www.socialistworker.org/2006-2/594/594_06_Carlos.shtml) (“He [Carlos Canales] talked to *Socialist Worker’s* Alvaro Lopez and Afsaneh

complain of being left unpaid are workers who are hired informally (i.e. hired through a work center versus off the street).<sup>122</sup>

### B. *Senate Bill*

In March 2006, the Securing America's Borders Act (S. 2454) was introduced to the United States Senate.<sup>123</sup> The bill also calls for the building of a fence along the United States-Mexico border,<sup>124</sup> but unlike H.R. 4437, the Senate bill provides for a new temporary guest-worker program.<sup>125</sup> Under the Bill, the program would increase the amount of visas allotted for skilled workers. S. 2454 requires that employers and sub-contractors verify that any new employees they hire have worker authorization by using an electronic system.<sup>126</sup> Moreover, it increases the fine for hiring undocumented immigrants from \$10,000 to \$20,000.<sup>127</sup> Under this Act, immigrants who have been in the United States for over five years can remain in the United States after paying back taxes, learning English, and paying at least \$3,250 in fines.<sup>128</sup> After fulfilling these requirements and continuing to work in the United States, an immigrant may apply for legal resident status.<sup>129</sup> Although the Senate bill would impact immigrant workers, its restrictions are not as harsh on day laborers and day labor centers as the restrictions in H.R. 4437.

### C. *President's Proposal*

Along with the House and Senate, President George W. Bush proposed his own immigration reform policy. The president's program calls for a fence, and it increases the amount of border patrol agents securing the borders.<sup>130</sup> The program also calls for a temporary worker program,

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Moradian about the conditions that immigrant day laborers face and how they have organized.”).

122. *Id.* (“The majority of the nonpayment of workers that we see here every week—I’d say 99 percent of it—is workers who are on the streets. They’re not coming from our workers’ centers.”).

123. Securing America’s Border Act, S. 2454, 109th Cong. (2006) (proposing an amendment to the Immigration and Nationality Act for an increase in federal immigration enforcement).

124. Securing America’s Border Act, S. 2454, 109th Cong. § 106 (2006) (describing the construction strategy for border fencing and vehicle barriers).

125. *See id.*

126. *Immigration Reform Proposals*, WASH. POST, May 25, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/27/AR2006032701201.html>.

127. *Id.*

128. *Id.* (highlighting provisions of House and Senate Bills on immigration reform).

129. *Id.*

130. The White House, Comprehensive Immigration Reform, <http://www.whitehouse.gov/infocus/immigration/> (last visited Nov. 14, 2007) (outlining President George W.

similar to the S. 2654, which provides legal methods for immigrant workers to be employed in the United States.<sup>131</sup> Furthermore, the president's program increases the enforcement of immigration laws at actual labor sites.<sup>132</sup> The proposal also opposes amnesty, but it seeks middle ground for immigrants who have resided in the United States illegally for an extended period of time in order to provide them a path to citizenship.<sup>133</sup> Both President Bush's proposal and S. 2654 increase the current visa caps under HA-1 and HB-2 programs, and such an increase provides a possible solution for the illegal employment of day laborers. Lastly, the president's proposed reform requests that immigrants be integrated to United States by learning American history, customs, traditions, and the English language.

#### D. *The Wall*

On September 29, 2006, the Secure Fence Act passed, but only provided enforcement measures as a method of dealing with immigration reform.<sup>134</sup> Unlike the other proposed immigration reforms, the Act Secure Fence solely addressed the building of a seven hundred mile double-layer fence in Arizona, New Mexico, and Texas.<sup>135</sup> The fence is intended to

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Bush's immigration reform plan); *see also* WhiteHouse.gov, Fact Sheet: Securing America Through Immigration Reform, <http://www.whitehouse.gov/news/releases/2005/11/20051128-3.html> (last visited Nov. 14, 2007) (explaining President George W. Bush's immigration reform plan in greater detail).

131. The White House, Comprehensive Immigration Reform, <http://www.whitehouse.gov/infocus/immigration/> (last visited Nov. 14, 2007) (outlining President George W. Bush's immigration reform plan); *see also* WhiteHouse.gov, Fact Sheet: Securing America Through Immigration Reform, <http://www.whitehouse.gov/news/releases/2005/11/20051128-3.html> (last visited Nov. 14, 2007) (explaining President George W. Bush's immigration reform plan in greater detail).

132. The White House, Comprehensive Immigration Reform, <http://www.whitehouse.gov/infocus/immigration/> (last visited Nov. 14, 2007) (outlining President George W. Bush's immigration reform plan); *see also* WhiteHouse.gov, Fact Sheet: Securing America Through Immigration Reform, <http://www.whitehouse.gov/news/releases/2005/11/20051128-3.html> (last visited July 26, 2007) (explaining President George W. Bush's immigration reform plan in greater detail).

133. The White House, Comprehensive Immigration Reform, <http://www.whitehouse.gov/infocus/immigration/> (last visited Nov. 14, 2007) (outlining President George W. Bush's immigration reform plan); *see also* WhiteHouse.gov, Fact Sheet: Securing America Through Immigration Reform, <http://www.whitehouse.gov/news/releases/2005/11/20051128-3.html> (last visited Nov. 14, 2007) (explaining President George W. Bush's immigration reform plan in greater detail).

134. Nathan Smith, *Build It and They'll Still Come*, TECH., COM., SOC'Y DAILY, Oct. 3, 2006, *available at* <http://www.tcsdaily.com/article.aspx?id=100306B>.

135. *Id.* (expressing an attempt to merely "re-partition Amexica into America and Mexico") (internal quotations omitted).

decrease the “problem” of mass immigration but may be the beginning of more extreme anti-immigrant legislation.<sup>136</sup>

The wall’s construction is unfortunate considering that mass migration is responsible for decreases in United States inflation, upturns in the housing market, and improved situations in Mexico, a third-world country.<sup>137</sup> Stricter laws will not keep immigrants from moving to the United States in search of jobs.<sup>138</sup> Instead, stricter laws will merely encourage the movement of immigrants from traditional crossing zones to remote areas, where there are greater physical risks for the immigrant and less of a chance to get caught.<sup>139</sup> As long as economic conditions in Mexico do not improve, Mexican citizens have a strong incentive to take the risk of getting caught for the possibility of increased income and the chance of a better life.<sup>140</sup>

Moreover, although illegal immigration may be legally wrong, it is not morally wrong.<sup>141</sup> While United States employers of day laborers may not choose to break the law by stealing or harboring murderers, United States employers have no apprehension in hiring someone to tidy their house or mow their lawn.<sup>142</sup> Should one feel guilty giving a hard-working individual who is trying to provide for their family and willing to perform heavy labor a job that most United States citizens refuse to do? Many times, employers just want to fill a job that needs to be filled.

An illustration of this situation in Texas can be seen in agricultural fields. In Batesville, Texas, Mr. Carnes needed two hundred workers to harvest onion on five hundred acres of south Texas fields.<sup>143</sup> As result of tighter border security, Mr. Carnes only had one hundred workers, and

136. *Id.* (“A border fence is the Berlin Wall, but it’s not a police state, or the gulag, or ethnic cleansing.”).

137. *Id.* (representing that “accidents of geography have been a far wiser and more human legislator than Congress has”).

138. *See id.* (noting unilateral enforcement to stop Mexican laborers from entering United States has failed miserably).

139. Nathan Smith, *Build It and They’ll Still Come*, TECH., COM., SOC’Y DAILY, Oct. 3, 2006, available at <http://www.tcsdaily.com/article.aspx?id=100306B> (articulating how the unilateral enforcement has backfired).

140. *See id.* (“If a Mexican earns \$10,000 per annum in Mexico, and expects to earn \$35,000 per annum in the U.S. [sic], the net present value of migrating (with a discount rate of 5%) is \$500,000.”).

141. *Id.* (“When laws lack a basis in justice, efforts to enforce them do not enjoy the general cooperation of the public.”).

142. *Id.* (adding those on the opposite side of the border have no apprehension in breaking laws to which they never originally consented).

143. Elizabeth White, *A Thin Crop-Of Workers*, HARTFORD COURANT, Oct. 5, 2006 (indicating there is little room for setbacks with only two months of harvest time).

his income fell by \$150,000 for the year.<sup>144</sup> Although Mr. Carnes checks his employees' paperwork in effort to comply with federal law, he is aware that he does employ some immigrant workers.<sup>145</sup> This is also true on a larger scale—a study conducted by the Department of Labor, the National Agricultural Workers Survey revealed that at least fifty-three percent of laborers lacked authorization to work in the United States in 2001-2002.<sup>146</sup>

It is uncertain if any other regulations from the proposals will be implemented. H.R. 4437 is opposed by approximately eighty percent of Senate Democrats and supported by approximately ninety percent of the Republicans in the Senate.<sup>147</sup> The support for S. 2454 is still undetermined.<sup>148</sup> Furthermore, many within the Republican party see President Bush's support for a guest worker program as contrary the party's values.<sup>149</sup> At this time, immigration reform and the potential criminalization of day laborers will have an economic impact, which will be widely felt throughout the United States, and more specifically, in Texas.<sup>150</sup>

When considering current and proposed changes to legislation that affect immigrants, it is important to remember the benefits immigrant workers provide through their work. In many ways, immigrants contribute to economic growth by providing necessary labor and fulfilling the needs of a growing economy. Moreover, immigrants usually only migrate to the United States when employment is growing.<sup>151</sup> Immigrants are less likely to leave their home county for work opportunities if the employment rate is not increasing.<sup>152</sup> On the other hand, anti-immigrant groups claim that any positive effects resulting from immigrant workers is countered because their lower economic status qualifies them for public benefits creating a negative fiscal impact.<sup>153</sup> This argument remains flawed,

144. *Id.* (recognizing the significant loss because he fell two weeks behind due to the lack of laborers).

145. *Id.* (adding that other employers of migrant workers take these same precautionary steps).

146. *Id.* (indicating that worker advocates and grower associations believe the actual figure to be closer to eighty percent).

147. Gov Track S. 2454, *Securing America's Border Act*, <http://www.govtrack.us/congress/bill.xpd?bill=S109-2454> (last visited Nov. 14, 2007).

148. *Id.*

149. Elizabeth White, *A Thin Crop-of Workers*, HARTFORD COURANT, Oct. 5, 2006.

150. *Id.*

151. See Pia M. Orrenius, *U.S. Immigration and Economic Growth: Putting Policy on Hold*, 6 Sw. ECON. 4 (2003), available at <http://www.dallasfed.org/research/swe/2003/swe0306.pdf>.

152. *Id.* ("The foreign-born are both less apt to come and more likely to leave when the U.S. economy is doing poorly.")

153. See Federal Reserve Bank of Dallas, *Dallas Fed Focuses on NAFTA, Immigration, Texas Manufacturing and Growth in the Rio Grande Valley* (last visited Nov. 14,

however, because undocumented immigrants do not qualify for public benefits.<sup>154</sup>

### E. *Americans Talk*

As a result of day laborers' impact in the United States, many Americans express strong opinions (strongly against or strongly in favor) about day laborers' presence. It remains unclear whether the negative feelings towards immigrant workers come from a legitimate disapproval for illegally migrating to the United States or from ignorance concerning people from different countries. The present law does not provide a clear distinction between people who come into daily contact with undocumented immigrants and people who encourage the presence of illegal immigrants in the United States through smuggling; therefore, it is hard to pinpoint at what point the law has been broken.<sup>155</sup> However, the previously mentioned proposed legislation would make the act of feeding the day laborers smuggling, and as a result, the proposed legislation would consider Micah's Way to be law breakers.<sup>156</sup>

Although concerns about American citizens who violate the law by furthering an illegal immigrant's presence in the United States are legitimate, ignorant comments hold no place in the debate concerning the presence of day laborers.<sup>157</sup> Such comments reveal mere hatefulness and sustain no valid legal claim.

Proposed legislation must be based on serious political, social, and economic concerns. Gratefully, contrary to what the protestors in this video demonstrate, there are Americans who do not want to see illegal immigrants become felons.<sup>158</sup> In a poll taken by CBS News, seventy-four per-

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2007), <http://www.dallasfed.org/news/releases/2006/nr060424.html> (stating the tendency for people to focus on illegal or low-skilled immigration in terms of affecting the United States economy).

154. *Id.* (“[A] low-skilled illegal immigrant can create less fiscal burden than a low-skilled immigrant because the undocumented don’t qualify for most benefits.”).

155. *See* *United States v. Barajas-Chavez*, 162 F.3d 1285 (10th Cir. 1999) (holding that the evidence was enough to satisfy the “in furtherance of” element to find the defendant guilty).

156. *See* Border Protection, Anti-Terrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. § 708(B) (2005) (“Amends INA to preclude states from requiring business entities to: (i) provide, build, fund, or maintain a shelter, structure, or designated area for use by day laborers at or near their places of business; or (ii) take other steps to facilitate the employment of day laborers by others.”).

157. Video of *SOS and Minutemen Berate Charitable People*, [http://www.youtube.com/watch?v=\\_UbopWb-WZc](http://www.youtube.com/watch?v=_UbopWb-WZc) (last visited Nov. 14, 2007) (recording the anti-immigrant demonstrators protesting Micah's Way providing food for immigrants).

158. *GOP Backs Off Immigrant Felony Plan*, CBS NEWS, Apr. 12, 2006, available at <http://www.cbsnews.com/stories/2006/04/12/politics/main1491324.shtml> (quoting House

cent of people surveyed thought that illegal immigrants should be allowed to continue to live and work in the United States if they meet particular standards, which include, but are not limited to, presence in United States for five years, pay fines, and pay back-taxes.<sup>159</sup>

#### F. *New Proposal*

A compromise and combination of the proposed changes to immigration law could provide fair treatment for day laborers and recognize the benefits day laborers provide for the United States economy.<sup>160</sup> Immigrant reform that focuses on the following standards would have a positive impact on the U.S:

- (1) Provide increased support and creation of day labor centers in cities where day labor is prominent.<sup>161</sup>
- (2) Provide education or advice for immigrant workers in accessible forms and encourage day laborers to seek assistance.<sup>162</sup>
- (3) Provide enforcement of work safety standards at day labor work sites and protection for workers who raise safety concerns.<sup>163</sup>
- (4) Provide paths to legal residency for immigrant workers who have been paying their taxes and have had a significant presence in the United States.<sup>164</sup>
- (5) Increase the supply of unskilled work visas available for United States employers with protection provided for the workers to avoid injustice.<sup>165</sup>

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Speaker Dennis Hastert and Senate Majority Leader Bill Frist who state that “[it] remains our intent to produce a strong boarder security that will not make unlawful presence in the United States a felony.”).

159. *Id.*

160. See AFL-CIO, IMMIGRANT WORKERS AT RISK: THE URGENT NEED FOR IMPROVED WORKPLACE SAFETY AND HEALTH POLICIES AND PROGRAMS (AFL-CIO 2005) available at [http://www.aflcio.org/issues/safety/upload/immigrant\\_risk.pdf](http://www.aflcio.org/issues/safety/upload/immigrant_risk.pdf) (commenting that immigrant workers often work in high risk occupations in the “informal economy” which remains unregulated, and are often afraid to report their injuries to receive compensation).

161. See *id.* (explaining one focus of immigrant reform that would have a positive impact on the United States).

162. See *id.* (listing one focus of immigrant reform that would have a positive impact on the United States).

163. See *id.* (pointing to another focus of immigrant reform that would have a positive impact on the United States).

164. See *id.* (pointing to another focus of immigrant reform that would have a positive impact on the United States).

165. See AFL-CIO, IMMIGRANT WORKERS AT RISK: THE URGENT NEED FOR IMPROVED WORKPLACE SAFETY AND HEALTH POLICIES AND PROGRAMS (AFL-CIO 2005), available at [http://www.aflcio.org/issues/safety/upload/immigrant\\_risk.pdf](http://www.aflcio.org/issues/safety/upload/immigrant_risk.pdf) (explaining another focus of immigrant reform that would have a positive impact on the United States).

(6) Provide more paths to union memberships for immigrant day laborers.<sup>166</sup>

Because day laborer centers can provide a helpful structure that connects communities with the immigrant community and helps everyone involved, more day labor centers should be opened. Without an official site for workers to gather, there can be complaints of loitering, disorder, and arguments in informal meeting places, such as parking lots for home-improvement stores.<sup>167</sup> Disorganization can increase crime in the local community and create feelings of anger among members of the public who wrongfully and automatically associate workers with harmful activities, such as drugs or theft.<sup>168</sup> Moreover, laborers may also find it more difficult to find work if they are not organized and employers may not get the labor supply they need. Without a formal meeting place for workers and employers to meet, both may miss opportunities for exchange.

Also, a day labor center can be a place for workers to express their concerns and raise issues of injustice. Without day labor programs, such as social services, undocumented workers have no one to turn to for assistance or advice if they are mistreated.<sup>169</sup> Therefore, cities should be cognizant of the day laborers in their community and arrange for budget allocations towards the creation of day laborer centers.

Not only can day labor centers protect the immigrant workers and the citizens of the community, but also centers provide a source for educating day laborers about their rights and options. Despite their illegal presence, immigrants live in the United States and are part of society, and will continue to be, despite anti-immigrant legislation. The American people have nothing to lose by educating a fellow community member. The Central Texas Immigrant Workers' Rights Center ("CTIWorc") in Austin, Texas serves as a model that cities wishing to create programs to assist undocumented workers should follow.<sup>170</sup> CTIWorc informs immigrant and low-income workers of their rights of their rights and holds a weekly clinic where such workers can ask questions.<sup>171</sup>

Additionally, the center informs day laborers of their rights to recover unpaid wages and directs them to non-profit programs, like the Univer-

166. *See id.* (explaining another focus of immigrant reform that would have a positive impact on the United States).

167. DAY LABOR RESEARCH INSTITUTE, *COMPARING SOLUTIONS: AN OVERVIEW OF DAY LABOR PROGRAMS 5* (Day Labor Research Inst. 2004), available at <http://daylaborinfo.org/Documents/Comparing%20Day%20Labor%20Center%20Models.pdf>.

168. *Id.* at 5, 7.

169. *Id.* at 8.

170. The Central Texas Immigrant Worker Rights Center Home Page, <http://equaljusticecenter.org/CTIWorc.htm> (last visited Nov. 14, 2007).

171. *Id.*



sity of Texas School of Law's Transitional Workers' Rights Clinic, which assists day laborers with their wage claims.<sup>172</sup> CTIWorc also tries to reach workers through alternative methods such as Day Labor Street Theatre, which educates undocumented immigrants of their rights.<sup>173</sup> Thus, when communities create local day labor centers they should work to incorporate education for these workers. They can also help workers in their path to citizenship by providing English as a Second Language classes.

Regardless of a person's perspective on illegal immigration, no person should be placed in a dangerous work situation, and everyone should have somewhere to turn if they are injured.<sup>174</sup> Occupational Safety and Health Administration (OSHA) agencies should be a place all workers in the United States consult when they encounter workplace danger.<sup>175</sup> Unfortunately, most immigrant workers are unaware the agency exists and the protection it provides them.<sup>176</sup> In 2000, when Latino construction workers were surveyed in North Carolina, only thirty-five percent knew OSHA existed, but none of them mentioned that OSHA was an agency to contact for health and safety protections.<sup>177</sup> Therefore, it is necessary to have more of an outreach from OSHA to the immigrant community.

As part of an expanded outreach initiative, OSHA should offer more of their pamphlets and information in Spanish so that immigrant workers can access their information.<sup>178</sup> Additionally, OSHA should corroborate with day labor centers<sup>179</sup> to make sure undocumented workers are in-

172. *Id.*

173. *Id.*

174. AFL-CIO, IMMIGRANT WORKERS AT RISK: THE URGENT NEED FOR IMPROVED WORKPLACE SAFETY AND HEALTH POLICIES AND PROGRAMS 9 (AFL-CIO 2005), available at [http://www.aflcio.org/issues/safety/upload/immigrant\\_risk.pdf](http://www.aflcio.org/issues/safety/upload/immigrant_risk.pdf) (describing the fact that immigrants are more likely work in high risk industries).

175. U.S. Dep't of Labor, OSHA'S Mission, <http://www.osha.gov/oshinfo/mission.html> (last visited Nov. 14, 2007) ("OSHA's mission is to assure the safety and health of America's workers by setting and enforcing standards . . . Nearly every working man and woman in the nation comes under OSHA's jurisdiction[.]").

176. AFL-CIO, IMMIGRANT WORKERS AT RISK: THE URGENT NEED FOR IMPROVED WORKPLACE SAFETY AND HEALTH POLICIES AND PROGRAMS 10 (AFL-CIO 2005), available at [http://www.aflcio.org/issues/safety/upload/immigrant\\_risk.pdf](http://www.aflcio.org/issues/safety/upload/immigrant_risk.pdf) ("[I]mmigrants are less likely to know about their rights to safety and health protections and less likely to know there are government agencies that are supposed to protect them.").

177. *Id.* ("A 2000 survey of 50 Latino construction workers in North Carolina found only 35 percent knew about the Occupational Safety and Health Administration (OSHA) . . . None mentioned the state's Occupational Safety and Health Division or OSHA.").

178. *Id.* at 19 ("Require OSHA to provide materials, publications and information in the primary languages of major immigrant worker populations.").

179. *Id.* at 8 ("Workers affiliated with worker centers for day laborers and garment workers were more likely to report an injury . . .").

formed about their rights and should send a stronger message to employers that undocumented workers should not be taken advantage of or the employers will face repercussions.<sup>180</sup> States should require that OSHA agencies make a strong effort to reach the immigrant community and require them to show progress of their outreach efforts.<sup>181</sup> Otherwise, illegal immigrants are contributing to a fund that they cannot collect. Such a disparity seems unfair considering that under our current laws, an illegal immigrant can reside in the United States for ten years, pay taxes, and then turn sixty-five years old and not be entitled to any benefits. These workers who contribute to the United States economy and provide cheaper labor are left with no options and face extreme poverty when they get older.

A possible solution would be to provide a path to citizenship as proposed in the S. 2454 and President's Bush proposal. If day laborers can have a goal like a path to citizenship to look forward to they can continue to work hard and contribute to society. If the only law a day laborer violated was entering the United States illegally, a path to citizenship can provide them with a reward for their efforts.

An alternative that employers have to hiring illegal day laborers is hiring workers through the use of H-2 visas. Most associations that fight for day laborer rights do not support the guest worker program because of all the potential problems that arise. These organizations see H-2 visas an invitation to take advantage of workers. Although these visas help fill in labor cracks in the United States market, the visas provide for the exploitation of workers by not providing any mobility.<sup>182</sup> They can create

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180. *Id.* at 14 (“Federal OSHA could and should do much more in terms of outreach, allocating resources and using the regulatory process to improve protections for immigrant workers.”).

181. AFL-CIO, *IMMIGRANT WORKERS AT RISK: THE URGENT NEED FOR IMPROVED WORKPLACE SAFETY AND HEALTH POLICIES AND PROGRAMS* 19 (AFL-CIO 2005), available at [http://www.aflcio.org/issues/safety/upload/immigrant\\_risk.pdf](http://www.aflcio.org/issues/safety/upload/immigrant_risk.pdf) (“Enhance outreach, training and education programs for immigrant and Hispanic workers to inform them of job safety rights, job hazards and available protections.”).

182. See Memorandum from Alan B. Krueger, Bendheim Professor of Economics and Public Policy, Princeton University, to Interested Parties (Apr. 4, 2006) available at [http://www.americanprogress.org/kf/krueger\\_immigration.pdf](http://www.americanprogress.org/kf/krueger_immigration.pdf).

Economic efficiency requires that all workers in the U.S. labor market are treated on a level playing field. This means that the same set of legal protections apply to all workers. The notion of employment at will, or the ability of employers to dismiss workers at will and the ability of employees to leave a job for a better opportunity or for any other reason, is a hallmark of the United States labor market. Free mobility of labor is a bulwark against exploitation. Workers who feel mistreated can leave their job to search for another one or exit the labor force. Free mobility is also economically efficient. Workers move to the opportunities that value their services most highly. If guest workers do not have the opportunity to change jobs with minimal administrative

leverage for employers over immigrant workers that the employers do not have over regular workers.<sup>183</sup> For the H-2 visa program to work there must be strict enforcement to ensure that all the workers are being paid by their employers.<sup>184</sup> Additionally, there needs to be more supervision to ensure employers are not taking advantage of the situation.<sup>185</sup> Also, H-2 visas should be available to the most industries and occupations possible to prevent favoritism of certain industries. If the H-2 Visa program was executed fairly, it could be viewed positively by day labor supporters and create a stronger workforce.

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) recently decided to work with National Day Labor Organizing Network (NDLON) and assist them with fighting for the rights of day laborers.<sup>186</sup> AFL-CIO cited that lower standards for some workers could cause a reduction in standards for all workers.<sup>187</sup> As part of their agreement, local unions will work with local day labor centers and help them fight for higher labor standards and improved working conditions.<sup>188</sup> By encouraging more undocumented immigrants to work with unions, day laborers will become more organized and provide a stronger fighting front against injustice at their work sites.

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burden, other workers in the U.S. will potentially suffer because employers will have some scope to exploit guest workers and lower labor conditions more generally. *Id.*

183. *See id.* (noting the inevitable advantage employers hold over temporary and immigrant workers in comparison to other workers).

184. *See* AFL-CIO, IMMIGRANT WORKERS AT RISK: THE URGENT NEED FOR IMPROVED WORKPLACE SAFETY AND HEALTH POLICIES AND PROGRAMS 10 (2006) available at [http://www.aflcio.org/aboutus/laborday/upload/immigrant\\_risk.pdf](http://www.aflcio.org/aboutus/laborday/upload/immigrant_risk.pdf) (“Immigrant workers are paid less and are exposed to more environmental and occupational risks . . . New immigrants are in a much more precarious financial situation than more established residents. They typically start at the bottom rung on the employment ladder, often have seasonal or contingent work, are paid in cash ‘under the table,’ and owe substantial debts to coyotes or smugglers who helped them enter the country. This great economic need has a number of consequences for job safety and health.”).

185. *See generally id.* (quoting Jose Saucedo “This work that we do here in the United States is really hard and the companies take advantage of us as immigrants who don’t speak English and who don’t know our rights. They intimidate us to keep us in line and fire us when they want to.”).

186. Christian Zappone, *Unions Get Behind Illegal Workers*, CNNMONEY.COM, Aug. 17, 2006, [http://money.cnn.com/2006/08/16/news/economy/unions\\_daylabor/index.htm](http://money.cnn.com/2006/08/16/news/economy/unions_daylabor/index.htm).

187. *Id.*

188. *Id.*

## IV. CONCLUSION

***“We even talk of starting our own construction company with the skills between us someday. Dreaming is not prohibited.”***

**Alexander Carbajal, day laborer<sup>189</sup>**

Day laborers are people with dreams like everyone else; they just happen to be born in a different country. They come to the United States looking for a place to work in order to provide for themselves and their families. Their need for work makes them willing to engage in heavy labor for minimal pay; this is the type of work that many Americans are not willing to do.<sup>190</sup> Because day laborer employers have difficulty finding anyone willing to do the work, employers appreciate that immigrant workers are ready to engage in labor that keeps their small businesses running.<sup>191</sup> However, sometimes an undocumented immigrant’s desperation to find a job exposes them to unfair pay and an unstable work environment.<sup>192</sup> Day laborers often agree to do work in unsafe environments and in unsafe conditions.<sup>193</sup>

Work centers are one of the few resources day laborers can turn to when they face this injustice—whether they are formal or informal.<sup>194</sup> Texas currently has four formal centers in the cities of Austin, Houston, Dallas, and Plano.<sup>195</sup> Because day labor centers work in assisting illegal aliens, centers are seen as magnets that encourage immigrants to illegally

189. Samantha Henry, *Toil and Tears; Hope, Loss Mark Hard Lives of Day Laborers; For Some, Survival is a Mixed Blessing*, HERALD NEWS (Passaic County, NJ) Nov.19, 2006, at A01 (quoting Alexander Carbajal, day laborer).

190. ABEL VALENZUELA, NIK THEODORE, EDWIN MELENDEZ & ANA GONZALEZ, *ON THE CORNER: DAY LABOR IN THE UNITED STATES* (2006), available at [http://www.sscnet.ucla.edu/issr/csup/uploaded\\_files/Natl\\_DayLabor-On\\_the\\_Corner1.pdf](http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf) (stating that day laborers usually leave their country for economic reasons.).

191. Katherine Young, *Business Group to Push for Immigration Changes*, HISP. BUS., Aug. 5, 2006.

192. ABEL VALENZUELA, NIK THEODORE, EDWIN MELENDEZ & ANA GONZALEZ, *ON THE CORNER: DAY LABOR IN THE UNITED STATES* (2006), available at [http://www.sscnet.ucla.edu/issr/csup/uploaded\\_files/Natl\\_DayLabor-On\\_the\\_Corner1.pdf](http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf) (“The median hourly wage for day laborers is \$10. However, employment is unstable and insecure, resulting in volatile monthly earnings.”).

193. *Id.* at 197 (“[S]ixty-eight percent of day laborers have worked while in pain, yet another indication of their dire need for employment.”).

194. *Id.* at 22 (“One of the most important ways that workers in the informal economy take legal action against abusive employers is through workers’ rights advocates employed by community-based organizations.”).

195. The City of Plano, Day Labor Centers [http://www.plano.gov/Departments/Planning/Neighborhood+Services/day\\_labor.htm](http://www.plano.gov/Departments/Planning/Neighborhood+Services/day_labor.htm) (last visited Nov. 14, 2007).

migrate to the United States.<sup>196</sup> Currently, it is uncertain whether these centers, which work to improve the working conditions for immigrants, are in violation of federal law or whether changes to the law will make day labor centers an illegal operation.<sup>197</sup>

However, some proposed federal laws do appear to be harsher on day labor centers. For example, Federal Bill H.R. 4437 proposes harsh standards for illegal immigrants by making them guilty of a felony.<sup>198</sup> Moreover, H.R. 4437 increases the fines for employers of illegal immigrants.<sup>199</sup> The bill would affect day laborers by making anyone who assists undocumented workers to be guilty of smuggling.<sup>200</sup> It is unclear whether under this proposed law whether helping a day laborer find employment or providing him with a place to rest is considered smuggling. S. 2454 is not as harsh on undocumented immigrants.<sup>201</sup> Like H.R. 4437, S. 2454 increases fines for employers of undocumented immigrants.<sup>202</sup> However unlike H.R. 4437, S. 2454 provides a path to citizenship for illegal immigrants who fulfill certain requirements.<sup>203</sup> Moreover, S. 2454 increases the total amount of allowed unskilled worker visas in the United States President Bush has also presented his own proposal for immigration reform.<sup>204</sup> It includes creating a temporary work program and proposes a path towards

196. ABEL VALENZUELA, NIK THEODORE, EDWIN MELENDEZ & ANA GONZALEZ, *ON THE CORNER: DAY LABOR IN THE UNITED STATES* 23 (2006), available at [http://www.sscnet.ucla.edu/issr/csup/uploaded\\_files/Natl\\_DayLabor-On\\_the\\_Corner1.pdf](http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf) (“Media accounts in those cities and others have misrepresented the functions and activities of worker centers by labeling them as “magnets” for undocumented immigration (even though 83 percent of day laborers learned of this market after migrating to the U.S.), as illegal gathering places, or as a waste of public resources.”).

197. Border Protection, Anti-Terrorism, and Illegal Immigration Control Act, H.R. 4437, 109th Cong. (2005) (providing for more a strengthened enforcement of immigration laws and border security in the United States).

198. NAT’L EMPLOYMENT L. PROJECT, *ANALYSIS OF CERTAIN KEY PROVISIONS OF H.R. 4437 (SENSENBRENNER-KING) IMPACTING WORKER 6, 10* (2006), available at <http://www.nelp.org/docUploads/analysis%20of%20certain%20key%20provisions%2Epdf> (“H.R. 4437 makes unlawful presence not only a crime, but an aggravated felony under the immigration law—a basis for detention and deportation and a bar to re-entry.”).

199. *Id.* (“The Sensenbrenner bill increases the penalties for knowingly employing an undocumented worker or failing to comply with the verification requirements.”)

200. *Id.* (“This creates new crimes and a new class of criminals: nearly anyone and everyone who, with no evil or criminal intent, interacts with undocumented immigrants, casually, socially or otherwise.”).

201. Securing America’s Border Act, S.2454, 109th Cong. (2006).

202. *Id.*

203. *Id.*

204. The White House, *Comprehensive Immigration Reform*, <http://www.whitehouse.gov/infocus/immigration/> (last visited Nov. 14, 2007).

citizenship.<sup>205</sup> The proposal also requires that immigrants integrate to American society by adopting American customs.<sup>206</sup>

In addition to federal laws, states are addressing the issue of illegal immigration. Among these proposed bills are bills that prohibit public benefits to an illegal immigrants' child (whether or not they were born in the United States), creating a tax for electronic money transfers to Mexico and Latin America, and requiring state agencies of reporting the cost of hospital care to illegal immigrants.<sup>207</sup> Cities are also tackling the immigration issue. One north Texas suburb imposed a fine against landlords who rent housing to illegal immigrants.<sup>208</sup> The same city also declared English its official language.<sup>209</sup>

It seems clear that these proposed changes will increase the awareness for undocumented immigrants and augment the attention on day laborers. Anti-undocumented worker groups will continue to argue that undocumented workers are a burden that worsens the conditions for lower-class Americans. Currently, many of these groups gather and protest outside labor sites.<sup>210</sup> At the same time, the proposed changes will continue to unite illegal immigrants. In May 2006, illegal immigrants gathered in mass demonstrations in major cities in the United States to protest the proposed bills that were unfavorable to immigrants.

In the future, changes affecting undocumented workers should take the following factors into consideration and provide legislation which offers a better understanding of the plight of immigrant workers: (1) increased support for day labor centers, (2) educational services and advice for immigrant workers, (3) enforcement of work safety standards at typical work sites for day laborers and protection for workers who voice their concerns for their safety, (4) paths for legal residency, (5) increased availability of unskilled worker visas, and (6) increased immigrant representation in employment unions.

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205. *Id.*

206. *Id.*

207. Ralph Blumenthal, *Texas Lawmakers Put New Focus on Illegal Immigration*, N.Y. TIMES Nov. 16, 2006, available at [http://www.nytimes.com/2006/11/16/us/16immig.html?\\_r=1&oref=slogin](http://www.nytimes.com/2006/11/16/us/16immig.html?_r=1&oref=slogin).

208. Cathy Booth Thomas, *Taking Aim at Immigration in Texas*, TIME, Nov. 17, 2006.

209. *Id.*

210. Terry McCarthy, *Stalking Day Laborers*, TIME, Dec. 5, 2005, at 12–13.