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Mauricio A. Espana

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Cover Page Footnote

J.D. 2003, Fordham University School of Law; Associate, Mayer, Brown, Rowe & Maw (as of September 2003). I would like to thank everyone who supported and encouraged me as I strived to carry on my endeavors. I would like to express special gratitude to my mother, father, family, and friends for their unending support, tolerance, and understanding.

DAY LABORERS, FRIEND OR FOE: A SURVEY OF COMMUNITY RESPONSES

Mauricio A. España*

INTRODUCTION

A landscaper named Ausencio is hanging seventy-five feet in the air suspended by only a two-inch rope as he attempts to trim a tree.¹ In one hand, he holds a chainsaw while with the other he tries to keep himself stable.² As he works diligently to cut down this tree, the rope becomes untied and he plummets to his death.³ Under normal circumstances, Ausencio's co-workers and employer would run to his aid and summon an ambulance to help him. For Ausencio, however, none of this is a reality because of one reason; he is a day laborer.⁴

Communities throughout New York State, such as Farmingdale and Freeport, Long Island, Bensonhurst and Williamsburg, Brooklyn, and Woodside, Queens, have for some time grappled with how to integrate a day labor force into their communities.⁵ Day labor-

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1. Valeria Godines, *Fatal Fall Illustrates Risks Taken by Desperate Immigrants*, ORANGE COUNTY REG., July 19, 2002, at State & Regional News.

2. *Id.*

3. *Id.*

4. I use the word reality because in this situation the day laborer was abandoned by his employer.

5. Wil Cruz, *Roosevelt Avenue Day Laborers, Officials Meet Over Concerns*, NEWSDAY, Sept. 8, 2002, at A17 (discussing the day laborer population and controversy in Woodside Queens); Ron Howell, *Gathering Spot for Day Laborers; Official site for hiring opens in Bensonhurst*, NEWSDAY, Mar. 5, 2002, at A15 [hereinafter Howell, *Bensonhurst Center*] (discussing the opening of a day labor site in Bensonhurst Brooklyn); Ron Howell, *Laborers Pressured To Move*, NEWSDAY, Aug. 29, 2002, at A16 [hereinafter Howell, *Williamsburg Removal*] (discussing the removal of Latina and Polish women day laborers from the streets of Williamsburg, Brooklyn); Bart Jones, *Laborer Site's Slow Start*, NEWSDAY, Sept. 19, 2002, at A26 [hereinafter Jones, *Freeport Center*] (discussing the permanent center created in Freeport, Long Island); Bart Jones, *Residents In Support Of Laborers; Amid adversity, hope*, NEWSDAY, Aug. 26, 2002, at A04 [hereinafter Jones, *Farmingdale Center*] (discussing the opening of a day labor site in Farmingdale, Long Island); Marta E. Kane, *Day Laborers Site Closed by Village*, FARMINGDALE OBSERVER, June 15, 2001, at 1 (discussing the removal of day laborers from a public street in Farmingdale, Long Island).

ers are typically at-will employees that are hired on public streets.⁶ Although these communities rely on day laborers as a source of cheap labor, they also find the presence of these workers troubling.⁷ Their major contentions are that they create unsanitary conditions, they are aesthetically detrimental to their neighborhoods, and they take away jobs from American citizens.⁸ Some communities respond with overt hostility to day laborers.⁹ Other communities implement solutions that not only move the hiring process of day laborers—and thus the workers themselves—off public streets, but also create permanent centers where private organizations can monitor employers and empower laborers by teaching them their rights.¹⁰

This comment discusses the various ways that communities that benefit from day laborers respond to the presence of this “underground” employment phenomenon. Part I provides some background into the day laborers’ situation, livelihood, and legal rights. Part II discusses the competing issues faced by day laborers, as well as the issues the laborers present to community residents, employers, and the United States Government. Finally, Part III discusses the different solutions that communities confronted with day laborers have proposed and implemented, and concludes that it is in the best interests of all parties involved that communities accept day laborers and accommodate them in shape up sites.

I. BACKGROUND

Day laborers are primarily undocumented immigrants from Latin America that seek work on a daily basis.¹¹ A day laborer is “someone who gathers at a street corner, empty parking lot, . . . or

6. Stephen R. Munzer, *Ellickson on “Chronic Misconduct” in Urban Spaces: Of Panhandlers, Bench Squatters, and Day Laborers*, 32 HARV. C.R.-C.L. L.REV. 1, 33-34 (1997).

7. Howell, *Williamsburg Removal*, *supra* note 5, at A16; Kane, *supra* note 5, at 1. There are also community organizations such as Sachem in Farmingdale, Long Island, whose goals include prohibiting day laborers from seeking work and getting them deported. SACHEM QUALITY OF LIFE ORGANIZATION, at <http://sqlife.org/about.htm> (last visited Mar. 17, 2003).

8. *See infra* Part II.B.

9. Howell, *Williamsburg Removal*, *supra* note 5, at A16; Kane, *supra* note 5, at 1.

10. Cruz, *supra* note 5, at A17; Howell, *Bensonhurst Center*, *supra* note 5, at A15; Jones, *Farmingdale Center*, *supra* note 5, at A04; Jones, *Freeport Center*, *supra* note 5, at A26.

11. ABEL VALENZUELA, JR., CTR. FOR THE STUDY OF URBAN POVERTY, WORKING ON THE MARGINS: IMMIGRANT DAY LABOR CHARACTERISTICS AND PROSPECTS FOR EMPLOYMENT 7, 10, 16, 22, 23 (1999), available at <http://www.weingart.org/institute/research/colloquia/pdf/DayLaborerStudy.pdf> (last visited Mar. 21, 2003); ABEL

an official hiring site, to sell their labor [, as an individual rather than union or company,] for the day, hour, or for a particular job.”¹² Most of them are undocumented immigrants that enter the United States illegally in search of work.¹³ Although the majority of them are Mexican immigrants, many come from throughout Southern and Central America, and most lack proficiency in the English language.¹⁴ The majority of day laborers are unable to work in the mainstream labor market either because they are undocumented or because they lack the ability to speak English.¹⁵ Additionally, the overwhelming majority of day laborers are men between the age of eighteen and sixty-five.¹⁶ In New York, however, the day laborer phenomenon is not exclusive to Latino men; it also includes women and Eastern Europeans.¹⁷

Day laborers usually emigrate from their countries because of dire economic or political situations and live meager, modest lives in the United States. Some individuals come to the United States in order to support their families back home, where there are no

VALENZUELA, JR. & EDWIN MELENDEZ, DAY LABOR IN NEW YORK: FINDINGS FROM THE NYDL SURVEY 1, 5 (2003); Munzer, *supra* note 6, at 33-34.

12. VALENZUELA & MELENDEZ, *supra* note 11, at 1; Munzer, *supra* note 6, at 33-34.

13. VALENZUELA, *supra* note 11, at 7; VALENZUELA & MELENDEZ, *supra* note 11, at 5. In New York, Professor Valenzuela's survey report found that less than sixteen percent of day laborers had legal status in the United States when they first arrived. VALENZUELA & MELENDEZ, *supra* note 11, at 5.

14. VALENZUELA, *supra* note 11, at 10, 22; VALENZUELA & MELENDEZ, *supra* note 11, at 5. Day laborers are primarily Latinos from Mexico, Guatemala, Ecuador, Honduras, El Salvador, and Peru. VALENZUELA & MELENDEZ, *supra* note 11, at 5. This list, however, is not exclusive. *Id.* In New York, there are day laborers from countries as widespread as Brazil, Chile, Colombia, Cuba, Haiti, Jamaica, Poland, Ukraine, Canada, and many others. *Id.* at 5 n.2.

15. VALENZUELA, *supra* note 11, at 16; VALENZUELA & MELENDEZ, *supra* note 11, at 9-10. According to Professor Valenzuela, the majority of day laborers interviewed in Los Angeles, 40.3%, provided lack of work authorization as their reason for being day laborers; the second greatest number, 21.3%, claimed lack of English proficiency. VALENZUELA, *supra* note 11, at 16. Similarly, Professor Valenzuela found that in New York, 31.3% of day laborers cited lack of work authorization as the primary reason and 34.7% claimed lack of English proficiency. VALENZUELA & MELENDEZ, *supra* note 11, at 9-10.

16. VALENZUELA, *supra* note 11, at 11, 23; VALENZUELA & MELENDEZ, *supra* note 11, at 5.

17. VALENZUELA & MELENDEZ, *supra* note 11, at 5; Howell, *Williamsburg Removal*, *supra* note 5. In New York, five percent of day laborers surveyed were women. VALENZUELA & MELENDEZ, *supra* note 11, at 5. This is a characteristic that is exclusive to New York since in neither Los Angeles nor Northern California, where day labor is also highly prevalent, do women day labor. *Id.*

job opportunities.¹⁸ Others leave their homes to escape their war torn or politically unstable countries in fear of being persecuted or killed.¹⁹ Regardless of why they came to the United States, the overwhelming majority live in uninhabitable conditions, sharing a home with as many as a dozen or more workers.²⁰ They must live under these conditions either because they do not make enough money to live otherwise or because their main obligation is to send money to their families back home.²¹

The day laborers' plight is such that they will perform any task that an employer will hire them to do.²² Employers usually hire them to perform unskilled or low-skilled jobs, usually in construction, landscaping, or rubbish removal.²³ Although the type of work they perform is not unique or distinct to day laborers, what distinguishes them is their method of organizing and obtaining work.

A day laborer's daily routine usually begins early, around five or six in the morning.²⁴ While most workers head out their door in the morning to their place of employment, day laborers leave for a designated public location that serves as their de facto employment

18. Thomas Maier, *Death on the Job: Immigrants at Risk: Scaffold Collapse Highlights Immigrant Worker's Plight*, NEWSDAY, Dec. 16, 2001, at A08 [hereinafter Maier, *Scaffold Collapse*]. Donato Conde, a Mexican immigrant, emigrated to the United States to work so that he could send money to his father and fiancée and finish building his house in Mexico. *Id.*; see also Brian Harmon, *Glen Cove Outreach Grows Adopts Migrants, Quake Victims*, DAILY NEWS, May 6, 2001, at 1 (discussing the plight of Salvadoran lay day laborers that left Salvador's horrible living conditions and their families after the Salvador earth quake).

19. Mathew Purdy, *Our Towns; For Day Laborers, Another Dollar Could Mean Another Death*, N.Y. TIMES, Dec. 2, 2002, at § 1, at 49 (discussing the story of Broge-lío Oliva, who came to the United States to escape civil war in Salvador).

20. Michael Cooper, *Laborers Wanted, but Not Living Next Door*, N.Y. TIMES, Nov. 28, 1999, at §1, at 1; Karen Lipson, *Converging on Farmingville: Mexican Day Workers, Community Organizers and their Fervent Supporters All Get their Say in a Soon-To-Be-Completed Documentary*, NEWSDAY, Dec. 2, 2002, at B06; Robert McFadden, *At Rally, Suffolk Residents Protest Illegal Immigration*, N.Y. TIMES, Oct. 15, 2001, at § 1, at 42; Robert Worth, *A Tribute To King Focuses on Laborers*, N.Y. TIMES, Jan. 21, 2001, at § 14WC, at 7; *Hyenga Lake's Future: Clarkstown Must Work With Developers*, J. NEWS, Mar. 12, 2001, at 5B.

21. Cooper, *supra* note 20, at 1; Harmon, *supra* note 18, at 1; Maier, *Scaffold Collapse*, *supra* note 18, at A08.

22. See *infra* notes 28-31 and accompanying text (discussing the process through which employment is obtained including the competition to obtain work).

23. VALENZUELA, *supra* note 11, at v, 12, 13 tbl. 10; VALENZUELA & MELENDEZ, *supra* note 11, at 9; Munzer, *supra* note 6, at 34.

24. Louis Aguilar & Kevin Simpson, *Working for the Future Immigrants Risk Much for Life-Changing Gains in U.S.*, DENVER POST, Dec. 1, 2002, at §A, at A-01 (discussing the daily routine of a day laborer in Denver, Colorado).

site.²⁵ These designated locations are usually near commercial streets or busy hardware stores.²⁶ At these locations, anywhere from forty to two hundred laborers congregate and await prospective employers to solicit their services.²⁷ Once an employer arrives, swarms of laborers surround the vehicle and begin negotiating over the price for their services.²⁸ Since there is usually a substantial number of day laborers anxious to have a day's work, employers reap a bargain by having the men outbid each other for the lowest price.²⁹ If a day laborer is fortunate, he will be employed for at least that day.³⁰ If a day laborer, however, has not been hired by noon, it is most likely that he will not work that day.³¹

Day labor is a national employment phenomenon.³² Cities throughout the United States, in states including California, Illinois, Ohio, Pennsylvania, and Texas, are faced with the day labor employment phenomenon and the consequences and controversies it brings forth.³³ New York has one of the largest populations of day laborers, approximately 15,000.³⁴ This fact is not surprising considering that, according to the Office of Immigration and Naturalization Services ("INS"), New York is the second-highest desti-

25. Cruz, *supra* note 5, at A17; Howell, *Williamsburg Removal*, *supra* note 5, at A16; Kane, *supra* note 5, at 1.

26. Cruz, *supra* note 5, at A17; Howell, *Williamsburg Removal*, *supra* note 5, at A16; Kane, *supra* note 5, at 1.

27. Bill Farrell, *Job Plan Working Out Center Helps Hiring, Keeps Streets Clear*, DAILY NEWS, Sept. 16, 2002, at 1 (stating that "[e]very morning there would be 200, 300 workers lining the streets waiting for someone to drive by and offer work"); Jones, *Freeport Center*, *supra* note 5, at A26; see also *City Council Needs to Tackle Issue of Day Laborers*, NEWSDAY, Aug. 7, 2002, at A28 (stating that "an estimated 15,000 day laborers wait at more than 50 locations in the metropolitan area").

28. Ron Howell, *Day-Laborer Tensions Fuel Search For Remedy*, NEWSDAY, Aug. 12, 2002, at A04 [hereinafter Howell, *Tensions*].

29. VALENZUELA, *supra* note 11, at 13-14; Howell, *Tensions*, *supra* note 28, at A04.

30. Interview with anonymous day laborers at the Workplace Project, Hempstead N.Y. (Aug. 2001).

31. *Id.*

32. The day laborer phenomenon is not exclusive to New York. This comment, however, will only discuss how it has become significant and controversial in New York.

33. VALENZUELA, *supra* note 11, at 2-3; Godines, *supra* note 1 (discussing day laborers in California). See generally DAVID FOCARETA, TESTIMONY FROM POLICY MATTERS OHIO: CLEVELAND CITY COUNCIL HEARING ON THE DAY LABOR INDUSTRY (2001); Adrien Strasbourg, *City Funds Help 'Shade' Day Laborers From Summer Heat*, HOUSTON CHRONICLE, June 23, 2002, at 1.

34. Howell, *Tensions*, *supra* note 28, at A04. The day laborer phenomenon has specifically affected New York communities of Bensonhurst and Williamsburg, Brooklyn, Woodside, Queens, and various villages of Nassau and Suffolk Counties. See *supra* note 5 and accompanying text.

nation of "legal" immigrants³⁵ and third-highest of "illegal" immigrants.³⁶

A. Day Laborers' Rights

Day laborers who enter the United States illegally have constitutional rights, including the right to loiter for innocent purposes on public property.³⁷ The right to loiter on public property arises from the "liberty" interest protected by the Due Process Clause of the Fourteenth Amendment.³⁸ This "liberty" right is significant to day laborers because their ability to obtain work, and as such their livelihood, is dependent on exercising this right.

Additionally, federal labor laws such as the Fair Labor Standards Act of 1938 ("FLSA")³⁹ and the National Labor Relations Act ("NLRA")⁴⁰ protect day laborers since they apply to all employees regardless of immigration status.⁴¹ The FLSA is the federal mandate that provides minimum labor guidelines for all employees.⁴²

35. IMMIGRATION & NATURALIZATION SERVICE, DEP'T OF JUSTICE, IMMIGRANTS, FISCAL YEAR 2001, at 4, 54 (2002), available at <http://www.immigration.gov/graphics/aboutus/statistics/IMM01yrbk/IMM2001.pdf> (last visited Apr. 10, 2003). California is the most common destination of legal immigrants. *Id.* Although as of March 1, 2003 the Immigration & Naturalization Service ("INS") became the United States Citizenship and Immigration Services ("USCIS"), for purposes of this Comment it will continue to be referred to as INS.

36. IMMIGRATION & NATURALIZATION SERVICE, DEP'T OF JUSTICE, CHAPTER VII ESTIMATES, 2000 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 5-8, available at <http://www.immigration.gov/graphics/aboutus/statistics/Est2000.pdf> (last visited Apr. 10, 2003). According to the INS, as of October 1996 there were approximately 5 million illegal immigrants in the United States, 2 million in California, 700 thousand in Texas, and 540 thousand in New York. *Id.* at 4-5. The INS has also estimated that the population of illegal immigrants in the United States was growing by 275 thousand each year. *Id.* However, have estimated that in 2001 the illegal immigrant population was about 8.5 million people. Caitlin Harrington, *What's in a Day's Work a Little Organization Goes a Long Way in the Lives of Day Laborers*, U.S. NEWS & WORLD REP., Sept. 3, 2001, at 40-42.

37. See, e.g., *City of Chicago v. Morales*, 527 U.S. 41, 53-54 (1999) (holding unconstitutional a city ordinance prohibiting gang members from loitering on any public street because the right to loiter for innocent purposes is part of the liberty protected by the due process clause); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 164-65 (1972) (holding unconstitutional a vagrancy statute that broadly prohibits loitering); *Williams v. Fears*, 179 U.S. 270, 274 (1900) (stating that the right of liberty includes the right to live and work where one chooses as long as it is legal).

38. U.S. CONST. amend. XIV, § 1; *Morales*, 527 U.S. at 53-54.

39. 29 U.S.C. §§ 201-19 (2001).

40. *Id.* §§ 151-69.

41. *In re Reyes*, 814 F.2d 168, 169 (5th Cir. 1987); *Nat'l Labor Relations Bd. v. Appollo Tire Co., Inc.*, 604 F.2d 1180, 1182 (9th Cir. 1979).

42. The Fair Labor Standards Act ("FLSA") establishes several labor guidelines, such as minimum wage, overtime pay, recordkeeping, and child labor standards. §§ 201-19.

The Department of Labor ("DOL"), created in the early twentieth century, is the governmental entity dedicated to enforcing its guidelines.⁴³ The FLSA is significant because courts have consistently held that it provides protection to all "employees" regardless of their immigration status.⁴⁴

"[I]t is well established that the protections of the Fair Labor Standards Act are applicable to citizens and aliens alike, and whether the alien is documented or undocumented is irrelevant."⁴⁵ The Fifth Circuit, in *In re Reyes*, based its holding on the fact that, for purposes of the FLSA, an employee is defined as "any individual employed by an employer."⁴⁶ The majority of courts, soon thereafter, followed this decision.⁴⁷ Moreover, in 1987, the DOL filed a statement in which, relying solely on *In re Reyes*, they took "the position that illegal aliens can enforce the wage and hour provisions of the FLSA."⁴⁸

The NLRA, also a federal mandate, is dedicated to ensuring that labor disputes do not disturb the free flow of commerce and industry.⁴⁹ The NLRA accomplishes this mandate by "encouraging the practice and procedure of collective bargaining and by protecting the exercise, by workers, of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."⁵⁰ Unlike the

43. See the Department of Labor's Website for more information. U.S. Department of Labor: Employment Standards Administration Wage and Hour Division, at <http://www.dol.gov/esa/whd/flsa/> (last visited Mar. 21, 2003).

44. See *infra* notes 45-48 and accompanying text.

45. *In re Reyes*, 814 F.2d at 169. "Margarito Reyes and other petitioners [sought] a writ of mandamus to direct the district court to withdraw a discovery order" that demanded that petitioner's provide their citizenship status, place of birth and other fact relating to their immigration status. *Id.*

46. *Id.* (citations omitted).

47. See, e.g., *Patel v. Quality Inn South*, 846 F.2d 700, 702-03 (11th Cir. 1988) (holding that the Immigration Reform and Control Act does not affect undocumented aliens rights under the FLSA); *Zeng Liu v. Donna Karan Int'l, Inc.*, 207 F. Supp. 2d 191, 192 (S.D.N.Y. 2002) (distinguishing between the NLRA and FLSA and finding that undocumented workers are still entitled to be paid for work performed); *Singh v. Jutla & C.D. & R Oil, Inc.*, 214 F. Supp. 2d 1056, 1058-59 (N.D. Cal. 2002) (holding that undocumented aliens are entitled to all the protections under the FLSA); *Vega v. Gasper*, No. EP-84-CA-259-B, 1991 U.S. Dist. LEXIS 18576, at *10-14 (W.D. Tex. Apr. 30, 1991) (holding that undocumented migrant workers are entitled to all benefits under the FLSA).

48. *Patel v. Sumani Corp.*, 660 F. Supp. 1528, 1529 (N.D. Ala. 1987).

49. 29 U.S.C. § 151 (2001).

50. *Id.* Under the NLRA employees are entitled to several rights:

Forming, or attempting to form, a union among the employees of your employer. Joining a union whether the union is recognized by your employer or

FLSA, which is enforced by the DOL, the NLRA is enforced and regulated by the National Labor Relations Board ("NLRB").⁵¹ The NLRB is not a governmental agency like the DOL, but rather an independent federal agency established by Congress in 1935.⁵² Nonetheless, courts have also held that the NLRA applies unequivocally to undocumented immigrants.⁵³

In 1979, the Ninth Circuit held, in *National Labor Relations Board v. Appollo Tire Company, Inc.*,⁵⁴ that illegal aliens are entitled to all rights under the NLRA.⁵⁵ Similar to *In re Reyes*, the Ninth Circuit based its holding on the notion that the NLRA defines "employees" broadly, thereby including illegal aliens.⁵⁶ Moreover, it explicitly excludes certain individuals from its protections, but illegal aliens are not among them.⁵⁷ The Supreme Court,

not. Assisting a union in organizing your fellow employees. Engaging in protected concerted activities. Generally, 'protected concerted activity' is group activity which seeks to modify wages or working conditions The NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, or engaging in concerted activities, or refraining from any such activity. Similarly, labor organizations may not restrain or coerce employees in the exercise of these rights.

NAT'L LABOR RELATIONS BOARD, THE NATIONAL LABOR RELATIONS BOARD AND YOU 2-3 (1992).

51. §§ 153, 156. These statutes provide the NLRB with the authority to regulate under the National Labor Relations Act. Also see the United States National Relations Board website, at <http://www.nlr.gov/> (last visited Apr. 10, 2003).

52. For more information see the National Labor Relations Board Website. United States National Labor Relations Board, at <http://www.nlr.gov/> (last visited Mar. 21, 2003).

53. See *infra* notes 56-60 and accompanying text.

54. 604 F.2d 1180 (9th Cir. 1979).

55. *Id.* at 1181.

56. *Id.* at 1182; 29 U.S.C. § 152(3) (2001). The NLRA protects undocumented immigrants because its definition of employee is broad. Under §152(3):

The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

57. *Appollo Tire Co., Inc.*, 604 F.2d at 1182.

in *Sure-Tan v. National Labor Relations Board*,⁵⁸ affirmed and validated *National Labor Relations Board v. Appollo Tire Company, Inc.* by holding that the NLRB's construction of the definition of "employee" as including illegal aliens is entitled to considerable deference.⁵⁹ It is also significant that the Ninth Circuit went further and asserted that the Immigration and Naturalization Act ("INA") neither prohibits employers from hiring illegal aliens nor prevents them from enforcing any of their rights under the NLRA.⁶⁰

1. *Protection of Day Laborers Takes a Backward Step*

Last year, however, the Supreme Court's restrictive reading of the Immigration Reform and Control Act of 1986 ("IRCA")⁶¹ limited the scope of undocumented worker's rights under the NLRA.⁶² Under the IRCA regime, it is impossible for an undocumented alien to obtain employment in the United States without some party directly contravening explicit congressional policies. Either the undocumented alien tenders fraudulent identification, which subverts the cornerstone of IRCA's enforcement mechanism, or the employer knowingly hires the undocumented alien, in direct contravention of IRCA obligations.⁶³

As a result of the IRCA, illegal aliens are no longer entitled to awards of backpay under the NLRA for any work performed or for work they would have performed, but for an illegal termination, if they never had authorization to live or work in the United States.⁶⁴ The IRCA, however, does not undermine or diminish the FLSA in any way.⁶⁵

B. State Protection of Day Laborers

Regardless of day laborers' protection, or lack thereof, by federal laws, New York State labor laws protect them. New York State effectuates its protection by broadly defining an "employee" as a "mechanic, workingman or laborer working for another for

58. 467 U.S. 883 (1984).

59. *Id.* at 891.

60. *Appollo Tire Co., Inc.*, 604 F.2d at 1183.

61. Pub. L. No. 99-603, § 1(a), 100 Stat. 3359 (1986).

62. *Hoffman Plastic Compounds v. Nat'l Labor Relations Bd.*, 535 U.S. 137, 140 (2002).

63. *Id.* at 148-49.

64. *Id.*

65. *Id.* at 157.

hire.”⁶⁶ Similar to federal courts’ interpretation of the FLSA, this broad category encompasses day laborers by not making the category contingent on immigration status or work authorization.⁶⁷ In particular, New York has four main laws that are significant to day laborers: the Minimum Wage Act,⁶⁸ the Labor Relations Act,⁶⁹ an Hours of Labor statute,⁷⁰ and a Payment of Wages statute.⁷¹ The Minimum Wage Act provides minimum wages for all employees employed in New York State.⁷² In 1979, the Supreme Court of New York, in *Nizamuddowlah v. Bengal Cabaret, Inc.*, validated the act by holding that illegal aliens are entitled to all rights enumerated under the act.⁷³ The Labor Relations Act, New York’s version of the NLRA, was enacted to encourage collective bargaining, and to protect employees “in the exercise of full freedom of association, self-organization and designation of representatives . . . for the purposes of collective bargaining, or other mutual aid and protection, free from the interference, restraint or coercion of their employers.”⁷⁴ Finally, Article Five of the New York Labor Laws, Hours of Labor, provides the minimum and maximum hours regulations,⁷⁵ and Article Six, Payment of Wages, provides the regulations relating to wages for all employees.⁷⁶

These state labor laws are not merely on the books to provide the appearance of protection. Various governmental entities actively enforce them.⁷⁷ For instance, in 2001, New York State Attorney General Elliot Spitzer created a task force dedicated to investigating the abuse of day laborers.⁷⁸ According to Spitzer’s spokeswoman, the task forces policy “is never to ask [about] immigration status because workers are entitled to the same wages and

66. N.Y. LAB. LAW § 2 (McKinney 1999).

67. Compare *id.*, with *In re Reyes*, 814 F.2d 168, 169 (5th Cir.1987).

68. N.Y. LAB. LAW §§ 650-64 (McKinney 2001).

69. *Id.* §§ 700-18.

70. *Id.* §§ 160-80.

71. *Id.* §§ 190-199-d.

72. *Id.* §§ 650-64.

73. 415 N.Y.S.2d 685, 686 (Sup. Ct. 1979).

74. N.Y. LAB. LAW § 700 (McKinney 2001).

75. *Id.* §§ 160-80.

76. *Id.* §§ 190-99d.

77. Press Release, Office of New York State Attorney General Elliot Spitzer, Spitzer to Investigate Labor Law Violations Against Day Laborers: Legislature Urged to Override Veto of Hiring Hall Measure in Farmingville, (Apr. 11, 2001) [hereinafter Spitzer, Spitzer to Investigate]; see *infra* notes 84-84 and accompanying text.

78. Spitzer, Spitzer to Investigate, *supra* note 77. On April 11, 2001 Attorney General Spitzer created this task force and also made clear the task force’s policy that state laws protect undocumented day laborers. *Id.*

protections under New York State law regardless of whether their status is legal.”⁷⁹

The day labor task force concerns itself primarily with efforts to combat two of the most common abuses employers commit against day laborers: underpaying workers or not paying them at all.⁸⁰ Although day laborers endure these violations on a daily basis, the task force has directed their efforts against the most egregious cases.⁸¹ For instance, in June 2002, the Attorney General’s office arrested and prosecuted an individual for failing to pay several day laborers wages that he had promised them for an entire month of work.⁸² Similarly, in October of the same year, the task force ordered another individual to pay \$75,000 in back wages to eighteen immigrant day laborers.⁸³

Federal governmental entities such as the Equal Employment Opportunity Commission (“EEOC”) and the United States Occupational Safety and Health Administration (“OSHA”) have also actively directed their efforts at enforcing federal laws that protect day laborers.⁸⁴ The EEOC is a federal governmental commission established by Title VII of the Civil Rights Act of 1964.⁸⁵ The EEOC’s primary job is to enforce employment discrimination on the basis of age, disability, race, color, religion, sex, or national ori-

79. Elisa Gootman, *Contractor on L.I. is Charged with Cheating Day Laborers*, N.Y. TIMES, June 13, 2002, at B5.

80. Spitzer, Spitzer to Investigate, *supra* note 77.

81. As an intern at the Workplace Project, I predominantly dealt with day laborers that were not paid for their services. In effectuating this service, I learned how New York State labor laws and Attorney Spitzer’s task force actually works. There is an understanding that organizations like the Workplace Project are to try to remedy the countless incidents of violations against day laborers. These organizations are then supposed to pass on to the Task Force those cases they deem most egregious.

82. Press Release, Office of New York State Attorney General Elliot Spitzer, *Long Island Contractor Arrested For Failing to Pay Wages to Day Laborers*, (June 12, 2002) [hereinafter Spitzer, Long Island Contractor].

83. Elissa Gootman, *Contractor is to Pay \$75,000 Owed 18 Immigrant Laborers*, N.Y. TIMES, Oct. 4, 2002, at 5.

84. Press Release, Equal Employment Opportunity Commission, *EEOC Reaffirms Commitment to Protecting Undocumented Workers from Discrimination*, (June 28, 2002), available at <http://www.eeoc.gov/press/6-28-02.html> (last visited Apr. 21, 2003); see Thomas Maier, *OSHA To Help Improve Safety; Officials Meet with Immigrant Groups*, NEWSDAY, Dec. 21, 2001, at A24 [hereinafter Maier, *OSHA*]; Abby Scher, *When is a labor law violation not a labor law violation? in Hoffman Plastics, the Supreme Court struck a blow against the rights of undocumented workers. Immigrant rights advocates are fighting back; Making Sense*, DOLLARS & SENSE, Sept. 1, 2002, at 9.

85. Civil Rights Act of 1964, Pub. L. No. 88-352, Title II, § 201, 78 Stat. 243 (1964) (codified as 42 U.S.C. § 2000a-2000h).

gin.⁸⁶ It has firmly stated that they will investigate and prosecute any claims that come to their attention, without regard to immigration status.⁸⁷ Moreover, OSHA, under the direction of the DOL, is responsible for enforcement against another day laborer's affliction: hazardous and unhealthy working conditions.⁸⁸ OSHA has promised the community activists of New York City and Long Island that they will "increase safety measures and crack down on employers who exploit undocumented workers."⁸⁹ According to an OSHA spokesperson, the agency's focus is directed toward getting "immigrant workers to [become] aware of their rights and [being able] to get a feel of how [the agency] can improve things."⁹⁰

II. EXAMINING THE SPECIFIC ISSUES SURROUNDING DAY LABORERS

A. Employer Exploitation and Abuse of Day Laborers

1. *Inadequate Wages or Failing to Pay at All*

Day laborers are a distinct class of workers because of their method of obtaining work and their legal status as undocumented immigrants.⁹¹ This distinction, however, leads many unscrupulous employers to exploit them and violate their labor rights.⁹² Day laborers withstand the constant and repetitive abuse and violation of their rights either because they are reluctant to enforce these rights for fear that their employer will report them to the INS, or because they are ignorant of their rights and thus their ability to enforce them.⁹³

86. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, STATUTORY AUTHORITY, at <http://www.eeoc.gov/statauth.html> (last visited Apr. 21, 2003).

87. Press Release, Equal Employment Opportunity Commission, *supra* note 84; see also Scher, *supra* note 84, at 9 (discussing the EEOC's decision to review its present stance that federal anti-discrimination laws apply to all employees regardless of immigration status).

88. See *infra* Part II.A.2.

89. Maier, *OSHA*, *supra* note 84, at A24.

90. *Id.*

91. See *supra* notes 24-31 and accompanying text.

92. VALENZUELA & MELENDEZ, *supra* note 11, at 10; see, e.g., Randal C. Archibold, *Creating a Bridge from the Subculture of Day Laborers to Mainstream Society*, N.Y. TIMES, Mar. 3, 2002, at 1.36 (discussing day labor's experience in Mamaroneck New York); Gootman, *supra* note 83, at 5 (discussing an incident where a Long Island contractor failed to pay various day laborers for work performed); Spitzer, Long Island Contractor, *supra* note 82 (discussing the prosecution of the Long Island contractor who refused to pay day laborers for work performed).

93. *Workplace Safety and Health for Immigrants and Low Wage Workers: Hearing Before the Subcommittee on Employment, Safety, and Training of the Committee on Health, Education, Labor, and Pensions*, 107th Cong. 50-51 (2002) [hereinafter *Hear-*

A persistent problem for day laborers' is that, many times, they will work for an employer for a day or even weeks and not be paid.⁹⁴ An example of such an abuse is the case that the Attorney General's task force prosecuted last June.⁹⁵ Richard Holowchak, a Long Island contractor, recruited four day laborers in January of last year to perform general construction work, from sunrise to sunset, for one month.⁹⁶ He promised two of the laborers \$90 a day and the other two \$100 a day.⁹⁷ The four individuals worked for a month without receiving any pay.⁹⁸ When the job was completed, Holowchak refused to pay the four laborers their salary for the entire month, \$7,360.⁹⁹

Another employer abuse of day laborers occurs when the laborers are paid substantially less than what they are entitled to under the labor laws.¹⁰⁰ For instance, there is the case of the Queens contractor who solicited eighteen immigrant day laborers to construct an animal shelter in Southampton, Long Island.¹⁰¹ Although the contractor paid the individuals \$130 to \$160 a day, under state law they were entitled to the prevailing wage because the work was a public project.¹⁰² The prevailing wage is usually between \$39 and \$69 an hour.¹⁰³ The wage difference, which the workers did not complain about, was discovered when dealing with the laborers' original grievance: the contractor had also failed to pay them at all for the two to three weeks that they had worked.¹⁰⁴

ings on Workplace Safety and Health] (testimony of Thomas Maier reporter, for New York Newsday, testifying that "[because] of their illegal status in this country, many undocumented workers are vulnerable to abuse, fearing they will be deported if they complain about unsafe and unhealthy job conditions"), *available at* http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi? IPdress=162.140.64.21&filename=78031.pdf&directory=/diskb/wais/data/107_senate_hearings (last visited Apr. 10, 2003).

94. VALENZUELA & MELENDEZ, *supra* note 11, at 10; Archibold, *supra* note 92, at 1.36; Gootman, *supra* note 83, at 5; Spitzer, Long Island Contractor, *supra* note 82.

95. Spitzer, Long Island Contractor, *supra* note 82. Other illustrations are that of Artemio Garcia and other day laborers who were owed about \$2,000 by a contractor for months of work, and Hernan Arias, 23, who was solicited by a contractor to work for fifteen days, who then failed to show up and pay him. Archibold, *supra* note 92, at 1.36. As Hernan Arias stated, the most unfortunate thing about these incidents is that this is a daily occurrence for day laborers. *Id.*

96. Spitzer, Long Island Contractor, *supra* note 82.

97. *Id.*

98. *Id.*

99. *Id.*

100. Gootman, *supra* note 83, at 5.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

Further, according to Professor Valenzuela, as of last year, the mean hourly reservation wage for day laborers in New York was \$8.51.¹⁰⁵ Although this is higher than the minimum wage in New York, these same individuals' mean yearly income was approximately only \$11,850.¹⁰⁶ Two factors unique to day laborers' situation best explain this disparity. First, the amount of time they are employed varies.¹⁰⁷ Second, their ability to obtain employment varies, since only during the summer is employment constant and generously available.¹⁰⁸

2. *Unsafe Working Conditions*

Another problem that day laborers face is the unsafe and life-threatening working conditions that many times they are forced to work in.¹⁰⁹ Immigrant workers are more likely to die on the job than non-immigrant workers.¹¹⁰ For instance, between 1994 to 1999 there were 4200 immigrant worker fatalities.¹¹¹ This is particularly significant in New York since it "has the nation's highest rate of immigrants killed on the job."¹¹² As of the year 2000, forty percent of workplace deaths occurred in New York.¹¹³ According to Pascual Blanco, Executive Director of the La Fuerza Unida de Glen Cove, a day laborer site in Glen Cove, "[ninety-five] percent of [his] workers are in high risk jobs and are afraid of making any complaints."¹¹⁴ The fact that from 1994 to 2000, 800 immigrant work-related deaths went uninvestigated by OSHA worsens these circumstances.¹¹⁵

105. VALENZUELA & MELENDEZ, *supra* note 11, at 6-7. The reservation wage means that day laborers would refuse to work for lower than this amount. *Id.* at 6. This mean wage is the mean of the hourly reservation wage during spring and summer when there is demand, \$9.37, and when there is a low demand, \$7.61. *Id.*

106. *Id.* at 6-7. This number was computed by using the mean of day laborers' monthly income in a good month, \$1,471, and a bad month, \$504 as the basis for their monthly income. *Id.*

107. VALENZUELA, *supra* note 11, at 17-18; VALENZUELA & MELENDEZ, *supra* note 11, at 7.

108. VALENZUELA, *supra* note 11, at 17-18; VALENZUELA & MELENDEZ, *supra* note 11, at 7.

109. Godines, *supra* note 1; Maier, *OSHA*, *supra* note 84, at A24.

110. *Hearings on Workplace Safety and Health*, *supra* note 93, at 50-51.

111. *Id.*

112. Maier, *OSHA*, *supra* note 84, at A24.

113. *Hearings on Workplace Safety and Health*, *supra* note 93, at 50-51.

114. Maier, *OSHA*, *supra* note 84, at A24.

115. *Hearings on Workplace Safety and Health*, *supra* note 93, at 50-51; *see also* Maier, *OSHA*, *supra* note 84, at A24. Day labor and undocumented immigrants work related injuries go unreported by OSHA for various reasons. The accidents go unre-

There are many examples of these unsafe conditions. In New York, for example, a Park Avenue South construction accident that occurred in October 2001, involved a scaffolding that collapsed and killed five immigrant day laborers, injuring fourteen others.¹¹⁶ All were working for \$7 per hour.¹¹⁷ One month later, on November 23, 2001, yet another day laborer was killed and ten other were injured, after a building they were working on in Williamsburg, Brooklyn, collapsed.¹¹⁸ Most recently, Juan Oliva, a twenty-one year old Salvadoran, was killed when six hundred pounds of particle board fell on top of him as he loaded a truck for \$90 a day in Farmingdale, Long Island.¹¹⁹

B. Resident Complaints about Conditions that Day Laborers Allegedly Cause

Communities with large populations of day laborers have always grappled with how to integrate the laborers that live and work in their communities. Residents are outraged by what they claim as consistently unacceptable behavior displayed by the day laborers in their neighborhoods.¹²⁰ Residents complain that the day laborers cause significant traffic congestion and increase commercial traffic in residential areas because their presence attracts employers who must drive through their communities to solicit laborers from street corners.¹²¹ There is also a broader public concern that “motorists on the highway or in the parking lot are likely to hit one of the workers or get into an accident as they swerve out of the way.”¹²² Residents also claim that day laborers cause unsanitary conditions by urinating and leaving garbage on streets when waiting to solicit work.¹²³ In addition, they claim that day laborers vandalize areas where they congregate.¹²⁴ One Long Island citizens organization

ported primarily because neither the employer nor the employees report the incident. Maier, *OSHA*, *supra* note 84, at A24; Purdy, *supra* note 19, at 49.

116. Maier, *Scaffold Collapse*, *supra* note 18, at A08. Donato Conde, the nineteen-year-old, had emigrated from Mexico where his elderly father and fiancée lived. *Id.* His only purpose for coming to the United States was to work, make money, and send it to Mexico so that his fiancée and father could finish constructing their home. *Id.*

117. *Id.*

118. Anthony M. DeStefano, *Legal Efforts to Continue In Building Collapse Case*, *NEWSDAY*, June 19, 2002, at A24.

119. Purdy, *supra* note 19, at 49.

120. Kane, *supra* note 5, at 1.

121. Kane, *supra* note 5, at 1; David Simon, *Local Politicians Investigating Tough Issues With Day Laborers*, *QUEENS CHRON.*, August 22, 2002, at 2.

122. Jones, *Freeport Center*, *supra* note 5, at A26.

123. Cruz, *supra* note 5, at A17; Kane, *supra* note 5, at 1.

124. Kane, *supra* note 5, at 1.

has gone as far as to blame day laborers for allegedly committing and leading others to commit serious crimes, “such as rape, sexual assault, involuntary and vehicular manslaughter, and other violence against the taxpaying residents of [their] community.”¹²⁵

Residents’ outrage, however, is not limited to complaints about aesthetic and sanitary conditions. Residents’ fundamental grievance is that day laborers should not be entitled to work in their neighborhoods, and they argue that communities should not help the laborers in any way.¹²⁶ Many residents believe that day laborers are a detriment to their neighborhood because they take away jobs that citizens and legal immigrants are entitled to have.¹²⁷ Moreover, they feel that since day laborers are not living or working here legally, residents and municipalities should not help them further their activities.¹²⁸ Ironically, although residents are outraged by the existence of day laborers in their community, the majority of them use employers that hire day laborers, and enjoy the benefits day laborers provide in terms of possibly lower prices.¹²⁹

C. Employers’ Economic Factors

Employers that routinely engage day laborers for work must consider many economic factors. These employers have a stake in the existence of day laborers’ employment structure because it is a vital and generous source of cheap labor.¹³⁰ The unending supply

125. Sachem Quality of Life: About SqofL, Myths & Facts, at <http://sqlife.org> (last visited Apr. 21, 2003).

126. Bart Jones, *Day Laborers Lose Site: Farmingdale Shuts Gathering Spot Amid Cries of Racism*, NEWSDAY, June 12, 2001, at A07 [hereinafter Jones, *Lose Site*] (stating that residents “also complained that most of the workers are in the country illegally and don’t pay taxes since they work ‘off the books’”); *Letters: Stop Breaking Laws*, NEWSDAY, Aug. 24, 2002, at A14; Sachem Quality of Life: Myths & Facts, at <http://sqlife.org/fag.htm> (last visited Apr. 21, 2003).

127. Munzer, *supra* note 6, at 34 n.65; Jones, *Freeport Center*, *supra* note 5, at A26; Sachem Quality of Life: Myths & Facts, *supra* note 126.

128. *Letters: Stop Breaking Laws*, *supra* note 126, at A14; Jones, *Freeport Center*, *supra* note 5, at A26 (quoting Freeport resident who is furious that the village is supporting the day labor site while he is out of work).

129. Myrka A. Gonzalez, *Day Laborers Deserve LI Support*, NEWSDAY, Aug. 30, 2002, at A45. “The irony [of this issue is that the residents of Long Island] want them as [their] gardeners, waiters, dishwashers, maids, handymen, and builders, but then we don’t want to see them around.” *Id.*

130. VALENZUELA, *supra* note 11, at 3; VALENZUELA & MELENDEZ, *supra* note 11, at 10 (stating that the proliferation of day laborers throughout New York “is mostly explained by the increased number of employers seeking this relatively inexpensive, hard working, and trouble free workforce”); Howell, *Tensions*, *supra* note 28, at A04 (comparing New York City with Long Island, but also illustrating the new problems in Brooklyn and Queens).

of labor, whenever they need it, makes it very easy for employers to replace employees or recruit more employees as business requires.¹³¹ If day laborers, therefore, are pushed out and made inaccessible, employers would have to hire other workers and incur greater expenses.¹³²

D. The INS and Day Laborers' Assertion of their Rights Under the FLSA

Although the INS mandate is directed at preventing illegal immigrants from living and working in the United States, in reality the INS does not pose a significant threat to day laborers and the vindication of their otherwise recognized rights.¹³³ Under the Immigration and Nationality Act ("INA"), undocumented immigrants are not allowed to enter and live within the United States and do not have authorization to work.¹³⁴ Accordingly, under the INA, INS is required to investigate, prosecute, and deport all day laborers.¹³⁵ This mandate, however, was inadequate for some time because, although it prohibited the harboring of illegal aliens, courts interpreted this to exclude employment.¹³⁶ Courts held that unless there was some direct congressional action prohibiting the employment of illegal aliens, employers were free to do so.¹³⁷ In 1986, Congress heeded the courts' assertions and passed the Immigration and Reform Act of 1986 ("IRA"), which explicitly made it illegal for undocumented immigrants to obtain work and also made it illegal for employers to hire immigrants without work authorization.¹³⁸

The impact of the IRA, however, has been blunted. The DOL, which is responsible for enforcing the FLSA, protects all "employees" regardless of their immigration status.¹³⁹ The INS and DOL's

131. VALENZUELA, *supra* note 11, at 3. This is especially significant for the day laborers' common employers, for example construction contractors and landscapers, because work is not continuous. Thus, employers do not have to employ stable workers, but can recruit laborers whenever there is work.

132. See VALENZUELA, *supra* note 11, at 3; Howell, *Tensions*, *supra* note 28, at A04 (discussing day laborer's importance to employers).

133. Mayor Trudden, *Opinion: From the Mayor*, FARMINGDALE OBSERVER, June 30, 2000, at <http://www.antonnews.com/farmingdaleobserver/2000/06/30/opinion/> (last visited Aug. 15, 2003).

134. Ch 477, Title II, Ch 8, § 274A (1952) (codified as 8 U.S.C. §1101 etc.).

135. *Id.*

136. See *supra* notes 56-60 and accompanying text.

137. See *supra* notes 56-60 and accompanying text.

138. Pub. L. No. 99-603 § 1(a), 100 Stat. 3359 (1986) (codified in scattered sections of chapter 8 U.S.C.).

139. See *supra* notes 45-48 and accompanying text.

opposing mandates led to a formal “understanding”: whenever both entities share the same jurisdiction they will work together to carry out both of their objectives.¹⁴⁰ In reality, however, the INS has admitted that, because of budgetary constraints, they cannot police the street corners day laborers frequent.¹⁴¹ Accordingly, INS does not pose a significant threat to day laborers’ rights under the FLSA.

III. COMMUNITIES HAVE REACTED DIFFERENTLY TO THE DAY LABORER PHENOMENON

A. Surveying Positive Attempts to Find a Solution to the Day Laborer Plight

All communities faced with a substantial population of day laborers have had to deal with the complex issues involved. Communities like Freeport, Huntington Station, Glen Cove, and Farmingdale, Long Island, and Bensonhurst, Brooklyn, have dealt positively with day laborers, recognizing their importance to the community and acknowledging that the phenomenon will not disappear by pushing it elsewhere. Although, their responses are not identical, since only Freeport is municipally funded, their common characteristic is that in all three, residents and community organizations have taken the initiative to find a solution instead of waiting for their government to act.¹⁴²

1. Freeport, Long Island: Municipal Support for Day Laborers

The Village of Freeport, Long Island, followed the lead of the villages of Glen Cove and Huntington Station, Long Island, in creating a permanent center that provides day laborers with a set location, preventing traffic congestion, and providing a safe and sanitary environment.¹⁴³ Non-profit groups, such as the Workplace Project and Catholic Charities, founded and continue to administer

140. U.S. DEP’T OF LABOR, MEMORANDUM OF UNDERSTANDING BETWEEN THE IMMIGRATION AND NATURALIZATION SERVICE DEPARTMENT OF JUSTICE AND THE EMPLOYMENT STANDARDS ADMINISTRATION DEPARTMENT OF LABOR Part I-V (1998), available at <http://www.dol.gov/esa/whatsnew/whd/mou/nov98mou.htm> (last visited Apr. 21, 2003). According to this understanding their goal is “to reduce the employment of unauthorized workers in the U.S. and the consequential adverse effects on the job opportunities, wages and working conditions of authorized U.S. workers by increasing employers’ compliance with their employment eligibility verification procedures.” *Id.* at Part I

141. Mayor Trudden, *supra* note 133.

142. See *infra* Part III.A.1-3.

143. Jones, *Freeport Center*, *supra* note 5, at A26.

these centers, but more significantly, their respective municipalities sponsor and financially support them.¹⁴⁴ Mayor William Glacken of Freeport stated that although he recognizes that there may be taxation and immigration issues within the day labor phenomenon, these issues are out of his hands.¹⁴⁵ Accordingly, he has supported the initiative to help the day laborers primarily to address local safety concerns.¹⁴⁶ In addition, organizations like the Workplace Project, along with the municipalities, provide day laborers with other forms of assistance, including legal assistance, education, moral support, and skills training.¹⁴⁷

2. Farmingdale, Long Island: Private Support After Government Disappointment

Farmingdale, Long Island, has also followed the lead of Freeport and the other Long Island villages. Farmingdale's situation, however, is different because its initiative is entirely privately organized, supported, and financed, since their municipality does not support day laborers.¹⁴⁸ Farmingdale's quest for a permanent day laborer center began like all others—with a petition to the municipality for the creation of a permanent center.¹⁴⁹ In April 2000, in response to complaints about traffic and other issues from the residents of Farmingdale, Mayor Joseph M. Trudden, with the help of the Workplace Project, created a temporary day laborer site.¹⁵⁰ Mayor Trudden created this temporary center, which he claimed the municipality was going to replace with a permanent center in one year.¹⁵¹ A newspaper opinion piece written by the Mayor, however, seems to indicate that the upcoming election and the appeasement of residents, rather than a legitimate interest in helping day laborers, was the motivation behind his initiative.¹⁵²

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. Jones, *Farmingdale Center*, *supra* note 5; Mayor Trudden, *supra* note 133.

149. See Jones, *Farmingdale Center*, *supra* note 5, at A04 (stating that the Farmingdale village failed to find a permanent center for the day laborers); Jones, *Lose Site*, *supra* note 126, at A07 (quoting Carlos Canales from the Workplace Project stating that the Mayor had promised a permanent center or at least a new site).

150. Baker, *Closing of Hiring Site Reflects Tensions Over Latino Workers*, N.Y. TIMES, June 13, 2001, at B5; Jones, *Lose Site*, *supra* note 126, at A07. The temporary site was a gravel lot adjacent to the Long Island Rail Road Station. Jones, *Lose Site*, *supra* note 126, at A07.

151. Baker, *supra* note 150, at B5; Jones, *Lose Site*, *supra* note 126, at A07.

152. This is evident from an opinion letter by Mayor Trudden where he thanked everyone for voting for him in the election and repeatedly stated that residents should

Trudden was re-elected in 2000,¹⁵³ and ordered the closing of the temporary day laborer site without replacing it with a permanent center.¹⁵⁴ As reported in the New York Newsday, "Trudden made the decision to shut the site . . . after public meetings in which Farmingdale residents and the Sachem Quality of Life Organization from Farmingville pressured him."¹⁵⁵ According to the Mayor and village officials, they closed the site because the Workplace Project and other day labor advocates failed to decide on a permanent center, whereas the Workplace Project organizers claim that the Mayor's Office was not cooperative.¹⁵⁶ After fencing up the gravel lot, and a ticketing spree against employers stopping at the location, Mayor Trudden again claimed that his office was dedicated to helping the day laborers find a permanent center.¹⁵⁷ He suggested that they could possibly relocate to Oyster Bay, to an unincorporated section of Farmingdale, or to a plot of state owned land in Suffolk County, a neighboring county.¹⁵⁸

In August of last year, the community organizations Farmingdale Citizens for Viable Solutions ("FCVS"), the Workplace Project, and HOLA, a new organization of Latino professionals, with the help of many Farmingdale residents, opened a permanent day laborer center.¹⁵⁹ This center is distinct from all others on Long Island because private organizations entirely provide funding, administration, and support.¹⁶⁰ Similar to the Freeport center, FCVS also provides day laborers with additional aid and services.¹⁶¹ For instance, they provide them with "English classes, legal assistance and training in carpentry and other trades."¹⁶²

not construe his actions as aiding or assisting illegal immigrant day laborers. Mayor Trudden, *supra* note 133. Moreover, that he and his organization are powerless to get rid of day laborers because day laborers have a constitutional right to loiter on public property. *Id.*

153. *Id.*

154. Baker, *supra* note 150, at B5; Jones, *Lose Site*, *supra* note 126, at A07.

155. Jones, *Lose Site*, *supra* note 126, at A07.

156. *Id.*

157. *Id.*; Marta Kane, *Farmingdale Site Closed, Workers Search for Alternate Locations*, FARMINGDALE OBSERVER, June 29, 2001, at 1.

158. Baker, *supra* note 150, at B5.

159. Jones, *Farmingdale Center*, *supra* note 5, at A04.

160. *Id.* Catholic Charities provides the majority of funding through a grant and the remainder of funding is provided through private donations. *Id.* For instance, Joseph Picone, a Farmingdale resident and parishioner of St. Killian's, donated and placed a wooden shed in the new location. Mayor Trudden, *supra* note 133.

161. Jones, *Farmingdale Center*, *supra* note 5, at A04.

162. *Id.*

3. *Bensonhurst, Brooklyn: A Coalition Comes Together to Help*

Bensonhurst, Brooklyn, where day laborers have lived and worked for over a decade, also grappled with the day laborer phenomenon.¹⁶³ Bensonhurst, like Freeport and Farmingdale, decided to solve both the community's and day laborers' problems by creating a permanent center.¹⁶⁴ The creation of this center was a collaboration between the Latin American Worker's Project, State Senator Vincent Gentile, and the Bensonhurst community.¹⁶⁵ Although, neither the City of New York nor the Borough of Brooklyn provided any funding, Senator Vincent Gentile was instrumental in obtaining a \$25,000 grant from the Independence Community Foundation.¹⁶⁶

Community residents and politicians have heralded this day laborer center as a success.¹⁶⁷ Residents are happy because in any one day the center is able to keep as many as two hundred day laborers, the majority from Brooklyn, but many from as far as Queens, off streets.¹⁶⁸ Day laborers benefit from the center because as Oscar Paredes, Director of the Latin American Worker's Project stated, as a result of the new center, employers will think twice before abusing day laborers.¹⁶⁹ For example, the center implemented several policies to ensure fairness.¹⁷⁰ Rates for the different jobs are standard and are posted throughout the center, all workers are tracked by a sign-in sheet, and every employer that uses the center signs a contract agreeing to pay the day laborers the wage that they have promised.¹⁷¹ Additionally, day laborers claim that the center benefits both day laborers and employers because it reduces the chaotic and competitive nature of soliciting employment, and employers know who they are hiring.¹⁷² Finally, the center also provides day laborers with additional assistance, such as

163. Howell, *Bensonhurst Center*, *supra* note 5, at A15.

164. *Id.*

165. *Id.*

166. *Neighborhood Report: \$25K for laborers*, DAILY NEWS, July 21, 2002, at suburban, at 1. [hereinafter *Neighborhood Report*]

167. Bill Farrell, *Job Plan Working Out: Center Helps Hiring, Keeps Streets Clear*, DAILY NEWS, Sept. 16, 2002, at 1; Howell, *Tensions*, *supra* note 28, at A04.

168. Farrell, *supra* note 167, at 1; Howell, *Tensions*, *supra* note 28, at A04.

169. Howell, *Bensonhurst Center*, *supra* note 5, at A15.

170. *Id.*; see also Farrell, *supra* note 167, at 1.

171. Farrell, *supra* note 167, at 1.

172. Howell, *Tensions*, *supra* note 28, at A04. Day laborers would no longer have crowd around and compete with each other for employment because employment at the new center is determined by a lottery system. *Id.*

learning new skills, safety and vocational training, and instructing them as to what they are entitled to under the labor laws.¹⁷³

B. Negative Responses to the Day Laborer Phenomenon

Other communities have reacted negatively to day laborers. These neighborhoods, fueled by anger and dislike, have made the removal of day laborers from their neighborhood their goal.¹⁷⁴

1. Farmingville, Long Island: Animosity and Attempted Murder

Some communities of day laborers on Long Island do not fare as well as others. For example, the Sachem Quality of Life organization in Farmingville was formed to eliminate day laborers from their communities.¹⁷⁵ Through organized efforts, members of Sachem urge and support the INS deportation proceedings against day laborers.¹⁷⁶ The existence of Sachem, an organization dedicated to raising support against day laborers and pushing politicians and government officials for the deportation of immigrant workers, makes Farmingville different from many of the other communities confronted by the day laborer phenomenon.¹⁷⁷ Sachem, for instance, has "photographed and videotaped laborers and their families and submitted the films to INS to facilitate deportation hearings."¹⁷⁸ Additionally, the Center for Constitutional Rights reported that "members of the Sachem group have managed to infiltrate various local governmental task forces and have gotten local law enforcement officers to ticket contractors for every minor infraction that they can."¹⁷⁹

Fueled by Sachem and its actions, the residents of Farmingville developed a strong sense of animus toward day laborers that eventually was detrimental to their safety and livelihood.¹⁸⁰ On September 17, 2000, white supremacists Ryan Wagner and Christopher Slavin lured and picked up two Mexican day laborers from a street

173. *Neighborhood Report*, *supra* note 166, at 1.

174. *See infra* Part III.B.1-2.

175. Sachem Quality of Life Organization, *supra* note 126.

176. *Id.*; Center for Constitutional Rights, Immigrant Workers Rights Project, at <http://www.ccrny.org/v2/legal/justice/justiceArticle.asp?ObjID=LCgJ2XVg60&Content=173> (last visited June. 30, 2003)

177. Center for Constitutional Rights, *supra* note 176; Sachem Quality of Life Organization, *supra* note 126.

178. Center for Constitutional Rights, *supra* note 176.

179. *Id.*

180. *Letters: Stop Breaking Laws*, *supra* note 126, at A14 (expressing their strong dislike of day laborers).

corner in Farmingville.¹⁸¹ They hired the men under the pretext that they needed them to clean a basement and lured them into the basement of an industrial building.¹⁸² Once they arrived, Wagner and Slavin beat and stabbed both individuals and left them there, thinking they were dead.¹⁸³ Both men managed to survive and escape.¹⁸⁴ By November 2000, both individuals were under police custody.¹⁸⁵ In August 2001, Slavin was convicted of attempted murder and assault, and sentenced to twenty-five years in prison.¹⁸⁶ On January 9, 2002, Ryan Wagner was also convicted and sentenced to twenty-five years in prison.¹⁸⁷ This incident, however, further fanned the flames of animosity.¹⁸⁸

Mainly due to the above incident, organizations like the Workplace Project petitioned the Village of Farmingville to fund and support a permanent center for day laborers.¹⁸⁹ In April 2001, however, the Suffolk County Legislature and County Executive Robert J. Gaffney, vetoed a bill to spend \$80,000 "for a hiring hall in Farmingville that would have housed a support center offering educational, legal and referral services for the workers as well as a place where they could wait for work."¹⁹⁰ Unlike in Farmingdale, where organizations and residents rallied together in support of day laborers and obtained a privately funded center, in Farmingville there has not been any progress.

2. Williamsburg, Brooklyn: Antagonism First, Then a Compromise

The day labor phenomenon has also affected Williamsburg, Brooklyn, a predominantly Hasidic community.¹⁹¹ Williamsburg's situation, however, is distinct in one way: the day laborers are Latina and Polish immigrant women who wait on street corners to

181. Steven Kreytak, 'I Still Have the Scars,' *Day Laborer Testifies; Shirley beating victim faces 2nd accused attacker*, NEWSDAY, Nov. 28, 2001, at A14.

182. *Id.*

183. *Id.*

184. *Id.*

185. Martin C. Evans, *2nd Arrest in Attack/Suspect Surrenders in Beating of Farmingville Workers*, NEWSDAY, Nov. 3, 2000, at A03.

186. Kreytak, *supra* note 181, at A14.

187. Brian Harmon, *25 Year Term for Attacks on Mexicans: Judge Blasts Defendants*, NEWSDAY, Jan. 10, 2002, at 1.

188. Kreytak, *supra* note 181, at A14.

189. Baker, *supra* note 150, at B5.

190. *Id.*

191. Ron Howell, *Laborers Find Warmer Home Plan Pleases Both Advocates, Locals*, NEWSDAY, Oct. 18, 2002, at A17 [hereinafter Howell, *Warmer Home*]; Howell, *Williamsburg Removal*, *supra* note 5, at A16.

work as housekeepers or any other job that families will hire them for.¹⁹²

On August 28, 2002, the Hasidic community and Rabbis of Williamsburg, Brooklyn, used loudspeakers to force these immigrant Latina and Polish women into a desolate street under the BQE, away from the community, without providing them any shelter or assistance.¹⁹³ Rabbi Yitzchok Glick stated, “[we] think it is not good for the community, the Jewish Community, that these women should gather in the center of our neighborhood.”¹⁹⁴ Moreover, as reported in New York Newsday, Rabbi Glick “offended immigrant advocates when he said [that] the action was taken because, ‘[t]hey are not dressed modestly and they should not be in the center of the community.’”¹⁹⁵

The Latin American Workers Project and the Transfiguration Roman Catholic Church of Williamsburg, Brooklyn, created an uproar in response to the community’s actions.¹⁹⁶ After several meetings between these organizations and the Hasidic leaders in the community, they agreed that the female day laborers would report to a social service center, Southside Mission, instead of staying under the BQE expressway.¹⁹⁷ Although the Latin American Workers Project and the Transfiguration Roman Catholic Church would organize, fund, and manage this new center, it was critical for the Hassidic community to agree and sanction this center.¹⁹⁸ According to Ron Howell, from Newsday, Hassidic leaders “wield considerable influence with the local Jewish families who employ the female laborers.”¹⁹⁹ Consequently, although the community initially sought to run the day laborers from its borders, unlike in Farmingville, the community was able to reach an agreement with laborer advocates that eventually led to a positive result.

192. Howell, *Warmer Home*, *supra* note 191, at A17; Howell, *Williamsburg Removal*, *supra* note 5, at A16.

193. Howell, *Warmer Home*, *supra* note 191, at A17; Howell, *Williamsburg Removal*, *supra* note 5, at A16. This action was detrimental to these women because there exists a strong natural wind tunnel that may cause them harm. Howell, *Warmer Home*, *supra* note 191, at A17.

194. Howell, *Williamsburg Removal*, *supra* note 5, at A16.

195. Howell, *Warmer Home*, *supra* note 191, at A17.

196. *Id.*; Howell, *Williamsburg Removal*, *supra* note 5, at A16.

197. Howell, *Warmer Home*, *supra* note 191, at A17; Howell, *Williamsburg Removal*, *supra* note 5, at A16.

198. Howell, *Warmer Home*, *supra* note 191, at A17.

199. *Id.*

3. *Woodside, Queens: Police Intervention Spurs Action*

Woodside, Queens, is a diverse neighborhood inhabited by mainly Irish, Filipino, and Latino residents. Mainly because of its diversity, residents of this neighborhood do not have a problem with day laborers and their way of life, but they are bothered by the traffic congestion, littering, and vandalism that day laborers allegedly cause.²⁰⁰ Although day laborers have solicited work in this community for years, during the month of August, 2002, police officers cleared the streets of any day laborers and vigorously distributed tickets to contractors and other employers who usually stop to pick up laborers.²⁰¹ In response, Helen Sears, Council Woman from Jackson Heights, and other community members, argued that this was not the best approach because many families rely on employers for sustenance.²⁰² In addition, community leaders proposed a resolution to the state legislature to investigate the issue and possible solutions.²⁰³ The legislature approved the resolution and sent it to the General Welfare Committee, which will oversee the investigation.²⁰⁴ Although no action has yet occurred, the negative response by police and some residents will be countered by the recommendations and findings that eventually result from the investigation.

CONCLUSION

Day laborers are a distinct class of workers.²⁰⁵ The situations that force people to become day laborers, their methods of obtaining employment, the type of work they perform, and the risks and hazards involved in their work, make them different.²⁰⁶ Although they are a vital part of the economy,²⁰⁷ many communities regard them as outcasts and a detriment to their way of life.²⁰⁸ Day

200. *Editorial: City Council Needs to Tackle Issue of Day Laborers*, *NEWSDAY*, Aug. 7, 2002, at A28; Ron Howell, *Sweep for Quality of Life: But Day Laborers in Woodside Say Police Targeting them*, *NEWSDAY*, Oct. 18, 2002, at A17 [hereinafter Howell, *Sweep*]; David Simon, *Local Politicians Investigating Tough Issues With Day Laborers*, *QUEENS CHRON.*, Aug. 22, 2002, available at <http://www.zwire.com/site/news.cfm?brd=1860&deptid+132987&newsid=5128419>.

201. *Editorial*, *supra* note 200, at A28; Howell, *Sweep*, *supra* note 200, at A17.

202. Cruz, *supra* note 5, at A17; *Editorial*, *supra* note 200, at A28; Simon, *supra* note 200.

203. Simon, *supra* note 200.

204. *Id.*

205. *See supra* Part I.

206. *See supra* notes 12-31 and accompanying text.

207. *See supra* notes 130-130 and accompanying text.

208. *See supra* Part III.B.

laborers may affect a community's way of life in certain respects,²⁰⁹ but it is important that these communities recognize that this phenomenon is significant and widespread. Accordingly, they should also recognize that day laborers will most likely continue to solicit work as long as their situation remains dire and employers need workers. Communities like Farmingville, Williamsburg, and Woodside may temporarily or "officially" solve their problem by pushing day laborers off their streets, but this is only a superficial remedy that harms many more individuals than it helps.²¹⁰

The policy of removing day laborers from communities as the sole remedy to the day labor phenomenon is unreasonable because it creates more harm for everyone than good. Under such a policy, the day laborers' situation is worsened because they must constantly move from their *de facto* sites, making it harder to obtain work. Additionally, they have the added pressure of making sure that police or village officials do not catch them and fine them.²¹¹ The removal of day laborers also detrimentally affects employers that work in these neighborhoods because they must either go to neighboring villages to look for workers, or hire non-day laborers for a higher fee.²¹² Residents, the main catalyst and reason for these actions, are also worse off.²¹³ Although they may be successful in moving day laborers from one street corner, the laborers will emerge somewhere else. Residents may also have to pay more for work done by non-day laborers if employers are not able to hire them.

In contrast, the movements initiated by communities, such as Freeport, Farmingdale, and Bensonhurst, are better because they provide the most benefit to the greatest amount of individuals.²¹⁴ The creation of permanent centers for day laborers is substantially beneficial to them for many reasons: because these centers shelter them from inclement weather employers will be less likely to exploit and abuse day laborers; and their distinct way of obtaining

209. *See supra* Part II.B (discussing resident's grievances); *see also supra* notes 130-132 and accompanying text (discussing their importance to employers and Long Island businesses).

210. *See supra* Part III.B.

211. *See, e.g.,* Howell, *Sweep*, *supra* note 200 (discussing Queens day laborers being ticketed for quality of life violations).

212. *See supra* Part II.C.

213. *See supra* Part II.B.

214. *See supra* Part III.A.

employment will become more regulated and less chaotic.²¹⁵ Employers would also benefit from the creation of permanent day laborer centers because it would make it easier to find day laborers, to obtain individuals at standard prices, and they would not face the possibility of greater expenses caused by the removal of day laborers.²¹⁶

Finally, this innovation would also benefit community residents. It would alleviate the aesthetic, sanitary, and safety concerns that residents find most troubling.²¹⁷ Community residents would also continue to benefit from the cheap and easily available labor that day laborers provide.²¹⁸ Permanent day laborer centers, however, would not alleviate one of the residents' concerns: the notion that municipalities or communities should not aid day laborers because they are committing illegal actions.²¹⁹ Although this may be true, in accordance with fairness and other public policy, it would be unreasonable to remove day laborers from their communities. Doing so does not solve the problem, but only makes it somebody else's problem.

215. See *supra* Part II.B. (discussing the exploitation by employers); *supra* notes 28-31 and accompanying text (discussing day laborers' distinct manner of obtaining employment).

216. See *supra* Part II.C. (discussing employers' role).

217. See *supra* Part II.B. (discussing residents' grievances).

218. See *supra* Part III.A-B.

219. See *supra* notes 128-130 and accompanying text.

