

Danger and Dignity: Immigrant Day Laborers and Occupational Risk

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ABSTRACT

The plight of immigrant workers in the United States has captured significant scholarly attention in recent years. Despite the prevalence of discourses regarding this population, one set of issues has received relatively little attention: immigrant workers' exposure to unhealthy and unsafe working conditions, and their corresponding susceptibility to workplace injuries and illnesses. Researchers have consistently found that immigrant workers suffer disproportionately from occupational injuries and fatalities, even when controlling for industry and occupation. Why, then, are foreign-born workers at greater risk for workplace injuries and fatalities, when compared with their native-born counterparts? This Article seeks to develop answers to that question with the aid of empirical research and to build upon a growing interdisciplinary literature.

This Article presents findings from a qualitative research study designed to explore the factors that shape occupational risks for immigrants. The study, conducted over several months in 2014, centered on in-depth interviews of eighty-four immigrant day laborers seeking employment in different parts of Northern Virginia. The workers' responses present a complex picture of the immigrant worker experience, reflecting persistent dangers alongside powerful

* Professor of Law, American University Washington College of Law. I extend special thanks to Daniela Carrion, my extraordinary research assistant, who helped develop the interview questions and carry out the interviews. Jeffrey Matus likewise provided exceptional support with the data analysis, and Kristin Donovan and Alejandra Aramayo provided valuable feedback and research assistance. Helpful comments from Sameer Ashar, Bernadette Atuahene, Jenny-Brooke Condon, Daria Fisher Page, Jennifer J. Lee, Elizabeth McCormick, Jaya Ramji-Nogales, Spencer Rand, Colleen Shanahan, Anita Sinha, David Thronson, and others have considerably enhanced this Article. I am also grateful to the following individuals and organizations for their collaboration on this project: Arnoldo Borja, Ivy Finkenstadt, and Claudia Quevedo of the Legal Aid Justice Center; and Molly Maddra-Santiago and Roberto Fernandez of the Centreville Labor Resource Center. Laura Cicirelli, Chika Seidel, and the staff of the *Seton Hall Law Review* provided excellent editorial assistance. Finally, I am thankful to the scores of day laborers in Virginia who participated in this study. The research protocols carried out in this study were approved in advance by the American University Institutional Review Board (#14055).

expressions of worker dignity: while the Virginia day laborers continue to encounter significant occupational risks, many comfortably asserted their rights, complicating standard narratives of immigrant worker subordination and vulnerability.

The results of the study also point to ongoing economic insecurities, and regulatory failures relating to the provision of training, use of protective equipment, and oversight of smaller worksites. The findings also signal the need for a more holistic approach to workplace regulation that concomitantly examines a range of workplace concerns, including wage violations, hostile work environments, and health and safety risks. Finally, the day laborers' experiences reveal that worker centers are well positioned to insulate immigrant workers from workplace risks, by promoting transparency and accountability in the employer-employee relationship.

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INTRODUCTION

It is a well-accepted truism that foreign-born workers in the United States perform difficult, dangerous jobs across different sectors of the economy.¹ Etched in the popular imagination are scenes of Latino and other immigrant workers toiling in agricultural fields, staffing residential and commercial construction sites, and undertaking all manner of tedious, manual labor. The economic contributions of these immigrant workers sustain numerous industries and typically provide reciprocal benefits for the laborers themselves. But for many foreign-born workers in the United States, the arc of their workplace experience leads to a tragic denouement: a work-related injury, illness, or fatality. The phenomenon is well documented by researchers, who consistently have found that immigrant workers suffer disproportionately from occupational injuries and fatalities.²

Why are foreign-born workers at greater risk for workplace injuries and fatalities, when compared to their native-born counterparts? The answer cannot simply be reduced to the inherently dangerous nature of the work that immigrants perform. Even when controlling for industry and occupation, foreign-born workers suffer disproportionately high fatality rates.³ As a result, researchers have

¹ See, e.g., Michael A. Flynn et al., *Improving Occupational Safety and Health Among Mexican Immigrant Workers: A Binational Collaboration*, 128 PUB. HEALTH REP. (SUPP. 3), Nov.–Dec. 2013, at 33, 34, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3945447/pdf/phr128s60033.pdf> (“Immigrants typically work in ‘3D jobs’ (i.e., jobs that are dirty, dangerous, and demanding).”) (footnote omitted).

² Arnold B. de Castro et al., *How Immigrant Workers Experience Workplace Problems: A Qualitative Study*, 61 ARCHIVES ENVTL. & OCCUPATIONAL HEALTH 249, 249 (2006) (“In a variety of reports, researchers . . . have noted that immigrant workers are at increased risk for work-related injury and illness relative to US-born workers.”) (footnotes omitted); Mark Schenker, *Migration and Occupational Health: Understanding the Risks*, MIGRATION POL’Y INST. (Oct. 11, 2011), <http://www.migrationpolicy.org/article/migration-and-occupational-health-understanding-risks> (“The disproportionate share of occupational fatalities among immigrants in large measure derives from the distribution of occupations among immigrants. . . . Nonfatal occupational injuries and illnesses are also higher among immigrant workers . . .”).

³ Emily Q. Ahonen et al., *Immigrant Populations, Work and Health—A Systematic Literature Review*, 33 SCANDINAVIAN J. WORK, ENV’T & HEALTH 96, 100 (2007) (“[S]ome differences in injury rates have been reported to remain even within high-risk industries; this finding suggests that other factors are also at work.”) (footnotes omitted). See also Thomas A. Arcury et al., *Work Safety Climate and Safety Practices Among*

begun to examine structural and positional factors—including immigration status, economic need, language ability, relative familiarity with the work, and more—to explain the disparities in risk.⁴ Occupational risk is a complex, variable phenomenon, but these studies have begun an important conversation regarding the salience of different risk factors and possible prevention strategies.

Of course, all of these factors operate in the context of a dizzying matrix of laws and regulations relating to occupational safety and health. Federal and state regulators have promulgated norms that articulate general duties for employers, and also standards that detail how specific types of work should be performed to ensure workplace safety. These laws relating to occupational safety and health, in turn, form part of a broader constellation of labor and employment laws that have diverse objectives and regulatory approaches. For foreign-born workers, the operation of U.S. immigration law, and its intersections with labor and employment protections, is yet another critical overlay. In other words, the occupational risks that immigrant workers face are shaped by different structural and positional forces and are modulated by multiple, intersecting legal regimes.

This Article seeks to distill, with the use of qualitative analysis, factors that might enhance or mitigate occupational risks for foreign-born workers in the United States. Specifically, this Article explores the possible relevance of both individual worker characteristics and contextual factors in the workplace and broader community. Among the individual characteristics examined are: immigration status, duration of presence in the United States, economic status, language ability, and level of experience in performing the work. Relevant contextual factors include the provision of safety-related training, involvement of a worker center or union, employer compliance with other bodies of employment law (relating to wage payment and anti-discrimination), other employer behavior, and the size and composition of the workforce. In essence, this Article examines a broader range of factors to better understand the socio-legal determinants of occupational risk. In so doing, this Article tests the widely accepted premise that immigration law (as manifested in immigration status, and/or the specter of immigration enforcement)

Immigrant Latino Residential Construction Workers, 55 AM. J. INDUS. MED. 736, 737 (2012) (citing statistics regarding Latino versus non-Latino construction workers); Xiuwen Dong & James W. Platner, *Occupational Fatalities of Hispanic Construction Workers from 1992 to 2000*, 45 AM. J. INDUS. MED. 45, 49–50 (2004) (citing disproportionate fatality rates among Hispanic construction workers).

⁴ See *infra* Part I.A.

shapes employer and worker behavior in a way that enhances susceptibility to occupational hazards.

To answer the underlying research question regarding risk factors, this Article draws upon interviews with eighty-four Latino immigrant day laborers who reside and seek employment in Northern Virginia. The in-depth, semi-structured interviews⁵ with these individuals explored their personal backgrounds, workplace experiences in the United States, exposure to occupational hazards, occurrence of work-related injuries and illnesses, personal health and safety practices, and familiarity with regulatory actors.⁶ By closely examining a specific subgroup of immigrant workers, this Article surfaces key trends and possible causal connections that can be explored further with the use of quantitative methods. Indeed, as a qualitative study, the present project (also referred to in this Article as “the present study” or “this study”) is not designed to generate findings that are generalizable to the population of immigrant workers as a whole.

Given its cross-disciplinary focus, this Article builds upon the growing literature in the social science and public health fields by explicitly examining immigrant workers’ susceptibility to occupational risk through a socio-legal lens.⁷ This Article also seeks to fill an important gap in the legal literature regarding immigrant employment rights. To be sure, the plight of immigrant workers in the United States has captured significant scholarly attention in recent years, with powerful contributions regarding wage theft, discrimination and harassment, and the criminalization of immigrant laborers.⁸ But the

⁵ This study involved research interviews with a vulnerable population of human subjects. The interviews explored topics that are sensitive in nature. Consistent with Institutional Review Board requirements, the research protocols ensured that all information collected would remain confidential and anonymous. The researchers collected very limited identifying information from the interviewed workers. No identifying information appears in this Article, and the workers’ experiences are presented in a way to preserve their anonymity. For a detailed description of the research procedures, please see *infra* Part II.

⁶ The present Article draws upon only a subset of the interview data, relating to the workers’ personal backgrounds, on-the-job experiences, and occurrence of occupational injuries and illnesses.

⁷ Pransky et al. observed in 2002 that “[l]ittle is known about the specific circumstances leading to occupational injuries and illnesses in U.S. immigrant populations.” Glenn Pransky et al., *Occupational Risks and Injuries in Non-Agricultural Immigrant Latino Workers*, 42 AM. J. INDUS. MED. 117, 118 (2002). While the literature has certainly grown since then, there are still many gaps in our understanding of this complex phenomenon.

⁸ See generally KIM BOBO, WAGE THEFT IN AMERICA (2011) (detailing the epidemic of wage theft against both immigrant and native-born workers); Ingrid Eagly, *Local*

issue of occupational health and safety—perhaps because of its regulatory complexity and occasional invisibility—has gained less traction in legal policy and academic spheres. At the same time, observers have assailed the federal Occupational Safety and Health Administration (OSHA) for its ossified agency structure and its inability to adapt to changing workplaces in the United States,⁹ including the growing presence of foreign-born workers.¹⁰ This project was designed to help nudge safety-related concerns into mainstream conversations about immigrant employment rights, and to inform the regulatory agenda of OSHA and its corollary state agencies.

The remainder of this Article is structured as follows. The Article opens in Part I by reviewing the legal, social science, and public health literature that has examined occupational risk factors for immigrant workers. Since this study focuses on immigrant day laborers, the Article also briefly describes the day labor phenomenon in the United States and some broader socio-legal trends relating to noncitizens in the U.S. workforce. Following the introduction, this Article turns to the study itself and describes the research methodology in Part II. Part III provides an overview of the interviewed workers, including their personal backgrounds, economic status and employment experiences, and self-reported workplace injuries and illnesses. Part IV then presents six core findings from the study. The Article concludes with some recommendations for further action and research that flow from the findings.

Immigration Prosecution: A Study of Arizona Before SB1070, 58 UCLA L. REV. 1749 (2010) (offering an empirical analysis of local immigration-related prosecutions); William R. Tamayo, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law: The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 U.C. DAVIS L. REV. 1075 (2000) (describing steps taken by the EEOC to address the sexual harassment of female migrant farmworkers).

⁹ One scholar has described the agency as “the paradigmatic case of bureaucratic inefficiency and regulatory failure.” Orly Lobel, *Interlocking Regulatory and Industrial Relations: The Governance of Workplace Safety*, 57 ADMIN. L. REV. 1071, 1078 (2005).

¹⁰ See, e.g., Jayesh M. Rathod, *Immigrant Labor and the Occupational Safety & Health Regime: Part I: A New Vision for Workplace Regulation*, 33 N.Y.U. REV. L. & SOC. CHANGE 479 (2009); Rebecca Smith & Catherine Ruckelshaus, *Solutions, Not Scapegoats: Abating Sweatshop Conditions for All Low-Wage Workers as a Centerpiece of Immigration Reform*, 10 N.Y.U. J. LEGIS. & PUB. POL’Y 555, 563–67 (2007).

I. BACKGROUND & LITERATURE REVIEW

The issue of immigrant worker occupational safety and health has generated wide-ranging literature from the fields of public health, industrial medicine, social science, and law. To situate the findings presented *infra*, this Article briefly surveys key components of the literature that have examined risk factors for immigrant workers. Broadly writ, these factors relate to immigration status and corresponding economic insecurity; language and cultural difference; and worksite administration and organization, including the presence of unions, the provision of safety-related trainings, the size of the workplace, and its safety culture. Following that survey, this Article provides a parallel overview of the day labor phenomenon in the United States, highlighting aspects that are relevant to occupational health and safety, and situating day labor within current sociopolitical debates.

A. *Understanding Risk Factors for Immigrant Workers*

Occupational risk is a complex phenomenon, and there are multiple frames for understanding the conditions that give rise to workplace accidents. Some occupational health scholars have focused on the particulars of work environments to understand how the physical layout, along with the tools and machinery used, might contribute to an injury, illness, or fatality. Others have investigated features of how the workplace is administered and organized—including the presence of unions, size of the workplace, and decisions or actions taken by an employer with respect to workplace safety. Still others have studied the characteristics and behavior of the workers themselves, including their use of personal protective equipment. The present study explores the possible relevance of immigrant worker characteristics and behavior, and examines key aspects of worksite administration.¹¹ But consistent with other studies, this project casts a slightly broader net, and seeks to understand the impact of social, cultural, and political contexts on the occupational risks that immigrants face.¹²

¹¹ See de Castro et al., *supra* note 2, at 250 (“In the context of work, . . . a variety of [risk] factors function more distally at employer and organizational levels.”).

¹² See Dong & Platner, *supra* note 3, at 53 (“[E]conomic circumstances and social and cultural issues are likely to be principal factors which may result in high risk task assignments, inadequate control over known hazards, inadequate safety equipment and practices, intimidation, fear of job loss or discrimination, inadequate safety training, acceptance of hazardous work practices, and underreporting of non-fatal injuries.”); Jenny Tsai & Annie Bruck, *Sociocultural Contexts and Worker Safety and Health: Findings of a Study with Chinese Immigrant Restaurant Workers*, 57 AM. ASS’N OCCUPATIONAL

What follows is a summary of existing perspectives on three key categories of risk factors: immigration status and economic security; language and cultural difference; and worksite administration and enforcement.¹³

1. Immigration Status and Economic Insecurity

In the workplace safety literature, immigration status is consistently invoked as a relevant factor for occupational risk. Indeed, as Nissen et al. observe, “[v]irtually all of the literature on undocumented workers in the United States assumes that they are more vulnerable than others because of the danger (and fear) of deportation.”¹⁴ Specifically, throughout the literature, researchers have suggested that concern about immigration-related retaliation (including possible deportation) inhibits undocumented workers from complaining about unsafe working conditions.¹⁵ A 2002 study undertaken by researchers at the University of California, Los Angeles (UCLA) proffers direct evidence for the assertion:

HEALTH NURSES J. 51, 52 (2009) (noting, in the context of restaurant worker safety and health, that “[l]ittle is known about the . . . sociocultural contexts beyond [the workplace]” and that “better understanding is needed of the work experience of foreign-born workers and factors associated with their safety and health outcomes”).

¹³ The risk factors explored in this Article overlap substantially with those named by Malcolm Sargeant and Eric Tucker, who offer a useful framework for understanding migrants’ vulnerability to occupational safety risks. Sargeant and Tucker divide the risk factors into migration factors (including legal status and conditions attached thereto), characteristics related to migrants and their country of origin (including language skills and education levels), and receiving country conditions (including sector of employment, strength of collective representation, regulatory presence, and degree of social inclusion or exclusion). Malcolm Sargeant & Eric Tucker, *Layers of Vulnerability in Occupational Safety and Health for Migrant Workers: Case Studies from Canada and the United Kingdom*, 7 POL’Y & PRAC. OCCUPATIONAL HEALTH & SAFETY 51, 53 (2009).

¹⁴ Bruce Nissen et al., *Immigrant Construction Workers and Health and Safety*, 33 LAB. STUD. J. 48, 51 (2008). See also Ahonen et al., *supra* note 3, at 96 (“It is probable that . . . newly arrived persons find themselves in positions of special occupational vulnerability, with high levels of precarious employment and poor work conditions.”).

¹⁵ See, e.g., Emily Q. Ahonen et al., *A Qualitative Study About Immigrant Workers’ Perceptions of Their Working Conditions in Spain*, 63 J. EPIDEMIOLOGY & COMMUNITY HEALTH 936, 939 (2009) (“Informants felt that they had little room for asking for improvements. They were reluctant to complain to supervisors . . . because they did not want to have ‘problems.’ For undocumented workers, this might mean the loss of their job and their income, or even deportation.”); Susan N. Buchanan et al., *Occupational Health Among Chicago Day Laborers: An Exploratory Study*, 60 ARCHIVES ENVTL. & OCCUPATIONAL HEALTH 276, 276 (2005) (“Many day laborers are undocumented immigrants and therefore may be unwilling to complain about unsafe conditions for fear of deportation.”).

[Many of the interviewed workers] felt they could not ask for protective equipment, training, or other health and safety-related items, because they might be turned into the Immigration and Naturalization Service (INS or “la migra”) or fired.¹⁶

Despite the intuitive appeal of this argument, at least one study from South Florida, which explicitly examined immigration status and safety outcomes, found no statistically significant connection between the two.¹⁷ In explaining this result, the authors suggested that documented workers might be equally vulnerable given the area’s competitive labor market, and the authors also speculated that some of the undocumented workers self-reported as documented.¹⁸ The present study builds upon prior research to examine whether undocumented status does, in fact, have a “chilling effect” on safety-related assertion of rights. As described more fully in Part IV below, the findings on this point are somewhat surprising, and suggest that among this population of workers, immigration status operates not as a blunt instrument, but in a more nuanced way.

The connections between immigration status and occupational safety are particularly intriguing, given the debates that percolated after the U.S. Supreme Court decision in *Hoffman Plastic Compounds, Inc. v. NLRB*.¹⁹ In *Hoffman*, the Court limited the remedies available to undocumented workers under the National Labor Relations Act, arguing that an award of back pay would undermine immigration law norms relating to employment authorization.²⁰ In the aftermath of *Hoffman*, lawmakers, advocates, and scholars have continued to scrutinize the appropriate balance between the enforcement of immigration laws (including those that prohibit unlawful entry and hiring of unauthorized workers) and the protection of labor rights (including the full panoply of workplace protections under U.S. law).²¹

¹⁶ MARIANNE P. BROWN ET AL., UCLA LAB. OCCUPATIONAL SAFETY AND HEALTH PROGRAM, VOICES FROM THE MARGINS: IMMIGRANT WORKERS’ PERCEPTIONS OF HEALTH AND SAFETY IN THE WORKPLACE 38 (2002), <http://www.losh.ucla.edu/losh/resources-publications/pdf/voicesreport.pdf>.

¹⁷ Nissen et al., *supra* note 14, at 58.

¹⁸ *Id.* at 60.

¹⁹ 535 U.S. 137 (2002).

²⁰ *Id.* at 150 (“[A]warding backpay in a case like this not only trivializes the immigration laws, it also condones and encourages future violations.”).

²¹ See, e.g., Christopher Ho & Jennifer C. Chang, *Drawing the Line After Hoffman Plastic Compounds, Inc. v. NLRB: Strategies for Protecting Undocumented Workers in the Title VII Context and Beyond*, 22 HOFSTRA LAB. & EMP. L.J. 473 (2005); Anne Marie O’Donovan, *Immigrant Workers and Workers’ Compensation After Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 30 N.Y.U. REV. L. & SOC. CHANGE 299 (2006).

Although a subset of remedies remains unavailable to undocumented workers, labor standards agencies have publicly asserted that undocumented workers are, in fact, protected under the law.²² Nevertheless, the legacy of *Hoffman* continues to inform legal questions at the intersection of these two legal regimes.

Immigration law norms arguably shape occupational risk, independent of their direct impact on labor standards. Because of existing laws relating to employment authorization, most undocumented workers are denied access to formal job markets and instead are funneled into the informal economy, where precarity is the norm.²³ In this way, undocumented status is often accompanied by economic insecurity; and in the context of occupational risks, researchers have found that a worker's extreme financial need may lead him to remain in an unsafe work environment.²⁴ Walter et al. reached this exact conclusion in their study of undocumented day laborers in San Francisco.²⁵ Along these lines, Williams et al. offer that "many workers are torn between refusing what they recognize to be unsafe work and the sometimes desperate need to earn money to support themselves and their families."²⁶ In some cases, the economic pressures include the expectation of sending remittances to family members in the country of origin.²⁷ The present study likewise examines the relevance of economic (in)security to occupational risk, suggesting that it continues to exert a powerful, but not indomitable, influence among the population of day laborers studied.

2. Language and Cultural Difference

Many studies relating to immigrant workers and occupational safety indicate that language difference is a contributing factor for workplace injuries and illnesses.²⁸ The reasoning advanced in these

²² Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, 35 LAW & SOC. INQUIRY 561, 568 (2010).

²³ See Arcury et al., *supra* note 3 (citing "economic pressure" as a perceived risk factor for workplace safety).

²⁴ See, e.g., Cora Roelofs et al., *A Qualitative Investigation of Hispanic Construction Worker Perspectives on Factors Impacting Worksite Safety and Risk*, 10 ENVTL. HEALTH 84, 89 (2011).

²⁵ Nicholas Walter et al., *Social Context of Work Injury Among Undocumented Day Laborers in San Francisco*, 17 J. GEN. INTERNAL MED. 221, 225 (2002).

²⁶ Quintin Williams Jr. et al., *The Impact of a Peer-led Participatory Health and Safety Training Program for Latino Day Laborers in Construction*, 41 J. SAFETY RES. 253, 254 (2010).

²⁷ Stéphanie Premji & Niklas Krause, *Disparities by Ethnicity, Language, and Immigrant Status in Occupational Health Experiences Among Las Vegas Hotel Room Cleaners*, 53 AM. J. INDUS. MED. 960, 971 (2010).

²⁸ See, e.g., Roelofs et al., *supra* note 24, at 85 ("Language barriers, i.e.,

studies is as follows: if non-English-speaking workers are unable to understand oral or written instructions, engage in trainings, or communicate to ask questions or request assistance, accidents may result.²⁹ A report by the Center to Protect Workers' Rights (CPWR) examined the impact of language difference and offered a quote from a worker affirming the enhanced risks:

If workers with limited English have a concern or doubt, they have to keep it for themselves because they can't communicate it to others. Like right now, I don't know exactly how many feet the ladder should be placed from the wall.³⁰

Language differences can enhance occupational risk in a related, but distinct way: by contributing to misunderstandings or unheeded warnings between co-workers or between workers and supervisors.³¹ A *New York Times* story from 2001 highlights this exact concern, describing an incident in Colorado where a language barrier prevented a supervisor from warning a Spanish-speaking worker about a slippery roof, resulting in that worker's fall, broken back, and paralysis.³²

Likewise, a worker's limited ability to read English could prevent that worker from absorbing warnings or instructions that accompany a

communication challenges . . . between employers and employees, are often cited among the reasons for the higher [injury] rates and/or as a key factor to address in order to ameliorate the disparity.”).

²⁹ See Ahonen et al., *supra* note 3. See also Maria J. Brunette, *Construction Safety Research in the United States: Targeting the Hispanic Workforce*, 10 INJ. PREVENTION 244, 246 (2004) (“English is not the first language of Hispanic workers and, consequently, their understanding of educational materials about safety at work will be significantly lower . . .”).

³⁰ RUTH RUTTENBERG & MARIA LAZO, THE CENTER TO PROTECT WORKERS' RIGHTS, SPANISH SPEAKING CONSTRUCTION WORKERS DISCUSS THEIR SAFETY NEEDS AND EXPERIENCES 3 (2004), <http://www.cpwr.com/sites/default/files/publications/krruttenbergreport.pdf>. Premji et al., in their study of garment workers in Montreal, Canada, likewise found that “language was found to affect workers' ability to understand and communicate [occupational health and safety] information.” Stéphanie Premji et al., *Broken English, Broken Bones? Mechanisms Linking Language Proficiency and Occupational Health in a Montreal Garment Factory*, 38 INT'L J. HEALTH SERVS. 1, 8 (2008).

³¹ Flynn et al., *supra* note 1, at 35 (“Language barriers and illiteracy can also make it difficult for workers to understand safety information and make employers less likely to spend time giving information beyond basic job task instructions.”) (footnote omitted).

³² Steven Greenhouse, *Hispanic Workers Die at Higher Rate*, N.Y. TIMES (July 16, 2001), <http://www.nytimes.com/2001/07/16/us/hispanic-workers-die-at-higher-rate.html>.

specific piece of equipment, hazardous chemical, or type of work.³³ For example, in the aforementioned 2002 UCLA study, researchers reported that the inability to “read English meant that [the study participants] could not read warning labels on containers holding toxic chemicals.”³⁴ One of the domestic workers interviewed for that study underscored the importance of “read[ing] what it says on the label Because if you mix two liquids that are opposites, you can get—the container has the information—you can choke.”³⁵ The present study collected information on the language ability of the interviewed workers and explores whether language differences contribute to the health and safety risks faced by the day laborers.

Another axis of occupational risk, invoked less frequently in the literature than language difference, is cultural difference. In some studies, “traditional values” are cited as a possible determinant of occupational harms among immigrant workers. Although no singular, dominant theory exists, the premise is that Latino male immigrant workers internalize cultural expectations to be the breadwinner for family members in the United States and overseas. Considerations of *machismo* also inform their behavior, motivating them to accept risks and project a sense of invincibility.³⁶ Menzel and Gutierrez, in their study of Latino workers in Southern Nevada, suggest a different cultural value that could potentially inform occupational risk: respect for authority.³⁷ In that study, thirteen workers reported feeling intimidated by communication with authority figures; the lack of communication, according to the authors, might enhance the risk of a workplace accident.³⁸

Another risk factor, linked to both immigration status and cultural difference, is unfamiliarity with the work. Immigrant workers, due to barriers to entry into traditional labor markets, often find themselves in occupations which they did not pursue in their countries

³³ Jayesh M. Rathod, *Beyond the “Chilling Effect”: Immigrant Worker Behavior and the Regulation of Occupational Safety & Health*, 14 EMP. RTS. & EMP. POL’Y J. 267, 283 (2010). See also Linda Delp et al., *Risk Amid Recovery: Occupational Health and Safety of Latino Day Laborers in the Aftermath of the Gulf Coast Hurricanes*, 22 ORG. & ENV’T 479, 486 (2009) (noting how OSHA facts sheets were ineffective, given the education, language, and literacy levels of the intended audience of workers).

³⁴ BROWN ET AL., *supra* note 16, at 25.

³⁵ *Id.* at 26.

³⁶ See Arcury et al., *supra* note 3.

³⁷ See Nancy Nivison Menzel & Antonio P. Gutierrez, *Latino Worker Perceptions of Construction Risks*, 53 AM. J. INDUS. MED. 179, 183 (2010).

³⁸ *Id.*

of origin.³⁹ The unfamiliar nature of the work, coupled with the newness of the work environment, can enhance occupational risks.⁴⁰ Corvalan et al. linked relatively shorter stays in the host country with higher fatality rates.⁴¹ Along these lines, a 2006 study by Breslin and Smith examined the relationship between job tenure and work injuries, and found that “all worker subgroups examined show increased risk when new on the job.”⁴² Reports issued in recent years similarly affirm that temporary workers, such as those employed through staffing agencies, are at higher risk for occupational injury due to unfamiliarity with hazards and inadequate training.⁴³ As described more fully in Part IV, most of the injured workers interviewed for this study were familiar with the work they were performing at the time of the injury, but few had received training on how to do that work safely.

3. Worksite Administration and Organization

Existing research suggests that various dimensions of the on-the-job experience operate to either enhance or mitigate occupational risks for immigrant workers. These include the presence of a union or other worker organization, the provision of safety-related training, the size of the workplace, and the workplace’s safety culture. Each of these four factors emerges as a possible determinant of risk for the immigrant day laborers interviewed for the present study.⁴⁴

A handful of scholars have examined the impact of labor unions on health and safety outcomes.⁴⁵ The CPWR report surveyed workers who had experience with both union and non-union employers. Those workers evaluated both work settings on different safety-related

³⁹ See Flynn et al., *supra* note 1, at 35.

⁴⁰ See Arcury et al., *supra* note 3, at 742.

⁴¹ Carlos F. Corvalan et al., *Role of Migrant Factors in Work-Related Fatalities in Australia*, 20 SCANDINAVIAN J. WORK, ENV'T & HEALTH 364, 369 (1994).

⁴² F.C. Breslin & P. Smith, *Trial by Fire: A Multivariate Examination of the Relationship Between Job Tenure and Work Injuries*, 63 J. OCCUPATIONAL & ENVTL. MED. 27, 31 (2006), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2078031/pdf/27.pdf>.

⁴³ See, e.g., U.S. DEP'T OF LAB., OCCUPATIONAL SAFETY & HEALTH ADMIN., ADDING INEQUALITY TO INJURY: THE COSTS OF FAILING TO PROTECT WORKERS ON THE JOB 8–9 (2015).

⁴⁴ See *infra* Parts IV.A, C–F.

⁴⁵ See, e.g., Davis Baltz et al., *Perceived Safety Climate, Job Demands, and Coworker Support Among Union and Nonunion Injured Construction Workers*, 33 J. SAFETY RES. 33, 44 (2002) (finding that “union workers differed quite dramatically from nonunion workers in their perception of safety climate”); Dong & Platner, *supra* note 3, at 52 (suggesting that unionization *may* be a relevant consideration in understanding higher fatality rates among immigrants, but noting that “[f]urther research is required”).

metrics, including “[q]uality and availability of personal protective equipment,” “[s]afety and [h]ealth [t]raining,” and “[c]ulture of [s]afety.”⁴⁶ Most of the participants rated the union employers as “excellent” or “good” in these categories, while the non-union employers were mostly given “poor” or “very poor” marks.⁴⁷ By contrast, in their study of immigrant construction workers in South Florida, Nissen et al. found a “positive but weak” correlation between union association and favorable safety outcomes.⁴⁸ The researchers suggested that sample size, misunderstanding on the part of interviewed workers, and a generally weak union presence in the area might have contributed to the surprising finding.⁴⁹ But the 2002 UCLA study similarly found no relationship between awareness of safety issues and affiliation with a union or worker center.⁵⁰ The findings from the present study, however, suggest that an immigrant worker center can play an important role in diminishing occupational risk.

Another critical component of worksite administration, which shapes outcomes relating to worker safety, is the provision of training. Mirroring the dynamics here in the United States, a study of immigrant workers in Spain found that few undocumented workers had received training in hazard prevention.⁵¹ The absence of this training, which is required of employers under U.S. law,⁵² can have dire consequences. In their study of fatal falls among immigrant construction workers, Dong et al. hypothesized that lack of training may have contributed to the fatalities.⁵³ Conversely, other studies have demonstrated how training can affirmatively improve safety outcomes.⁵⁴ For example, the CPWR report included surveys of individuals who had completed a ten-hour training organized by CPWR. Those participants “reported

⁴⁶ RUTTENBERG & LAZO, *supra* note 30, at 11 tbl.1.

⁴⁷ *Id.*

⁴⁸ Nissen et al., *supra* note 14, at 58.

⁴⁹ *Id.* at 59.

⁵⁰ BROWN ET AL., *supra* note 16, at 32.

⁵¹ Ahonen et al., *supra* note 15.

⁵² See generally U.S. DEP’T OF LAB., OCCUPATIONAL SAFETY & HEALTH ADMIN., TRAINING REQUIREMENTS IN OSHA STANDARDS (2015), <https://www.osha.gov/Publications/osha2254.pdf> (detailing training requirements across different job types).

⁵³ Xiuwen Sue Dong et al., *Fatal Falls Among Hispanic Construction Workers*, 41 ACCIDENT ANALYSIS & PREVENTION 1047, 1051 (2009).

⁵⁴ See, e.g., Paul Becker & John Morawetz, *Impacts of Health and Safety Education: Comparison of Worker Activities Before and After Training*, 46 AM. J. INDUS. MED. 63, 70 (2004) (“[M]ore workers tried and succeeded at making [safety-related] changes following training, leading to a suggestion that the training has contributed to substantial improvements in workplace conditions.”).

substantial changes in awareness and work practices ”after the training, including engagement with the employer regarding workplace hazards and sensitivity to potentially dangerous work habits.⁵⁵

According to at least one study, the above-noted issues of language difference can render ineffective otherwise well-intended training efforts. In their study, Menzel and Gutierrez observed that workers had difficulty understanding trainings and materials, due to the poor quality of interpretation and translation into Spanish.⁵⁶ Similarly, Pransky et al. reported that twenty-five percent of their survey respondents who had received some kind of job safety training had received it only in English.⁵⁷ Along these lines, O’Connor et al. found that workers with little or no English language ability were less likely to receive adequate workplace training, as compared with workers who had stronger English language skills.⁵⁸ In short, the existing literature emphasizes the importance of examining safety training in tandem with language difference in order to accurately assess the impact on occupational risk.

Some studies have suggested that the size of the workplace may be a relevant consideration in gauging occupational risk. In their study of construction worker falls, Dong et al. discovered that a disproportionate number of the falls had occurred in smaller workplaces with ten or fewer employees.⁵⁹ The researchers posited that small workplace employers “tend to lack the manpower, funding, and operational capabilities found in larger establishments”—which, in turn, can lead to weaker health and safety protocols.⁶⁰ Consistent with this finding, the Latino workers in Southern Nevada reported that “large construction companies . . . had strong health and safety training programs[,] . . . [whereas] small subcontractors . . . provided no, limited, or ineffective training.”⁶¹ In the present study, employer size again emerges as a potentially relevant risk determinant.

A final aspect of worksite administration and organization is an employer’s safety culture. Under this rubric, several different subthemes are present in the literature, including the employers’ exhortations to work quickly, provision and use of protective

⁵⁵ RUTTENBERG & LAZO, *supra* note 30, at 5–6.

⁵⁶ Menzel & Gutierrez, *supra* note 37.

⁵⁷ Pransky et al., *supra* note 7, at 120.

⁵⁸ Tom O’Connor et al., *Adequacy of Health and Safety Training Among Young Latino Construction Workers*, 47 J. OCCUPATIONAL & ENVTL. MED. 272, 274 (2005).

⁵⁹ Dong et al., *supra* note 53, at 1049.

⁶⁰ *Id.* at 1051.

⁶¹ Menzel & Gutierrez, *supra* note 37.

equipment, cultivation of relationships of trust, and promotion of a “sweatshop” culture. Employers’ insistence on speedy work surfaced as a dominant theme in the present study, and is likewise noted in the existing literature. As Menzel and Gutierrez have affirmed, pressure to work quickly is a recognized hazard of construction work.⁶² Ochsner et al. similarly reported that day laborers are encouraged “to hurry through tasks without regard to safety.”⁶³ In the qualitative study undertaken by Roelofs et al., the participants affirmed that they felt pressured to work quickly.⁶⁴

Provision and use of personal protective equipment is clearly a factor relevant to occupational risk.⁶⁵ But another, more elusive dimension of worksite conditions is the creation of an environment in which workers care for themselves and their co-workers.⁶⁶ In their study, Roelofs et al. discovered that building a relationship of trust between workers and supervisors could lead to improved safety; by contrast, an abusive environment could generate poor communication and disengagement, which could adversely affect safety outcomes.⁶⁷ Consistent with this premise, at least one study has linked mistreatment on the job (including threats and harassment) with higher rates of occupational injury.⁶⁸

A final dimension of worksite administration is the possible existence of a “sweatshop culture.” Cho et al. suggest that immigrants are at greater risk of being employed in a “sweatshop”—defined by the U.S. government as a job that violates both wage and workplace safety laws.⁶⁹ Indeed, many have posited that employers who violate one body

⁶² *Id.* at 180.

⁶³ Michele Ochsner et al., *Beyond the Classroom—A Case Study of Immigrant Safety Liaisons in Residential Construction*, 22 *NEW SOLUTIONS* 365, 366 (2012), <https://www.michaeldbaker.com/wp-content/uploads/2014/04/Article-H.pdf>.

⁶⁴ Roelofs et al., *supra* note 24, at 86.

⁶⁵ ABEL VALENZUELA, JR. ET AL., *ON THE CORNER: DAY LAB. IN THE UNITED STATES* 12 (2006), <http://www.judicialwatch.org/archive/2006/ucla-uicreport.pdf> [hereinafter *ON THE CORNER*].

⁶⁶ Arcury et al., *supra* note 3, at 742 (“[T]he creation of a culture or climate of safety may be essential to ensuring that workers protect themselves and each other on the job site.”).

⁶⁷ Roelofs et al., *supra* note 24, at 88.

⁶⁸ See Lezah P. Brown et al., *Evaluating the Association of Workplace Psychosocial Stressors with Occupational Injury, Illness, and Assault*, 8 *J. OCCUPATIONAL & ENVTL. HYGIENE* 31 (2011) (concluding that generalized workplace harassment, sexual harassment, and job pressure and threats are strongly associated with an increased risk of occupational injury, illness, and assault).

⁶⁹ Chi C. Cho et al., *An Interfaith Workers’ Center Approach to Workplace Rights: Implications for Workplace Safety and Health*, 49 *J. OCCUPATIONAL & ENVTL. MED.* 275, 276 (2007) (“The probability of working in sweatshop conditions in this sample increased

of labor/employment law (e.g., wage and hour law) are likely to violate others (e.g., occupational safety and health law) because of their general disregard for or ignorance of the law, or simply because of limited resources.⁷⁰ The present study explores this premise to determine whether safety and health violations co-occurred with other breaches of employment law. This inquiry is deeply significant for the regulatory project, as it would invite an intersectional approach to oversight and enforcement.⁷¹

B. Day Labor and Immigrant Worker Precarity

Given the demographic focus of this study, background on the day labor phenomenon in the United States is useful for understanding and analyzing the experiences of the interviewed workers. As a corollary to that background, this section also describes how socio-legal developments have generated a complex, almost dichotomous picture of the present-day immigrant worker experience.

Day labor has long been a phenomenon in the U.S. economy and society. Sociologist Abel Valenzuela, Jr. acknowledges that a precise definition of “day labor” does not exist, but offers that “the term is mostly used to convey a type of temporary employment that is distinguished by hazards in or undesirability of the work, the absence of fringe and other typical workplace benefits[,] . . . and the daily search for employment.”⁷² Although the practice is now most closely associated with male Latino immigrants who congregate at street corners or outside of home improvement stores, day labor has historically been pursued by other groups of marginalized workers, including African Americans and earlier waves of immigrants.⁷³

from 27.4% among US citizens to 36.8% among legal permanent residents and 69.6% among ‘others.’”). A General Accounting Office (GAO) report defines a “sweatshop” as “[a] business that regularly violates BOTH safety or health AND wage or child labor laws” and offers “[c]hronic labor law violator” and “[m]ultiple labor law violator” as synonyms. U.S. GEN. ACCOUNTING OFFICE, NO. GAO/HRD-88-130RR, “SWEATSHOPS” IN THE U.S.: OPINIONS ON THEIR EXTENT AND POSSIBLE ENFORCEMENT OPTIONS 16 (1988), <http://www.gao.gov/assets/80/77185.pdf>.

⁷⁰ See, e.g., JENNIFER GORDON, SUBURBAN SWEATSHOPS 13–15, 23–24 (2005) (describing how sweatshop employers systematically violate workplace laws and evade regulatory oversight).

⁷¹ See, e.g., Paul M. Secunda, *Closing Statement: More of Less: The Limits of Minimalism and Self-Regulation*, in Paul M. Secunda & Jeffrey M. Hirsch, *Workplace Federalism*, 157 U. PA. L. REV. PENNUMBRA 28, 42–45 (2008), http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1025&context=penn_law_review_online (presenting various recommendations for approaching workplace regulation more holistically and moving away from a patchwork of regulations to a more unitary system).

⁷² Abel Valenzuela, Jr., *Day Labor Work*, 29 ANN. REV. SOCIOLOGY 307, 308 (2003).

⁷³ *Id.* at 313–14 (describing the history of day labor in the United States and the

According to recent estimates, the day labor population in the United States includes several hundred thousand workers.⁷⁴

Workers typically pursue day labor for a range of reasons. Often, they are excluded from longer-term employment opportunities because of barriers to employment, including the lack of formal immigration status, racial or ethnic discrimination, limited English proficiency, lack of formal degrees and credentials, and more.⁷⁵ Although many workers are relegated to day labor due to lack of opportunities, others affirmatively choose the practice. Some workers prefer the flexibility of day labor or pursue day labor for supplemental income beyond a part-time (or even full-time) job.⁷⁶ For others, the sense of community and social networks that are established among fellow day laborers serve as an attractive force.⁷⁷

For employers, the reasons for choosing to hire day laborers are also varied. Some employers are homeowners or small business owners with a genuine need for short-term, unskilled or semi-skilled workers. For these employers, day labor is an appealing option.⁷⁸ Other employers, including those with a regular need for workers, rely on informal labor because it allows them to shirk the legal responsibilities that accompany a traditional employer-employee relationship.⁷⁹ Under this model, workers can be hired for either short- or long-term engagements: they are classified as independent contractors or their precise employment status is left vague.⁸⁰ The hiring entity makes no

groups that pursued day labor employment).

⁷⁴ Justin McDevitt, *Compromise Is Complicity: Why There Is No Middle Road in the Struggle to Protect Day Laborers in the United States*, 26 A.B.A. J. LAB. & EMP. L. 101, 103 (2010).

⁷⁵ ABEL VALENZUELA, JR. & EDWIN MELÉNDEZ, DAY LABOR IN NEW YORK: FINDINGS FROM THE NYDL SURVEY 9, 10 tbl.12 (2003) (listing, in textual and tabular forms, barriers to obtaining a job in the formal economy, including lack of English proficiency and documents, unavailability of jobs, racial discrimination, and more).

⁷⁶ ON THE CORNER, *supra* note 65, at 1–2.

⁷⁷ Nalini Junko Negi et al., *Social Networks That Promote Well-Being Among Latino Migrant Day Laborers*, 14 ADVANCES SOC. WORK 247, 253 (2013) (observing that “some participants indicated that they would even come to the day labor corner on their day off to escape feeling lonely and to be with their peers” and describing the corner “as a dynamic space where workers shared experiences and camaraderie”).

⁷⁸ ON THE CORNER, *supra* note 65, at 1 (attributing the growth in day labor to various factors, including “a push for greater labor market flexibility in all sectors of the U.S. economy”).

⁷⁹ Wade Goodwyn, *Texas Contractors Say Playing by the Rules Doesn't Pay*, NPR (Apr. 11, 2013, 8:35 PM), <http://www.npr.org/2013/04/11/176777498/texas-contractors-say-playing-by-the-rules-doesnt-pay>.

⁸⁰ See Abel Valenzuela, Jr., *Non-Regular Employment in the United States: A Profile*, in THE JAPAN INST. FOR LAB. POL'Y & TRAINING, NON-REGULAR EMPLOYMENT—ISSUES & CHALLENGES COMMON TO THE MAJOR DEVELOPED COUNTRIES 87, 99–102 (2011).

contributions to unemployment insurance, nor does it deduct wages for Social Security or other benefits, all as a result of the informality and ambiguity of the employment relationship.⁸¹

While such an arrangement could potentially benefit both employers and workers, broader structural forces have created an environment in which precarity is commonplace for immigrant day laborers. The growing day laborer population is just one manifestation of a broader shift in the economy towards contingent employment.⁸² These contingent work arrangements, while often favorable for employers, provide workers with fewer rights and benefits and less job security.⁸³ Additionally, day labor is difficult for the government to regulate and operates within industries where employers stand to gain a competitive advantage by cutting labor costs.⁸⁴ In this context, “systemic violations of labor and employment laws are the norm.”⁸⁵ One such violation is wage theft, which is endemic in the day labor economy.⁸⁶

The temporary nature of the arrangement, and the concomitant absence of a meaningful employer-employee relationship, also enables employers to disregard occupational safety and other workplace standards.⁸⁷ Indeed, existing studies reveal concerning trends regarding occupational safety and health among day laborers. As Buchanan has observed, various research studies “support the hypothesis that day laborers are at increased risk for occupational injury compared to workers in the formal labor market.”⁸⁸ A nationwide study found that one in five day laborers has suffered an on-the-job injury.⁸⁹ Indeed, some employers specifically recruit day laborers to perform difficult, dangerous work (such as asbestos abatement or demolition) that other workers would be reluctant to do

⁸¹ See generally Steven Greenhouse, *U.S. Cracks Down on ‘Contractors’ as a Tax Dodge*, N.Y. TIMES (Feb. 17, 2010), <http://www.nytimes.com/2010/02/18/business/18workers.html?pagewanted=all>.

⁸² Valenzuela, Jr., *supra* note 72, at 307.

⁸³ *Id.* at 311.

⁸⁴ Nik Theodore et al., *La Esquina (The Corner): Day Laborers on the Margins of New York’s Formal Economy*, 9 WORKINGUSA: J. LAB. & SOC’Y 407, 409 (2006).

⁸⁵ *Id.*

⁸⁶ Stephen Lee, *Policing Wage Theft in the Day Labor Market*, 4 U.C. IRVINE L. REV. 655, 661–62 (2014) (describing the phenomenon of wage theft among day laborers and offering different theories for why it occurs).

⁸⁷ See Susan Buchanan, *Day Labor and Occupational Health: Time to Take a Closer Look*, 14 NEW SOLUTIONS 253, 256–57 (2004).

⁸⁸ *Id.*

⁸⁹ ON THE CORNER, *supra* note 65.

because of the significant health hazards.⁹⁰

Immigrant day laborers in the United States perform work in a wide range of settings and industries. As noted above, many immigrant day laborers are employed directly by homeowners to perform tasks relating to landscaping, painting, moving, and more.⁹¹ And as reflected in the findings of the present study, many day laborers are employed by subcontractors engaged in construction or residential remodeling work. Consequently, the tasks that day laborers are asked to perform vary widely and include everything from carpentry to drywall installation to painting to landscaping.⁹²

In this complex and challenging environment for day laborers, worker centers have emerged as important institutions to attend to the needs of the population, mitigate the vulnerabilities they face, and serve as an intermediary between workers and employers. Currently, scores of day laborer worker centers exist in the United States, providing a physical space for workers to congregate and for employers to hire workers.⁹³ Day laborer worker centers assume a range of structures and offer varied facilities, including restrooms, telephones, drinking water, and a place to sit.⁹⁴ Most worker centers offer social and educational services, and many pursue policy and legislative priorities relevant to the center and its workers.⁹⁵ In many ways, as Janice Fine describes, worker centers “help[] immigrants navigate life in the United States.”⁹⁶ As part of their core operations, most try to stabilize the labor market by setting a wage floor, creating a system for jobs to be allocated, and facilitating the resolution of wage claims.⁹⁷ The hiring process at day labor worker centers stands in contrast to

⁹⁰ *Id.* (“The inescapable conclusions are that day laborers are hired to undertake some of the most dangerous jobs at a worksite and there is little, if any, meaningful enforcement of health and safety laws.”); *see also* Walter et al., *supra* note 25, at 222 (“Urban day laborers are restricted to a niche at the margin of society, finding employment only in the informal economy in jobs that are traditionally too dirty, too dangerous, and too poorly paid for domestic workers to accept.”).

⁹¹ ON THE CORNER, *supra* note 65, at ii, 6, 9.

⁹² *Id.* at 9 (“[Day laborers] perform a variety of manual-labor jobs, most of which involve difficult and tedious physical labor. Top occupations include construction, moving and hauling, gardening and landscaping, and painting . . .”).

⁹³ *See* Nik Theodore et al., *Worker Centers: Defending Labor Standards for Migrant Workers in the Informal Economy*, 30 INT’L J. MANPOWER 422, 424–25 (2009).

⁹⁴ ON THE CORNER, *supra* note 65, at 7–8.

⁹⁵ Ruth Milkman, *Immigrant Workers, Precarious Work, and the U.S. Labor Movement*, 8 GLOBALIZATIONS 361, 367 (2011).

⁹⁶ JANICE FINE, ECON. POLICY INST., *WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM* 11 (2006).

⁹⁷ Theodore et al., *supra* note 93, at 426–33.

informal (street corner) hiring, which can be competitive and chaotic.⁹⁸

Given its public visibility, day labor is also an optimal lens through which to examine the overall state of vulnerability for immigrant workers in the United States. For many years, particularly during the 2000s, when state and local anti-immigrant initiatives were on the rise, the Latino male immigrant day laborer came to epitomize the cause of restrictionists.⁹⁹ For anti-immigrant advocates, day laborers represented an economic threat because of the perception that they were undercutting wages and job opportunities for U.S. workers; day laborers were also perceived as a threat to the existing quality of life, as they moved into suburban neighborhoods that were unaccustomed to large numbers of low-income immigrants.¹⁰⁰

In 2012, the U.S. Supreme Court in *Arizona v. United States* upheld a preliminary injunction of portions of Arizona's controversial law targeting immigrants.¹⁰¹ This decision marked a turning point in state and local efforts to enact bills designed to drive undocumented persons out of their jurisdictions. Indeed, some state legislatures began to enact laws that served a more integrative function, including measures relating to driver's licenses and educational programs.¹⁰² At the same time, a grassroots immigrants' rights movement has continued to grow in strength, drawing attention to the plight of the millions of undocumented persons in the United States. As part of that movement, many undocumented persons affirmatively came out of the shadows, publicly proclaiming their undocumented status despite the adverse consequences they might face.¹⁰³ And in the federal legal sphere, although the holding in *Hoffman Plastic*

⁹⁸ Valenzuela, Jr., *supra* note 72, at 318.

⁹⁹ Peter Skerry, *Day Laborers and Dock Workers: Casual Labor Markets and Immigration Policy*, 45 SOC'Y 46, 46 (2008) ("Day laborers, visible outside Home Depots across the United States, have emerged at the center of [the immigration] controversy.").

¹⁰⁰ See AUDREY SINGER ET AL., BROOKINGS INST., METRO. POLICY PROGRAM, IMMIGRANTS, POLITICS, AND LOCAL RESPONSE IN SUBURBAN WASHINGTON, 1, 12–15 (2009).

¹⁰¹ 132 S. Ct. 2492 (2012).

¹⁰² *States Pass 171 Immigration Laws in 2014*, NAT'L CONF. STATE LEGISLATURES, <http://www.ncsl.org/press-room/states-pass-171-immigration-laws-in-2014.aspx> (last visited Feb. 20, 2016) ("Although 171 laws and 117 resolutions were adopted in 2014, that's a 34 percent decline from 2013, when state houses enacted 438 laws and resolutions. . . . [S]tates continue to consider immigration issues in a range of policy areas including appropriations, education, health, benefits, law enforcement, employment, driver's licenses and human trafficking.").

¹⁰³ Rose Cuison Villazor, *The Undocumented Closet*, 92 N.C. L. REV. 1, 1 (2013) (describing the growing visibility of "undocumented Americans").

Compounds stands, the Obama administration has generally discontinued the practice of large-scale worksite enforcement raids. Instead, it has pursued a significant number of behind-the-scenes audits of employers believed to have hired unauthorized workers.¹⁰⁴

What we see, therefore, is a decidedly mixed picture of immigrant worker precarity. Labor exploitation, dangerous working conditions, and economic insecurity continue to beleaguer immigrant workers. That said, the federal government has adopted a somewhat gentler approach to regulating unauthorized workers, and the social positioning of undocumented persons continues to evolve, particularly in the context of growing calls for immigration reform.¹⁰⁵

II. RESEARCH METHODOLOGY

The findings presented in this Article were gleaned from a qualitative research study conducted between May and September 2014. Specifically, the author and one other trained researcher conducted in-depth, semi-structured interviews of eighty-four immigrant day laborers in the Virginia suburbs of Washington, D.C. Prior to commencing the research, the author developed a list of interview questions relating broadly to the following topics: personal information; employment experiences in the United States; specific experiences in subjectively dangerous work environments and with occupational injuries or illnesses; recent practices relating to the use of personal protective equipment; and familiarity with OSHA and related worker protections. In addition to the list of interview questions, the author developed a consent form (in both English and Spanish) and an informational flyer (in Spanish) to be distributed to prospective interviewees. These documents and the accompanying research protocol were reviewed and approved by the Institutional Review Board (IRB) of American University.

Part of the research protocol included an incentive for day laborers to participate: a \$20 gift card for a local supermarket. Given the likelihood that the interview subjects might be reluctant to speak with the researchers, and that their time (as day laborers) was valuable, both the author and the IRB deemed this to be a suitable incentive but,

¹⁰⁴ Adriana Gardella, *As Immigration Audits Increase, Some Employers Pay a High Price*, N.Y. TIMES (July 13, 2011), http://www.nytimes.com/2011/07/14/business/smallbusiness/how-a-small-business-can-survive-an-immigration-audit.html?_r=0.

¹⁰⁵ The Associated Press, *Majority of Americans Support Pathway to Citizenship for Undocumented Immigrants*, DAILY NEWS (Dec. 19, 2015, 12:17 AM), <http://nydn.us/1RuNIMr> (reporting a poll showing that fifty-four percent of Americans support a pathway to legalization for the undocumented population).

at the same time, not overly influential on the day laborers' decision to participate.¹⁰⁶

A. Interview Locations & Outreach Strategy

The outreach and interviews with the day laborers were conducted at four sites in Northern Virginia: (1) an informal day laborer hiring location located around a 7-Eleven store in the Culmore neighborhood of Falls Church, Virginia; (2) a string of informal day laborer hiring locations along a stretch of Little River Turnpike in Annandale, Virginia; (3) an informal day laborer hiring location located on the exterior of the Centreville Public Library in Centreville, Virginia; and (4) a structured day laborer worker center, also in Centreville, called the Centreville Labor Resource Center (CLRC).¹⁰⁷

These locations were selected for several reasons. First, the sites allow comparisons to be drawn between informal hiring locations and a structured worker center; additionally, the sites permit comparisons between closer-in, semi-urban locations (Falls Church and Annandale) and a more quintessentially suburban location (Centreville). Furthermore, all of these sites have significant concentrations of day laborers. Perhaps most importantly, these locations allowed the author to collaborate with local non-profit organizations with knowledge of, and in some cases, pre-existing relationships with, the workers. At the Culmore and Annandale locations, the researchers worked with Claudia Quevedo and Arnoldo Borja respectively, both of whom are organizers with the Legal Aid Justice Center's Immigrant Advocacy Project. Ms. Quevedo and Mr. Borja interact frequently with the workers, help them address shared challenges, and refer them to legal, social service, and health providers. Given their familiarity with the day laborers at these sites, Ms. Quevedo and Mr. Borja played an important role in introducing the researchers to the workers and helping to explain the purpose of the study.

¹⁰⁶ Indeed, the outreach and interviewing experience confirmed that, notwithstanding the incentive, many workers were not inclined to participate in the research study. In other words, the incentive appears to have served its purpose of recognizing the time contributions of the workers.

¹⁰⁷ The breakdown of the eighty-four interviews among the four sites is as follows: twenty-two interviews were conducted at the Culmore site; fourteen were conducted in Annandale; ten were conducted with workers at the Centreville Public Library, and thirty-eight were conducted at the Centreville Labor Resource Center. In other words, forty-six workers were identified at informal hiring sites, and thirty-eight were interviewed at a structured worker center. As reflected in the interviews, however, several of the workers sought employment at both formal and informal hiring locations.

At the CLRC, the author likewise benefited from the support of staffers Roberto Fernandez and Molly Maddra-Santiago, who permitted the researchers to visit the CLRC and conduct interviews there. Mr. Fernandez and Ms. Maddra-Santiago likewise introduced the workers at the CLRC to the researchers and explained the purpose and benefits of participation. The CLRC staff also provided useful advice regarding the workers who frequent the informal hiring location outside of the Centreville Public Library. No third party directly introduced the researchers to the workers who congregate outside of the library. Rather, the researchers directly engaged the workers through informal conversations and outreach. This same approach was used at the two other informal hiring locations (in Culmore and Annandale, Virginia) on occasions when Ms. Quevedo and Mr. Borja were not present.

Although the D.C. metropolitan area is home to many day laborer hiring centers, the focus on Virginia was intentional. First, compared to the more robust immigrant organizing and advocacy efforts in Maryland, immigrant organizing in Virginia is still in development—in part because of the traditionally conservative political climate. This political climate has also spawned anti-immigrant initiatives over the years in counties near these hiring centers.¹⁰⁸ This history of immigrant-hostile policies provides an interesting backdrop to the issues explored in the study.

By way of additional background, the CLRC is a worker center that operates out of a location in the Centreville Crest Shopping Center in Centreville, Virginia. The CLRC officially opened in 2011. Its mission is “to provide a safe, organized Center where residents and contractors can negotiate work arrangements with day laborers.”¹⁰⁹ The CLRC operates on a first-in, first-out basis, where workers sign up for daily employment opportunities. As employers arrive at the CLRC, CLRC staff will go down the list of workers in chronological order, asking the workers if they are interested and able to perform the work, in light of the nature of the work, the skills required, and the wage being offered by the employer. In addition to providing a vehicle to match employers with workers, the CLRC offers different forms of educational and vocational training for the workers who frequent the center. Over the years, these offerings have included English and Korean language classes and workshops on different types of work,

¹⁰⁸ See generally SINGER ET AL., *supra* note 100 (describing the genesis of a restrictionist ordinance in Prince William County, Virginia).

¹⁰⁹ THE CENTREVILLE LAB. RESOURCE CTR., <http://www.centrevillelrc.org/> (last visited Feb. 20, 2016).

including carpentry, drywall, painting, and landscaping.¹¹⁰

At all four of the research sites, the researchers spent significant time conducting outreach among the workers. This outreach consisted of distributing the informational flyer and having informal conversations with the workers about their work and the purpose of the study. The goal of these conversations was to spread awareness about the study and to build trust among the workers. Outreach typically took place in the morning hours, as the workers were waiting for work. At the informal hiring locations, the outreach generally occurred later in the morning, around 9:30 AM or 10:00 AM. By this time, most of the employers had already come by to make their hires, so the workers were less distracted with the job search (and hence more inclined to speak with the researchers). At the CLRC, the outreach typically occurred in the early morning hours (around 7:30 AM or 8:00 AM), before the bulk of the prospective employers had arrived.

The interviews occurred at or near the outreach sites themselves. At the CLRC, the researchers conducted the interviews in private or semi-private spaces where confidentiality could be maintained. At the informal (street corner) outreach sites, the researchers identified a nearby restaurant or café to conduct the interview, but if none were available, the researchers conducted the interview outdoors, in a location where the interviewer and interviewee could sit and talk comfortably. Before beginning the interview, the researcher explained again the purpose of the study, reviewed the contents of the consent form, and obtained the worker's signed informed consent to participate in the interview. Most of the interviews lasted a minimum of forty-five minutes, though some took nearly twice as long—particularly when the worker had experienced a workplace injury or illness, which triggered a set of additional questions about the details and circumstances of that injury or illness.

B. *Sampling Approach & Potential Methodological Concerns*

The researchers adopted a purposive sampling approach, focusing on male immigrant day laborers in Northern Virginia. This constituency was identified for several reasons. First, although female immigrants in Northern Virginia do engage in casual labor (primarily domestic work), women do not frequent the informal hiring locations in search of employment and were not accessible at the outreach sites.

¹¹⁰ E-mail from Molly Maddra-Santiago, Ctr. Dir., Centreville Lab. Resource Ctr., to author (Feb. 8, 2016, 6:30 AM) (on file with author).

More importantly, given the highly gendered nature of work among immigrants, the types of occupations (and corresponding occupational risks) differ substantially between women and men, and would yield a highly disparate data set. The implications of gender difference for occupational risk is an important question, but fell outside the scope of the present study.

The focus on day laborers was also intentional, given their propensity to engage in a wide variety of work and the relative vulnerability in which they operate. Many day laborers in Northern Virginia are noncitizens; the informal, short-term nature of their employment relationships renders them susceptible to wage violations, other forms of mistreatment, and economic insecurity. The relative informality of their employment relationships (and the work settings in which they labor) places these workers outside of the mainstream, larger worksites where OSHA has been most visible and active. These characteristics allowed for fruitful exploration of the core research question animating this study. Finally, as noted above, Virginia was an optimal research site due to its growing immigrant population and the unique political climate in the state.

Beyond the purposive sampling (as defined by the above-noted criteria), the researchers primarily engaged in convenience and snowball sampling methods. Interview subjects were identified following in-person outreach, and hence were convenient subjects because of their accessibility and availability. Given the nature of this population and the difficulty of communicating with them, more structured sampling approaches would be difficult to implement. Furthermore, the researchers used snowball sampling approaches by encouraging workers who participated to inform their peers about the research project. From the informal observations of the researchers, the snowball technique was only moderately successful, as many interview participants preferred to remain discreet about their conversations with the researchers.

The outreach and sampling strategies described above presented some concerns about the overall representative nature of the sample. These concerns relate to different types of selection, acquiescence, and response bias. In conducting the outreach, the researchers specifically noted the subject matter of the interviews and the types of information being collected.¹¹¹ It is possible that some workers chose to participate because they had experienced a workplace injury and therefore had

¹¹¹ See AM. UNIV., CONSENT TO PARTICIPATE IN RESEARCH (undated) (on file with author); SE BUSCA PARTICIPANTES (recruitment flyer) (on file with author).

questions about how to receive different types of assistance. For example, when conducting interviews, the author occasionally received questions about legal or medical referrals relating to workplace accidents.¹¹² Another factor that may have contributed to an overrepresentation of injured workers was unstated assumptions about who could participate. In the course of the outreach, some workers stated that they were not appropriate interviewees because they had not faced any concerns relating to occupational health and safety. Although the researchers consistently explained that all workers were invited to participate—even those with no accidents or injuries to report—some may have declined to participate due to these assumptions.

On the other hand, some workers may have opted out of participation precisely *because* they had experienced a workplace accident or injury. Since nearly all of the interviewees were noncitizens, some may have feared that participating in the study would result in disclosure of information to government authorities, and in turn, trigger some liability for themselves or their former employers. In one notable incident during outreach at the Culmore site in May 2014, a worker quickly walked away from the researchers as soon as he learned that the study related to occupational health and safety. Following his departure, other workers then explained that he had recruited other workers to a job site on behalf of an employer, that one of the workers got injured, and that he likely feared liability. Similar fears of legal repercussions most likely inhibited some undocumented workers from participating. Despite clear explanations that the researchers were affiliated with a university, and not the government, some workers may have harbored fears about participating and therefore chose not to be interviewed. That said, given the significant number of undocumented workers who did participate in the interviews, lack of immigration status was not an insurmountable barrier to participation.

Two other types of selection bias are worth noting. First, since the interview participants emerged from the in-person outreach among those seeking work, the process necessarily excluded day laborers who had recently experienced a workplace injury or illness, and were recuperating and thus unable to be actively seeking employment. Likewise, day laborers who had experienced such a severe injury that they were permanently disabled—or at least unable to perform the

¹¹² Along these lines, some workers may have chosen to participate because of general legal questions, unrelated to occupational injuries.

work typically performed by day laborers—were not captured by the outreach methods. In this regard, some injured day laborers were necessarily excluded. Second, and conversely, the outreach strategy may have excluded those workers who were able to consistently procure employment in the mornings. It is unclear exactly how that attribute would relate to the issues explored in the study.¹¹³

Some of the selection bias concerns may have affected the responses of workers who chose to participate. For example, interviewed workers may have been reluctant to recount experiences with accidents or injuries due to concern about liability for themselves or for former employers. Another form of response bias may stem from working with an interview population that consists almost entirely of Latino immigrant men; *machismo* and other cultural forces may have shaped their responses.¹¹⁴ These gender and cultural considerations may have influenced questions relating to: whether the worker had feared an occupational injury or fatality; whether the worker had experienced a workplace injury or illness; and whether the worker would notify his employer about unsafe working conditions.

III. A SNAPSHOT OF THE INTERVIEW SAMPLE

As noted above, the present study was designed primarily to explore factors that might enhance or mitigate occupational risks for immigrant day laborers. But each of the interviews commenced with a series of basic questions regarding the worker's personal background, including his age, immigration status, year of arrival in the United States, country of origin, level of education, language ability, average earnings, and employment background in the United States.¹¹⁵ This data provides interesting insight into the composition of the day laborer population. Additionally, for purposes of this study, the different demographics subgroups represented allow for a more granular examination of possible risk factors. Figures 1 and 2 below summarize these key demographic characteristics. As a supplement to those tables, this Article offers some observations regarding the

¹¹³ One might hypothesize that such workers are less selective about the employment they pursue and hence more susceptible to workplace injuries. Conversely, consistent employment may reflect a worker's higher level of knowledge or skills, and perhaps, more attentiveness to health and safety concerns.

¹¹⁴ See G. Miguel Arciniega et al., *Toward a Fuller Conception of Machismo: Development of a Traditional Machismo and Caballerismo Scale*, 55 J. COUNSELING PSYCHOL. 19, 21 (2008), http://www.ncdsv.org/images/JCP_TowardFullerConceptionMachismo_2008.pdf ("Traditional Machismo (e.g., hypermasculinity) may manifest as exaggerated bravado . . . that may point toward avoidance of reality.")

¹¹⁵ INTERVIEW QUESTIONS (on file with author).

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profile(s) of the interviewed workers in Subsections A and B below.

A core component of the study was a series of questions relating to occupational injuries and illnesses that the interviewed workers themselves had experienced. In posing these questions to the workers, the researchers clarified that they were seeking information about slightly more serious injuries, which impacted the workers' ability to continue working that day or for longer periods of time. By way of example, the researchers distinguished minor cuts and scrapes, which might be treated quickly and would not impede workflow, from more serious injuries. Subsection C summarizes the data collected regarding these self-reported injuries and illnesses.

Figure 1: Personal Background of the Interview Sample

	Description	Number of Respondents	Percentage of Total
Country of Origin	El Salvador	18	21.43%
	Guatemala	46	54.76%
	Honduras	11	13.10%
	Mexico	4	4.76%
	Other in Latin America	4	4.76%
	United States	1	1.19%
Immigration Status	Undocumented	67	79.76%
	Permanent Resident	7	8.33%
	Temporary Protected Status	6	7.14%
	Other Status	3	3.57%
	U.S. Citizen	1	1.19%
Age	18-19	3	3.57%
	20-29	28	33.33%
	30-39 (average age 36)	22	26.19%
	40-49	17	20.24%
	50-59	10	11.90%
	60-69	4	4.76%
Level of Education	None	7	8.33%
	Elementary School	42	50.00%
	High School	27	32.14%
	College/University	8	9.52%
Native Language(s)	Ixil	18	21.43%
	Ixil & Spanish	12	14.29%
	Mam	1	1.19%
	Mam & Spanish	1	1.19%
	Maya Quiche	1	1.19%
	Spanish	50	59.52%
	Tz'utujil	1	1.19%
Ability to Speak and Understand English	Well/Very Well	12	14.29%
	Not Very Well / None	72	85.71%
Year of Arrival in U.S.	1980s	4	4.76%
	1990s	12	14.29%
	2000-2005	17	20.24%
	2006-2010	22	26.19%
	2011-2012	12	14.29%
	2013-2014	17	20.24%

A. Personal Background of the Workers

The Washington, D.C. metropolitan area is known for its sizeable Central American immigrant community, and the national origin profiles of the interviewed workers reflect this long-standing migration pathway. Recent data from the U.S. Census reveal that Salvadoran immigrants are the dominant national origin group in the foreign-born population in Virginia;¹¹⁶ in this regard, the concentration of Guatemalan workers at the interview sites (and therefore, in the interview pool) is disproportionately large relative to their representation in the local population. A small handful of workers hailed from Argentina, Bolivia, Cuba, and Mexico; one interviewed worker was a natural-born U.S. citizen who had spent most of his life in El Salvador.¹¹⁷ All of the interview respondents were of Latin American heritage.¹¹⁸ These demographic findings are consistent with the general understanding of the U.S. day laborer population in urban centers—largely comprised of male Latino immigrants, with a smattering of other immigrants and U.S. natives.¹¹⁹

The workers interviewed ranged in age from eighteen years old to sixty-six years old. The average age of thirty-six years old is consistent with U.S. day labor populations studied by other scholars.¹²⁰ Looking at the three largest national origin groups, the El Salvadoran day laborers tended to be the oldest age-wise (average age: forty-four years old; median age 45.5 years old), followed by Hondurans (average age: forty-one years old; median age: forty-two years old). The Guatemalan workers were notably younger, with an average and median age of thirty years old. These age breakdowns track the workers' reported year of arrival in the United States. On the whole, the El Salvadoran and Honduran day laborers arrived in the 1990s and 2000s. Only two

¹¹⁶ See *State Immigration Data Profiles: Virginia*, MIGRATION POL'Y INST., <http://www.migrationpolicy.org/data/state-profiles/state/demographics/VA> (last visited Feb. 20, 2016) (reporting that in 2013, 10.2% of the foreign-born population originated from El Salvador, 6.8% from Mexico, and 6.6% from all other Central American countries combined).

¹¹⁷ Confidential Interview No. 84 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014).

¹¹⁸ Although some day laborer hiring locations in the D.C. metropolitan area are known for attracting a number of African-American or African immigrant workers, almost none were visible to the researchers at the interview sites.

¹¹⁹ ON THE CORNER, *supra* note 65, at 17.

¹²⁰ See, e.g., Abel Valenzuela, Jr., *Working on the Margins: Immigrant Day Laborer Characteristics and Prospects for Employment* 7 (Ctr. for Comparative Immigration Studies, Univ. of Cal., San Diego, Working Paper No. 22, 2000), http://www.popcenter.org/problems/day_labor_sites/PDFs/Valenzuela_2000b.pdf (calculating that day laborers in the United States have a mean age of thirty-four).

Guatemalan day laborers arrived in the United States prior to the year 2000; a much larger proportion arrived in recent years, including in 2014, the year the interviews were conducted.¹²¹

The workers' years of arrival reflect general migration patterns from Central America to the United States. During the 1980s, violent civil conflicts in El Salvador and Guatemala led many to flee to the United States, including the Washington, D.C. area.¹²² A handful of the interviewed day laborers arrived in the United States as part of that wave of immigrants and have continued to pursue day labor, on and off, over the years. Others arrived during the 1990s during times of relative economic prosperity in the United States, when immigrant labor was in high demand. The large numbers of workers who arrived in recent years is likely attributable to several factors. First, the day labor population, as a whole, tends to draw persons who are relatively recent arrivals in the United States, as it is a somewhat easy entry point into the labor market.¹²³ Additionally, the countries of the Northern Triangle of Central America (El Salvador, Guatemala, and Honduras) have experienced significant internal instability in recent years, including growing levels of gang violence.¹²⁴ This instability has led many in the region to flee. As for the overrepresentation of Guatemalans in the interview sample: that may be attributable simply to the selection of interview sites where Guatemalan workers have tended to congregate.

Regarding immigration status, the presence of workers with immigration status is consistent with similar, nationwide studies of the day labor population.¹²⁵ A portion of the workers interviewed, including some of those with lawful immigration status, pursue day labor to supplement the income they receive from fixed employment.

¹²¹ Of the forty-six workers of Guatemalan origin interviewed for this study, twenty-three had first arrived in the United States between the years 2011 and 2014.

¹²² Audrey Singer, *Latin American Immigrants in the Washington, DC Metropolitan Area*, THE BROOKINGS INST. 3–4 (Nov. 1, 2007), <http://www.wilsoncenter.org/sites/default/files/SingerFINALbackgroundpaper.pdf> (describing the roots of Central American migration to the Washington, D.C. area, including efforts to escape turmoil).

¹²³ ON THE CORNER, *supra* note 65, at 18 (noting that “day laborers tend to be relatively recent immigrants”).

¹²⁴ DENNIS STINCHCOMB & ERIC HERSHBERG, UNACCOMPANIED MIGRANT CHILDREN FROM CENTRAL AMERICA: CONTEXT, CAUSES, AND RESPONSES 14–27 (2014) (describing various push factors that have contributed to outward migration from Central America).

¹²⁵ ON THE CORNER, *supra* note 65, at 17 (finding that about three-quarters of the day laborer population are undocumented migrants).

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Others, as noted in the literature, simply prefer the flexibility of day labor and the camaraderie of day laborer hiring sites.¹²⁶

The educational background of the interviewees ran the gamut, from no education to advanced degrees. Among the advanced educational backgrounds of the workers were certificates or degrees in education (elementary and general), electrical engineering, chemical engineering, graphic design, computing, and electronics repair. The diverse educational backgrounds of the Virginia day laborers reflect levels of schooling that are comparable to the overall day laborer population in the United States.¹²⁷

¹²⁶ Abel Valenzuela, Jr., *Working on the Margins in Metropolitan Los Angeles: Immigrants in Day-Labor Work*, 1 *MIGRACIONES INTERNACIONALES* 6, 13–14, 22–23 (2002), <http://www.redalyc.org/pdf/151/15101201.pdf> (noting how flexibility and autonomy are attractive for some day laborers); see also Negi et al., *supra* note 77.

¹²⁷ ON THE CORNER, *supra* note 65, at 19.

Figure 2: Economic Status and Employment Experiences of the Interview Sample

	Description	Number of Respondents	Percentage of Total
Average Weekly Earnings	\$0-\$200	4	4.76%
	\$201-\$400	38	45.24%
	\$401-\$600	32	38.10%
	\$601-\$999	6	7.14%
	\$1000+	2	2.38%
	Unknown/Did not Answer	2	2.38%
Estimated Monthly Remittance Payments	None	17	20.24%
	\$1-\$200	17	20.24%
	\$201-\$400	10	11.90%
	\$401-\$600	12	14.29%
	\$601-\$999	8	9.52%
	\$1000+	20	23.81%
Family Members Supported by Remittance Payments	Parent(s)	38	45.24%
	Child(ren)	36	42.86%
	Spouse	27	32.14%
	Sibling(s)	17	20.24%
	Cousin	1	1.19%
	Grandparent	1	1.19%
	In-Laws	1	1.19%
Type(s) of Work Regularly Performed	Remodeling/Interior Renovations	39	46.43%
	Landscaping	33	39.29%
	Construction	32	38.10%
	Painting	28	33.33%
	Carpentry	19	22.62%
	Roofing	8	9.52%
	Restaurant Work	8	9.52%
	Demolition	7	8.33%
Prior or Current Affiliation with Union or Worker Center	Prior affiliation with union	5	5.95%
	Prior affiliation with worker center	4	4.76%
	Current affiliation with worker center	38	45.24%
	No affiliations, past or present	37	44.05%

B. Economic Status and Employment Experiences

The workers reported a very broad range of typical work days, hours, and income. The day laborers interviewed worked an average of one to seven days per week, with most reporting that they regularly worked about three to four days per week. The number of hours worked per week varies, naturally, depending on the days of employment that the day laborers can procure. A significant majority of the workers reported typical weekly earnings in the range of \$300 to \$800.¹²⁸ Given variable wages, inconsistent employment, and frequent experiences with wage theft, day laborers in the United States are typically categorized among the working poor.¹²⁹

Eleven of the workers reported regular weekly earnings of less than \$300. These workers on the lower end of the earnings spectrum generally had less formal schooling than the overall pool of workers: eight of the eleven had received only an elementary school education or no education at all. The average and median age of these eleven workers is thirty-two years, with several workers clustered at either end of the range. Interestingly, four of the eleven low-wage earners had lawful permanent residence or temporary protected status in the United States, suggesting that lawful immigration status is not a direct proxy for economic security.

Furthermore, sixty-seven of the workers interviewed reported that they continue to support family members in their country of origin, sending back remittances on a regular basis. These family members typically included parents, a spouse, and/or children, but also included in some cases siblings and other extended family members. The interviewed day laborers reported sending anywhere from \$100 to \$2000 per month in remittances, with an average monthly remittance amount of \$495, or about one-quarter of their average monthly income. Several of the interviewed workers, especially those who had arrived in the United States in recent years, further noted that they still owed money for their transit to the United States (referred to simply as their *deuda*, or debt).

To get a deeper understanding of the workers' day-to-day experiences, and to put their susceptibility to risk in context, the researchers inquired about the type(s) of work that the workers have

¹²⁸ Only two workers reported weekly income above this range: one worker reported weekly earnings of \$1000 and another reported weekly earnings of \$1800. Confidential Interview No. 27 with Immigrant Day Laborer, in N. Va. (July 3, 2014); Confidential Interview No. 12 with Immigrant Day Laborer, in N. Va. (July 1, 2014).

¹²⁹ Theodore et al., *supra* note 84, at 415.

most commonly performed in the United States. The majority of the workers reported multiple types of work that they have performed regularly over the years—suggesting that most had transitioned into entirely new industries as new opportunities arose. Some of these areas of work are highly disparate: one worker reported significant experience with installing air conditioning units, landscaping work, hanging drywall, and cleaning buildings.¹³⁰ Similarly, another worker reported experience with cabinet installation, ceramic tile work, landscaping, and painting.¹³¹ Few reported consistent employment across a single industry throughout their time in the United States.

C. Self-Reported Occupational Injuries and Illnesses

As noted above, a key component of this study was a series of questions relating to workplace injuries and illnesses that the interviewed workers themselves had experienced. Slightly less than half of the workers—thirty-nine out of eighty-four, or approximately forty-six percent—answered in the affirmative. Five of these thirty-nine workers reported having experienced two work-related injuries during their time in the United States.¹³² Figure 3 below summarizes the nature of these injuries and illnesses.

¹³⁰ Confidential Interview No. 64 with Immigrant Day Laborer, in N. Va. (Aug. 16, 2014).

¹³¹ Confidential Interview No. 41 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014).

¹³² Confidential Interview No. 72 with Immigrant Day Laborer, in N. Va. (Aug. 15, 2014); Confidential Interview No. 41 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014); Confidential Interview No. 45 with Immigrant Day Laborer, in N. Va. (July 26, 2014); Confidential Interview No. 16 with Immigrant Day Laborer, in N. Va. (July 8, 2014); Confidential Interview No. 26 with Immigrant Day Laborer, in N. Va. (July 3, 2014); Confidential Interview No. 4 with Immigrant Day Laborer, in N. Va. (May 29, 2014).

Figure 3. Nature of Self-Reported Occupational Injuries and Illnesses

Nature of Self-Reported Injury or Illness	Number of Respondents
Severe cuts	10
Fall from roof or ladder	6
Musculoskeletal injury or strain	6
Foreign object or particles in eye	5
Poison ivy exposure	5
Slip & fall / other falls	5
Punctured by nail	3
Chemical exposure	1
Heat exhaustion	1
Physical assault	1
Struck by object	1

As reflected in Figure 3, the most commonly reported injuries were severe cuts, typically to fingers or legs. The following descriptions from the workers describe the types of circumstances that led to these injuries:

I was working at a food assembly line and was pushing meat into the machine. Sometimes, it would get stuck, and you would have to lift up the machinery to make sure the meat goes through. I lifted the machinery with my left hand and pushed the meat with my right hand. But because of the weight of the machinery, my left hand dropped it and it fell on my finger and cut it.¹³³

I was working for a contractor. We were removing windows and putting them onto a truck. The contractor had not given me gloves, so I cut my hand on the glass.¹³⁴

I was working at a tile job, and I had just arrived in the country. A co-worker was using a saw to cut some molding, so we could insert the tiles underneath. The blade on the saw did not have an automatic stop. My co-worker must have hit a nail and lost control of the saw. The saw moved along the floor and made contact with my leg, cutting it open. I

¹³³ Confidential Interview No. 53 with Immigrant Day Laborer, in N. Va. (Aug. 5, 2014).

¹³⁴ Confidential Interview No. 83 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014).

had to get thirty stitches.¹³⁵

Multiple workers reported falls from rooftops or high ladders:

I fell from a roof. It was not secured and I was not tied down. This happened a year ago. I fell about sixteen feet onto a concrete floor.¹³⁶

I was working at a supermarket and was bringing down merchandise that had been placed on a high shelf. I was using a ladder, but it was not secure, and it fell over. I also fell. It was about a twelve-foot ladder.¹³⁷

The workers also reported a range of musculoskeletal and repetitive strain injuries, including back and shoulder problems. Two representative examples are the following:

At the restaurant I normally did washing and cleaning work. One day they asked me to help unload the delivery truck. I was lifting a heavy box with chicken meat and hurt my back. I had to go to the hospital.¹³⁸

Just recently I was hired to do some digging [excavation] work. I worked there for about three days. From doing the same thing over and over, my shoulder started to hurt.¹³⁹

As reflected in Figure 3, several workers reported contact with poison ivy in the course of landscaping or other outdoor work. One worker recounted the following:

I was doing some painting on the outside of a house. There was a vine touching the walls and we had to remove it before painting. This was poison ivy and it got on my arms and other parts of my body.¹⁴⁰

¹³⁵ Confidential Interview No. 34 with Immigrant Day Laborer, in N. Va. (July 29, 2014).

¹³⁶ Confidential Interview No. 12 with Immigrant Day Laborer, in N. Va. (July 1, 2014).

¹³⁷ Confidential Interview No. 62 with Immigrant Day Laborer, in N. Va. (Aug. 16, 2014).

¹³⁸ Confidential Interview No. 18 with Immigrant Day Laborer, in N. Va. (July 10, 2014).

¹³⁹ Confidential Interview No. 81 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014).

¹⁴⁰ Confidential Interview No. 20 with Immigrant Day Laborer, in N. Va. (July 11, 2014).

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Several workers also reported foreign objects, particles, or chemicals entering their eyes:

I was working at a car dealership and was using an acid wash spray to remove grease from the rims. The acid got into my eye and it started burning. There was a sharp pain. My boss took me to a doctor who gave me some medicine. For about fifteen days, my vision was blurry. I still can't see that well out of that eye.¹⁴¹

I was working at a construction site doing carpentry work, cutting wood. I wasn't wearing safety glasses and a piece of wood entered my eye. Suddenly I felt a really sharp pain. I had to go to the hospital.¹⁴²

I do a lot of drywall work, including sanding. There is a lot of dust, and it really affects my eyes and sinuses.¹⁴³

Beyond these common categories, several workers reported other kinds of injuries:

At the restaurant, there was another worker who had been there for many years. He was a dishwasher. When I arrived, he became jealous because I was given a better job with more food preparation work. He kept saying things to me. After eight months on the job, he punched me.¹⁴⁴

I was washing the floor with some chemicals and had a reaction. The skin on one of my legs began to swell and became discolored. It gradually got worse.¹⁴⁵

Workers who responded affirmatively to the initial question were then asked a series of more detailed questions to understand the context of the workplace in which the accident occurred and the workers' level of experience with that type of work, with that employer,

¹⁴¹ Confidential Interview No. 2 with Immigrant Day Laborer, in N. Va. (May 29, 2014).

¹⁴² Confidential Interview No. 40 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014).

¹⁴³ Confidential Interview No. 76 with Immigrant Day Laborer, in N. Va. (Aug. 23, 2014).

¹⁴⁴ Confidential Interview No. 45 with Immigrant Day Laborer, in N. Va. (July 26, 2014).

¹⁴⁵ Confidential Interview No. 1 with Immigrant Day Laborer, in N. Va. (May 27, 2014).

and at that particular worksite. Among the contextual factors examined are the composition of the workforce at that site, the language abilities of co-workers and supervisors, and relevant actions and statements by the employer. Several of these contextual considerations are addressed in Part IV below.

IV. FINDINGS & ANALYSIS

The semi-structured interviews generated a wealth of information regarding the workplace experiences of these eighty-four workers, along with their perceptions and reflections regarding occupational health and safety. In the course of analyzing the data from the interviews, six key themes emerged regarding immigrant day laborers and occupational risk. These themes, which are described more fully below, include the following: (1) the role of worker centers in mitigating risks by promoting transparency and employer accountability; (2) the sublimation of discourse regarding immigration status, the ongoing importance of economic security, and the seeming empowerment of workers; (3) the impact of speedy work on occupational risk; (4) worksite considerations, including training, the provision of protective equipment, and existence of relationships of trust; (5) worksite location and workforce composition; and (6) whether occupational harms are symptomatic of a generally noncompliant employer. These findings are designed to serve as a springboard for additional research involving day laborers and other immigrant workers, using both qualitative and quantitative research methods.

A. Worker Centers: Promoting Transparency and Accountability

One of the objectives of this study was to explore whether a worker's affiliation with a worker center or union affected outcomes relating to occupational safety and health. To that end, the researchers interviewed thirty-eight workers affiliated with the CLRC, a worker center. The interview data strongly suggest that the center operates to mitigate occupational risk by promoting transparency and accountability in the employer-employee relationship, and by preparing the day laborers to safely perform the work they are about to undertake. Unfortunately, not enough data was collected to draw a similar conclusion about unions.

In general, the day laborers interviewed at the CLRC reported fewer occupational injuries and illnesses, as compared with those workers identified at the informal hiring sites. Even among the CLRC day laborers who reported injuries and illnesses, these did not occur at

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jobs obtained through the center—rather, they predated the creation of the center, or occurred at jobs obtained at informal hiring locations. The absence of a single injury stemming from work obtained at the center is notable and invites consideration of structural factors that make this possible.

From the interviews of the thirty-eight CLRC workers, several key themes emerged regarding the benefits provided by the center. One theme that surfaced relates to the liaison function that the CLRC plays *vis-à-vis* hiring entities. This quote from one of the CLRC workers summarizes key services provided by the center:

If you can't speak English, if the contractor comes, the people here can help and explain what the job is. And also help negotiate the price. Also, if we get to the house [or] job site, and we can't do the job, or we don't understand what they are saying, there are cards and we can call to help us communicate and explain.¹⁴⁶

As part of its intermediary role, the CLRC collects information about the prospective employers, should a wage dispute later arise. As one worker noted, "They write down the number of the license plate and also the name and number of the employer."¹⁴⁷ The transparency and accountability that the CLRC brings to the working relationship was highly valued by the workers:

We come here, and it's safe. We know that the person we are going with is going to pay us. If we are in the streets we are not sure about the person.¹⁴⁸

Indeed, many of the CLRC workers spoke of the "security" that the center provides. The term was used to describe a stronger protection against wage theft and also insulation from potentially harmful actors. In this vein, one worker noted that "there are no problems with the police" at the center,¹⁴⁹ while another remarked that "there is more safety [at the CLRC] than on the corner."¹⁵⁰

The transparency, accountability, and sense of safety fomented by CLRC almost certainly mitigate occupational risks. Over the course of

¹⁴⁶ Confidential Interview No. 59 with Immigrant Day Laborer, in N. Va. (Aug. 15, 2014).

¹⁴⁷ Confidential Interview No. 54 with Immigrant Day Laborer, in N. Va. (Aug. 5, 2014).

¹⁴⁸ Confidential Interview No. 82 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014).

¹⁴⁹ Confidential Interview No. 66 with Immigrant Day Laborer, in N. Va. (Aug. 7, 2014).

¹⁵⁰ Confidential Interview No. 54 with Immigrant Day Laborer, in N. Va. (Aug. 5, 2014).

the research interviews at the informal hiring locations, many of the day laborers expressed that they did not bring along protective equipment for the work, simply because they did not know what type of work they were being hired to perform. In the hurried transactions that typify day laborer hiring at those sites, few details are exchanged about the particulars of the job. In some instances, due to significant language barriers between the hiring entity and the workers, the day laborers accept employment knowing nothing about the nature of the employment, apart from the wage rate. One of the workers described this dynamic, and contrasted it with the environment at CLRC:

Before the center, we went to look for work on the corners. In the cold or the heat, you would be looking for work outside. When [CLRC] opened, I came here. It is safer. There is an order. They know what kind of work we can do and what the work is. On the corner, everyone rushes to the work, which I don't like.¹⁵¹

In short, the information transparency facilitated by CLRC and other worker centers allows workers to better gauge their ability to perform the work. Depending on the workers' comfort level with the type of work, they can opt in or out of a particular job opportunity. CLRC staff affirm that their role often involves clarifying with the employer the precise nature of the work to be performed and how it is to be performed.¹⁵² This dialogue likewise helps workers determine their preparedness for the job and allows them to bring along any needed safety equipment.

Likewise, as noted above, the CLRC sometimes intervenes after the workers have left the CLRC for the job. These interventions include serving as a go-between to communicate about the precise nature of the work to be done, including concerns about the task or the work environment. In many ways, this boils down to the role of an interpreter who has the workers' interests in mind,¹⁵³ but it almost certainly shields workers from a range of hazardous work conditions. Finally, even in the absence of CLRC intervention, the employers' decision to hire at CLRC (and therefore share their name and contact information) contributes to a sense of accountability which, in turn, can empower workers to discuss and negotiate conditions of work.

¹⁵¹ Confidential Interview No. 40 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014).

¹⁵² E-mail from Molly Maddra-Santiago, Ctr. Dir., Centreville Lab. Resource Ctr., to author (Jan. 7, 2016, 11:00 AM) (on file with author).

¹⁵³ Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1054–56 (2007) (suggesting the construct of “interpreter as guardian”).

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In general, the workers appreciated the employment opportunities that the CLRC facilitates and the classes and workshops offered. One worker stated as follows:

[The CLRC] helps with everything. I support myself here. If I get work, it's from the center. I am also working in landscaping from Monday to Friday but here is where I found the job. The center has been a great help for me and for my family. I have also taken some English classes here.¹⁵⁴

As for the classes, a significant number of the workers specifically mentioned the English and Korean language classes, while others praised the CLRC staff for organizing job-related trainings and workshops. One worker remarked:

[The CLRC] helps us with how to speak English and with getting jobs. They also give us training on the work here—on how to do it right.¹⁵⁵

Although the workers did not directly link the CLRC trainings to a particular workplace hazard they encountered, it seems likely that the trainings, at a minimum, operate to increase the workers' awareness of potential occupational risks. Further research would be needed to specifically link these trainings to the rates of occupational injuries and illnesses among these workers.

While there is significant literature on how worker centers facilitate communications between employers and workers,¹⁵⁶ there has been limited research on how worker centers specifically impact the risk of occupational injury or illness among immigrant day laborers, beyond simply providing "know-your-rights" trainings and workshops. In this regard, the present study suggests an important new way to conceive of the benefits of worker centers, and it invites additional inquiry (in other jurisdictions and/or with other populations of immigrant workers) along these lines.

Regarding formal union membership, only five of the eighty-four day laborers interviewed (about six percent) reported having been a member of a labor union at some point during their time in the United States. Each of these workers had previously been employed at a

¹⁵⁴ Confidential Interview No. 39 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014).

¹⁵⁵ Confidential Interview No. 22 with Immigrant Day Laborer, in N. Va. (July 26, 2014).

¹⁵⁶ See, e.g., Xóchitl Bada, *New Trends and Patterns in Mexican Migrant Labor Organization in INVISIBLE NO MORE: MEXICAN MIGRANT CIVIC PARTICIPATION IN THE UNITED STATES* 15, 21 (Xóchitl Bada et al. eds., 2006) (noting how worker centers are "growing in number," and that they "function as local mediating institutions that work collectively with workers and employers").

larger, unionized workplace. The workers tended to have a neutral or slightly negative impression of the unions, as only one could answer how the union had helped him. Most noted that dues were collected, but could not point to any tangible benefit. One worker noted that the company he previously worked for had gone out of business, but the union did nothing to prevent it and did not effectively communicate with the workers about the closure of the business or its impact on their jobs.¹⁵⁷ One worker, who had been employed by a construction contractor in a different state, acknowledged that “the union would help us if there was an issue and made sure we got paid.”¹⁵⁸ This statement was the most favorable reflection about unions expressed during the various interviews. These findings generally mirror the struggle that unions have faced in gaining traction among immigrant workers.¹⁵⁹

The interviews did not illuminate whether prior union membership mitigates occupational risk at subsequent jobs. First, the number of interviewed workers who had been part of a union was relatively small (only five of eighty-four). Second, although most of these workers had received some health and safety training while affiliated with the union, the training was either general in nature or pegged to the specific work they performed for the unionized employer. Indeed, several of these previously unionized workers did experience workplace injuries at subsequent places of employment.

B. *Immigration Status and Worker Empowerment*

In the literature, as noted above, immigration status has been positioned as a key determinant of occupational outcomes for foreign-born workers.¹⁶⁰ Many scholars have asserted, quite reasonably, that undocumented workers are more loath than documented workers to assert their workplace rights and are susceptible to retaliatory threats relating to deportation. The data gleaned from this study reflects a fascinating variant on this standard narrative. Very few of the interviewed workers reported direct immigration-related threats from their employers, and many defiantly stated that immigration status

¹⁵⁷ Confidential Interview No. 55 with Immigrant Day Laborer, in N. Va. (Aug. 7, 2014).

¹⁵⁸ Confidential Interview No. 36 with Immigrant Day Laborer, in N. Va. (July 31, 2014).

¹⁵⁹ Leticia M. Saucedo, *Everybody in the Tent: Lessons from the Grassroots About Labor Organizing, Immigrants, and Temporary Worker Policies*, 17 HARV. LATINO L. REV. 65, 68–74 (2014) (offering various theories for why unions have had difficulty in organizing immigrant workers).

¹⁶⁰ See *supra* notes 14–18 and accompanying text.

would not inhibit assertion of their rights. The precise etiology of this worker empowerment is unclear, but this Article offers some theories below. At the same time, while the raw invocation of immigration status has faded, status-related concerns are now recast as generalized economic worries.

Of the thirty-nine workers who experienced a workplace injury or illness, only one reported that his employer had made explicit comments about his immigration status or had made threats about deportation during the course of his employment. Interestingly, this report came from the oldest worker interviewed, a sixty-six-year-old Honduran national who has been in the United States since 1997. The worker described an injury that he sustained in 2010 on his fourth day of work at a construction site. He described the employer's reaction as follows:

After the accident, I asked him about my wages. He didn't want to pay and said to me, "I can help them deport you." He was Mexican and was very mean to the Central American workers. He was like that before the accident and also afterwards.¹⁶¹

One other interviewee mentioned an employer's threat of deportation, although this was outside of the context of an occupational injury. This account came from a nineteen-year-old Guatemalan national, who had just arrived in the United States in February 2014, about six months before the interview was conducted:

I went to work with a contractor. He was forcing me to work really fast, so I walked off the job. The boss followed me outside and said, "Are you going to work or not?" I said to him, "No. Take me home. If you don't, I will call the police." The boss said, "Go ahead and call. They will deport you." Eventually I just finished the work.¹⁶²

Although there is a common narrative that abusive employers will explicitly threaten their workers with deportation, leading to greater vulnerability, only two of the eighty-four interviewed workers recounted explicit threats regarding deportation. And in the latter example, the Guatemalan worker's own assertion of rights ("If you don't, I will call the police") is a striking counterpoint to the employer's threats—and even more remarkable given his recent arrival in the United States and his native language of Ixil. At least two other

¹⁶¹ Confidential Interview No. 4 with Immigrant Day Laborer, in N. Va. (May 29, 2014).

¹⁶² Confidential Interview No. 41 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014).

workers—both undocumented—reported that they threatened to call law enforcement to mediate workplace disputes.¹⁶³

This strand of worker empowerment was visible in response to another series of questions. The workers were asked whether, in the future, they would report a workplace hazard to an employer if they encountered it on the job. The vast majority of the interviewees insisted that they would report such a hazard to their employer. Among the fourteen workers who did not respond in the affirmative, six answered along the lines of “maybe” or “it depends.” Four of these six indicated that it would depend on the level of trust and comfort that they had with the particular employer.¹⁶⁴ One of the six suggested that he would try to remedy the hazard himself,¹⁶⁵ and another worker (who had just recently arrived in the United States and spoke no English) expressed concern about communicating with the employer.¹⁶⁶

Eight of the workers candidly admitted that they would not report a workplace hazard. The most common reason for this, cited by four of the eight, was the fear of losing the job and the accompanying income.¹⁶⁷ Two workers (including one recent arrival to the United States) cited language concerns,¹⁶⁸ and two cited the temporary nature of the job.¹⁶⁹ Only one respondent—an undocumented worker who had arrived in the United States three years before the interview—articulated fear of deportation.¹⁷⁰ Apart from this one response,

¹⁶³ Confidential Interview No. 45 with Immigrant Day Laborer, in N. Va. (July 26, 2014); Confidential Interview No. 43 with Immigrant Day Laborer, in N. Va. (July 25, 2014).

¹⁶⁴ Confidential Interview No. 57 with Immigrant Day Laborer, in N. Va. (Aug. 8, 2014); Confidential Interview No. 40 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014); Confidential Interview No. 3 with Immigrant Day Laborer, in N. Va. (May 29, 2014).

¹⁶⁵ Confidential Interview No. 60 with Immigrant Day Laborer, in N. Va. (Aug. 15, 2014).

¹⁶⁶ Confidential Interview No. 25 with Immigrant Day Laborer, in N. Va. (July 26, 2014).

¹⁶⁷ Confidential Interview No. 65 with Immigrant Day Laborer, in N. Va. (Aug. 7, 2014); Confidential Interview No. 46 with Immigrant Day Laborer, in N. Va. (July 26, 2014); Confidential Interview No. 11 with Immigrant Day Laborer, in N. Va. (June 19, 2014); Confidential Interview No. 9 with Immigrant Day Laborer, in N. Va. (June 19, 2014).

¹⁶⁸ Confidential Interview No. 25 with Immigrant Day Laborer, in N. Va. (July 26, 2014); Confidential Interview No. 9 with Immigrant Day Laborer, in N. Va. (June 19, 2014).

¹⁶⁹ Confidential Interview No. 9 with Immigrant Day Laborer, in N. Va. (June 19, 2014); Confidential Interview No. 8 with Immigrant Day Laborer, in N. Va. (June 19, 2014).

¹⁷⁰ Confidential Interview No. 52 with Immigrant Day Laborer, in N. Va. (July 31,

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explicit considerations of immigration status did not appear to inform the workers' responses. Indeed, five of the fourteen workers who responded "maybe" or "no" to this question had lawful immigration status in the United States. And conversely, many undocumented interviewees expressed no concerns about raising safety and health concerns with their employers.

When workers responded that they would report the workplace hazard, the researchers posed follow-up questions relating to possible barriers to reporting, including communication challenges and different types of employer retaliation. The workers' responses reflected a remarkable degree of confidence and self-care:

I would probably say something. I don't want to get injured just to avoid losing a job. I feel like I could communicate with the employer.¹⁷¹

If it's a hazard I would say something about it. Language might be a challenge, but I would maybe call a friend to speak English and explain it to the employer.¹⁷²

I would not be afraid to report the hazard. When you've been living here for a lot of years you have confidence. To speak about your rights is not a sin.¹⁷³

The sense of confidence reflected in these quotes is a reminder of the autonomy and voice of immigrant workers, and the dangers of painting immigrant worker vulnerability with too broad a brush. Indeed, in their study of immigrant workers in Chicago, de Castro et al. found that immigrants of different backgrounds frequently took action in the face of unfair or harmful working conditions.¹⁷⁴ Gleeson further observes that even workers who maintain a low profile may do so consciously and strategically.¹⁷⁵

In this case, the workers' confidence may reflect different underlying factors. Their comfort in engaging employers, and the sense of dignity that animates it, may be fueled by a "normalization" of

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¹⁷¹ Confidential Interview No. 21 with Immigrant Day Laborer, in N. Va. (July 25, 2014).

¹⁷² Confidential Interview No. 38 with Immigrant Day Laborer, in N. Va. (July 31, 2014).

¹⁷³ Confidential Interview No. 76 with Immigrant Day Laborer, in N. Va. (Aug. 23, 2014).

¹⁷⁴ de Castro et al., *supra* note 2, at 254–55 (citing a broad range of actions taken by workers, but also noting that lack of "immigration and work status can make [such challenges] difficult").

¹⁷⁵ Gleeson, *supra* note 22, at 583.

undocumented status in society at large.¹⁷⁶ In recent years, undocumented persons have become increasingly vocal in public debates, and some have led calls for immigration reform.¹⁷⁷ With a growing consciousness regarding the undocumented population and their struggles in U.S. society (as reflected, for example, in the calls to halt deportations), undocumented status is arguably becoming less taboo. Consequently, although the deportation regime looms in the background, explicit immigration-status-related threats by employers may have less leverage over workers, given the diminished social stigma attached to being undocumented.

Likewise, it is possible that the efforts to educate workers and encourage them to assert their workplace rights—pursued by grassroots advocates for many decades—may be taking root in some small way. Indeed, three of the four interview sites are either staffed or visited by skilled organizers who have consistently educated the workers about their rights. Through this outreach, the workers may have developed an awareness regarding the particular importance of safety protections. The responses may also reflect broader structural features of the immigration system, which in recent years has targeted criminal aliens and has shifted away from workplace raids. While it is possible that the workers' responses may be attributable to a type of affirmative response bias, the nature of the responses, and their number, suggests otherwise.

The workers' location in an urban setting, where they have access to a broad network of fellow day laborers and country-of-origin nationals, might also shape their disposition towards workplace hazards. In their study of day laborers in Houston, Texas, Brocato and Deng reported how workers would often support each other financially, given their shared challenges.¹⁷⁸ Over the course of the

¹⁷⁶ Jennifer J. Lee describes how “strategic mainstreaming” has been one strategy to help undocumented communities gain broader societal acceptance. See generally Jennifer J. Lee, *Outsiders Looking In: Advancing the Immigrant Worker Movement Through Strategic Mainstreaming*, 2014 UTAH L. REV. 1063, 1105–09 (2014).

¹⁷⁷ See Tania A. Unzueta Carrasco & Hinda Seif, *Disrupting the Dream: Undocumented Youth Reframe Citizenship and Deportability Through Anti-Deportation Activism*, 12 LATINO STUD. 279, 280–81 (2014) (describing a campaign undertaken by one of the co-authors who has been involved in the DREAM activist movement).

¹⁷⁸ Billy R. Brocato & Fuijen Deng, *Examining the Lives of Undocumented Day Laborers in a Southeast Texas Metropolitan and Nonmetropolitan Setting*, 4 INT'L. J. SOC. SCI. & EDUC. 621, 629 (2014), <http://ijsse.com/sites/default/files/issues/2014/v4-i3-2014/Paper-7.pdf> (“[O]n some occasions a day laborer would allow another day laborer to work in their place to [sic] so that person could make enough money to help with food and housing costs. Workers agreed that this was necessary because as a group they shared the same daily struggles and lived in the same neighborhoods.”).

interviews, it became apparent that a relatively strong network exists among the day laborers—especially those belonging to a particular subnational group (for example, Ixil speakers of Guatemalan origin). These networks may operate to offset concerns relating to immigration status and loss of income.¹⁷⁹ Moreover, this day laborer population resides in a diverse, metropolitan setting in the shadow of the seat of government. These workers face less of the isolation and racism that beleaguer immigrants in more rural settings.¹⁸⁰

The confidence and bravado articulated by these workers may have yet another, overlapping source. As noted in the literature review above,¹⁸¹ scholars have posited that cultural expectations and *machismo* shape how Latino immigrant workers respond to occupational hazards. It is possible that the strands of *machismo* that previously manifested as internal fortitude are now recast as affirmative challenges to workplace conditions. As the broader sociopolitical landscape has shifted, and the constraints posed by immigration status are somewhat loosened, the performance of the male immigrant identity may take on new forms.

While explicit threats are rare, and the workers appear to be somewhat empowered, complicated worker-employer dynamics persist. As noted just above, several workers expressed concern about losing the income associated with a job, suggesting that economic insecurity might render them susceptible to occupational hazards. The interviews revealed that in general, the workers earn relatively low wages and that many send a significant portion of their income overseas in the form of remittances. An observation from one of the workers, a thirty-six-year-old national of Guatemala who had just arrived in the United States a few months prior to the interview, illustrates this point.¹⁸² Here in the United States, the worker had primarily done residential renovation work—painting, laying tiles, and

¹⁷⁹ Cf. Premji & Krause, *supra* note 27, at 971 (offering that “ethnicity or language-based networks in the workplace . . . can influence exposure to risks, for instances, through the regulation of the workload”).

¹⁸⁰ Brocato & Deng, *supra* note 178, at 630 (comparing the experiences of day laborers in Houston with those who worked in New Orleans in the aftermath of Hurricane Katrina). See also Nissen et al., *supra* note 14, at 60 (noting how undocumented status might be less determinative in a city like Miami, given the infrequency of worksite raids and favorable attitudes towards immigrants). Unzueta Carrasco and Seif similarly remind readers of differing levels of privilege within the undocumented community. Unzueta Carrasco & Seif, *supra* note 177, at 289.

¹⁸¹ See *supra* note 36–38 and accompanying text.

¹⁸² Confidential Interview No. 41 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014).

installing wooden floors.¹⁸³ During a conversation about eye protection, the worker stated:

I thought about buying the glasses [safety goggles]. But I still have to pay the debt for my trip here. And I don't have the money. I have to pay for rent and food.¹⁸⁴

This worker's economic vulnerability was particularly acute, as he needed to send about \$1000 each month to support his wife and six children as well as to pay for the cost of his passage to the United States.¹⁸⁵ Another worker, a twenty-four-year-old national of Guatemala, similarly remarked that he had thought about purchasing a back brace, but "one doesn't have the money."¹⁸⁶ This worker was also supporting family members with his weekly earnings of between \$300 and \$500.¹⁸⁷ Several other workers made similar statements about the prohibitive cost of protective equipment.¹⁸⁸ All of these examples illustrate how the workers' economic insecurity might impair their ability to adequately protect themselves from workplace hazards. Although OSHA standards now require employers to provide personal protective equipment,¹⁸⁹ the comments nevertheless reflect the workers' strong focus on economic security and their perception that workplace safety is somehow oppositional to financial stability.

Overall, the interview data suggests that while immigration status concerns may have receded slightly, they are now replaced in the foreground by a constellation of corollary concerns relating to economic stability in the United States and support of family members

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* Buchanan, *supra* note 87, at 255–56 (describing studies where debts owed to family or to "coyotes" prevented workers from leaving unsafe work environments). Walter et al. describe such day laborers as "functionally in a form of indenture that makes it difficult to leave dangerous or abusive work environments." Walter et al., *supra* note 25, at 223.

¹⁸⁶ Confidential Interview No. 64 with Immigrant Day Laborer, in N. Va. (Aug. 16, 2014).

¹⁸⁷ *Id.* The need to support family members may exert a strong influence on these workers. In this vein, Emily Ryo has noted that the decision to migrate is often motivated by "deeply held commitments to providing economic security to one's family." Emily Ryo, *Less Enforcement, More Compliance: Rethinking Unauthorized Migration*, 62 UCLA L. REV. 622, 665 (2015).

¹⁸⁸ Confidential Interview No. 73 with Immigrant Day Laborer, in N. Va. (Aug. 15, 2014) (regarding a safety harness); Confidential Interview No. 6 with Immigrant Day Laborer, in N. Va. (May 29, 2014) (regarding ear protection); Confidential Interview No. 5 with Immigrant Day Laborer, in N. Va. (May 29, 2014) (regarding a respirator); Confidential Interview No. 3 with Immigrant Day Laborer, in N. Va. (May 29, 2014) (regarding a hard hat).

¹⁸⁹ See generally 29 C.F.R. § 1910.132 (2016) (personal protective equipment standard).

overseas.¹⁹⁰ These various forms of economic insecurity almost certainly shape the workers' susceptibility to occupational hazards, particularly when lack of immigration status limits entrance into the formal labor market. In other words, while fear of deportation *per se* may not be weighing upon the workers, immigration law nevertheless operates to limit employment options and funnels workers into potentially hazardous scenarios.¹⁹¹ This finding is consistent with Gleeson and Gonzalez's research among immigrant workers who reported few explicit threats from employers, but were still hesitant to engage superiors due to fear of job loss.¹⁹²

At least one other set of considerations may explain both the workers' empowerment and the employers' reluctance to deploy threats of deportation. Day laborer hiring is marked by temporality and informality—on the part of *both* workers *and* employers. Given that most work engagements are short-term, the day laborers may be less concerned about losing a source of income when other opportunities might be available. And while the day laborers can benefit from flexible work arrangements, the employers likewise feel unencumbered by the responsibilities that accompany formal employment, including work authorization checks, provision of benefits, and the like.¹⁹³ Given the “reciprocal illegality” of the employer's own role in the relationship, some day laborer employers may be reluctant to threaten use of formal legal processes. This project did not include interviews of employers, but this preliminary theory can be explored further in subsequent studies.

C. *The Cost of Speed*

The interviews revealed another possible determinant of occupational risk among immigrant day laborers: speed of work. About three-fourths of the thirty-nine workers who experienced an injury or illness reported that their employers had encouraged them to work quickly prior to the accident or exposure incident. One

¹⁹⁰ Ahonen et al., *supra* note 15 (“In the precarious economic situation most informants were in, many with dependents . . . the clear priority was to maintain their jobs and their incomes.”).

¹⁹¹ Walter et al., *supra* note 25, at 227 (“Lack of legal status places day laborers at disproportionate risk for work injury by restricting them to employment in the informal sector.”).

¹⁹² Shannon Gleeson & Roberto G. Gonzalez, *When do Papers Matter? An Institutional Analysis of Undocumented Life in the United States*, 50 INT'L MIGRATION, Aug. 2012, at 1, 7–8.

¹⁹³ Valenzuela, Jr., *supra* note 72, at 316.

worker, whose exposure to chemicals is recounted above, added the following:

I was working at a restaurant washing the dishes and doing other cleaning. Some chemicals splashed on my leg, and it got swollen. I eventually had to leave that job. But before the accident, the boss would always say, “fast, fast”—meaning I should work quickly.¹⁹⁴

Although this worker did not specifically link the employer’s exhortations to the occurrence of the accident, several other workers directly blamed their accidents on fast or hasty work. For example, one twenty-two-year-old worker from Guatemala described the following accident that also occurred at a restaurant:

A few years ago, I was working at a restaurant in Maryland. I had just finished emptying a can of oil. I was working very fast. I then went to make a taco, and when I tried to cut something, I accidentally cut off the skin from my thumb to my index finger. I was wearing plastic gloves. The employer came to see what happened, and he gave me some alcohol and said to take care of it. He wouldn’t take me to the hospital.¹⁹⁵

Another worker, a green card holder of El Salvadoran origin, recounted the following accident that occurred at a construction site in 2013:

Another worker and I, we were taking apart the scaffolding. My friend was working very fast, and he was pulling on the rod to disassemble the metal part. It fell on the middle finger of my left hand, and my whole fingernail came off. My boss told me to “be brave.” He said, “If you don’t want to work you can stop, otherwise just keep working. [In response to a follow-up question:] Yes, in the past, he sometimes told us to work quickly.¹⁹⁶

Another worker, whom a homeowner had hired to do landscaping work, was exposed to poison ivy while he was encouraged to work quickly, and was given “only a five-minute break”¹⁹⁷ during the time he performed the work. Along these lines, another worker, who

¹⁹⁴ Confidential Interview No. 1 with Immigrant Day Laborer, in N. Va. (May 27, 2014).

¹⁹⁵ Confidential Interview No. 44 with Immigrant Day Laborer, in N. Va. (July 25, 2014).

¹⁹⁶ Confidential Interview No. 19 with Immigrant Day Laborer, in N. Va. (July 11, 2014).

¹⁹⁷ Confidential Interview No. 57 with Immigrant Day Laborer, in N. Va. (Aug. 8, 2014).

experienced a severe cut while working with metal at a construction site, acknowledged that he could have prevented the injury by “wearing gloves and working more slowly.”¹⁹⁸ Several other workers similarly affirmed that their accidents could have been avoided through a combination of more cautious work and the use of personal protective equipment.¹⁹⁹

The existing literature on occupational safety already recognizes excessive speed as a contributing factor for occupational injuries and fatalities.²⁰⁰ The findings from this study are consistent with that strand of the literature. As noted above, several of the workers explicitly linked their injury or exposure to excessive speed, and others, in retrospect, suggested that speed might have been a causal factor. Naturally, it is difficult to draw a direct link between an employer’s demands regarding work speed and the broad array of accidents reported by the workers. Nevertheless, excessive work speed could certainly contribute to the types of accidents that were most commonly reported—including severe cuts, musculoskeletal injuries, and slip and fall incidents.

The ubiquity of employer demands for speed is interesting to dissect in the context of immigrant day labor. A frenetic pace may reflect the structural and economic constraints of the subcontractors that typically hire immigrant day laborers. These subcontractors frequently work on multiple, simultaneous projects; a quick pace will allow the subcontractor to complete the job and proceed to the next one. It may also reflect deep-seeded power dynamics that are magnified by class, cultural, and/or racial differences. Such dynamics are fueled by a societal context in which some employers prefer Latino workers due to racialized perceptions of their work ethic, efficiency, and reliability.²⁰¹ Employers may also perceive Latino immigrant labor

¹⁹⁸ Confidential Interview No. 4 with Immigrant Day Laborer, in N. Va. (May 29, 2014).

¹⁹⁹ Confidential Interview No. 65 with Immigrant Day Laborer, in N. Va. (Aug. 7, 2014); Confidential Interview No. 12 with Immigrant Day Laborer, in N. Va. (July 1, 2014).

²⁰⁰ See *supra* notes 60–62 and accompanying text.

²⁰¹ See, e.g., Ruth Gomberg-Muñoz, *Willing to Work: Agency and Vulnerability in an Undocumented Immigrant Network*, 112 AM. ANTHROPOLOGIST 295, 297 (2010) (quoting a Chicago restaurant manager who stated: Mexican immigrants “are just phenomenal workers. I don’t know what it’s like in Mexico, but something happens there. Something is instilled in them from birth I think”); Marta Maria Maldonado, ‘It Is Their Nature to Do Menial Labor’: The Racialization of ‘Latino/a Workers’ by Agricultural Employers, 32 ETHNIC & RACIAL STUD. 1017, 1026–28 (2009) (recounting employers’ views that “Hispanic culture” and the “strong work ethic and performance of Latinos/as” make these workers optimally suited to perform low-wage, labor-intensive work). Leticia

as a replaceable, disposable commodity,²⁰² from which speedy output should be expected.²⁰³ Further research is needed to untangle the complex underpinnings of these employer demands.

D. *Training, Protective Equipment, and “Confianza”*

The interviews yielded valuable insight regarding other possible determinants of occupational risk, including provision of training, work experience, and the duration of the employer-employee relationship. Many of the interviewed workers who reported a workplace injury or illness had not received training on how to safely perform the work in question, and most were not wearing personal protective equipment at the time of the accident or exposure. Curiously, the majority of the workers who reported occupational harms were familiar with the work they were performing, having undertaken it multiple times before.

All of the workers were asked whether they had ever participated in a formal training or workshop in the United States relating to occupational health and safety. Fifty-three of the interviewed workers, or about two-thirds, reported that they had received no such training. Of the remaining workers, most had received training during a period of prior employment by a larger, more established employer. Most of these workers could recite the purpose and content of the training in great detail. Some examples follow:

I received training in the supermarket where I used to work. They gave us instructions on how to lift boxes and what to do to avoid accidents. Also to watch where you are walking so you don't fall or trip. And when you are mopping that you put up the signs to notify people.²⁰⁴

Saucedo has explored the legal and economic structures that contribute to worker subordination and, in turn, employer preferences for those workers. See generally Leticia M. Saucedo, *The Employer Preference for the Subservient Worker and the Making of the Brown Collar Workplace*, 67 OHIO ST. L.J. 961 (2006).

²⁰² Lori A. Nessel, *Disposable Workers: Applying a Human Rights Framework to Analyze Duties Owed to Seriously Injured or Ill Migrants*, 19 IND. J. GLOBAL LEGAL STUD. 61, 93–94 (2012) (describing how certain legal regimes and practices reinforce the view that migrant workers in the United States are “disposable”).

²⁰³ Cf. Joseph G. Grzywacz et al., *Organization of Work in the Agricultural, Forestry, and Fishing Sector in the US Southeast: Implications for Immigrant Workers' Occupational Safety and Health*, 56 AM. J. INDUS. MED. 925, 932–33 (2013) (noting how certain immigrant-heavy occupations rely on piece-rate compensation, which encourages speedy work and deprioritizes worker safety).

²⁰⁴ Confidential Interview No. 62 with Immigrant Day Laborer, in N. Va. (Aug. 16, 2014).

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I used to work at a roofing company and got trained on how to use a forklift. This was in 2007. I still have the card in my wallet.²⁰⁵

In California I worked at a printing press. They showed us videos about safety—on how to lift boxes [and] how to check if the floor was wet and put up the sign. Or how to work in an area where things might fall from above. Also on cutting wood and using a drill.²⁰⁶

Additionally, a few workers had received training at a union or worker center. Fortunately, most of the trainings received by workers were conducted in Spanish or with full interpretation; only five were in English or with an informal interpreter. Trainings are one of the most critical vehicles for conveying the fundamentals of workplace safety protections,²⁰⁷ but the majority of the interviewed workers had never participated in one during their time in the United States.

Among the workers who had experienced an occupational injury or illness in the United States, an even greater proportion—about three-fourths—had not been trained in how to do the work that gave rise to their injury or illness. Figure 4 below details how many of these workers received training and by whom.²⁰⁸ A dominant theme among the workers is that they were simply put to work with a cursory explanation on what to do (or no explanation at all). Many of the workers learned to perform the work simply by watching others. One of the interviewed workers, who experienced an eye injury while doing carpentry work, explained it as follows:

When I got hurt, I had already worked for that company for about a year and a half. I entered as an assistant and then moved into cutting the wood. You watch how other people do it. They show you how to do it. They did not give me any training on how to do the job safely.²⁰⁹

²⁰⁵ Confidential Interview No. 1 with Immigrant Day Laborer, in N. Va. (May 27, 2014).

²⁰⁶ Confidential Interview No. 76 with Immigrant Day Laborer, in N. Va. (Aug. 23, 2014).

²⁰⁷ Dong et al., *supra* note 53 (“Given the large proportion of young and inexperienced Hispanic workers in construction, providing enhanced safety and health training programs is extremely important.”).

²⁰⁸ Note that this chart omits one of the reported injuries: a physical assault by a co-worker. Confidential Interview No. 45 with Immigrant Day Laborer, in N. Va. (July 26, 2014). Although employers can certainly take steps to prevent workplace violence, the researchers did not ask the worker about possible preventive measures.

²⁰⁹ Confidential Interview No. 40 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014).

Another worker, who had fallen nearly thirty feet off of a scaffold while installing siding, similarly reported a lack of training, noting that he “began as a helper and then [he] saw what the other guys were doing and did it as well.”²¹⁰ Yet another worker described the devastating, long-term consequences of replicating the practices of others and receiving no training:

I was working for a company, and I would have to cut sheetrock with a circular saw and there was a lot of dust. I had to do this regularly in that job over several years. I never wore eye protection, and since then my vision has not been very good. It was a type of sheetrock that has something in it No one ever trained me. You just watch the others and do it.²¹¹

These findings are consistent with similar studies, describing how immigrant workers received informal training on the job and often simply observed their co-workers.²¹²

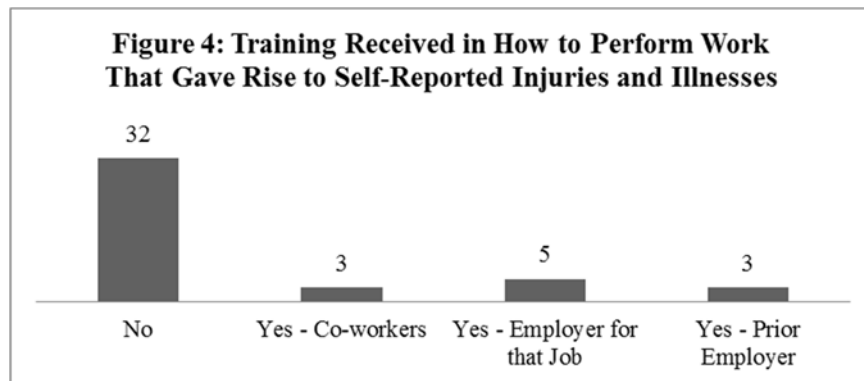
But many other workers interviewed for this study simply received no training at all. One worker, who was exposed to poison ivy while doing landscaping work for a homeowner, explained that his employer was demanding and just told him what needed to be done, without explaining how to do it safely.²¹³

²¹⁰ Confidential Interview No. 65 with Immigrant Day Laborer, in N. Va. (Aug. 7, 2014).

²¹¹ Confidential Interview No. 41 with Immigrant Day Laborer, in N. Va. (Aug. 2, 2014).

²¹² Ahonen et al., *supra* note 15 (“It appeared that training was largely informal and based on on-the-job observation of more experienced colleagues.”); O’Connor et al., *supra* note 58.

²¹³ Confidential Interview No. 58 with Immigrant Day Laborer, in N. Va. (Aug. 8, 2014).



An equivalent proportion (about three-fourths) of the workers who experienced a work-related injury or illness were not wearing any personal protective equipment at the time of the injury or exposure incident. When asked whether the occupational harm could have been avoided, nearly all of them answered in the affirmative and referred to some kind of protective equipment or clothing. One worker, who had been hired by a contractor outside of a 7-Eleven, explained the circumstances of his injury:

I was working at a home that was being rebuilt. They had already poured the concrete for the foundation. My job was to remove the “latas”—these are the metal forms that you pour the concrete into. They were very long and difficult to carry, and also heavy. Maybe about 50 pounds. As I was carrying one, I cut open the inside of my right hand and forearm. I didn’t have any gloves, and I wasn’t wearing long sleeves. The guy in charge didn’t give us gloves. And I didn’t have any with me. When I accepted the job, I didn’t know what kind of work I was going to do.²¹⁴

The same worker had sustained a second workplace harm and reported a similar dynamic leading up to the exposure:

I was working in a building. I didn’t have any [protective equipment] with me, because one does not know what kind of work you will do. There were four of us working but I was the only one installing insulation. The boss did not give me any goggles, and I was not wearing any. I could feel it in my eyes. I went to a pharmacy right after work and got some

²¹⁴ Confidential Interview No. 16 with Immigrant Day Laborer, in N. Va. (July 8, 2014).

drops.²¹⁵

While many of the workers had received no protective equipment at all from their employers, several others *had* gotten equipment from their employers but were not wearing it at the time. One worker described his injury as follows:

I was working for a contractor, putting together a deck outside of a home. I was using a nail gun to nail some of the deck pickets. The wood had some kind of knot so the nail popped back and went into my finger. The boss had given us gloves, a mask, and even ear plugs. But I didn't have the gloves on at the time Sometimes I don't wear gloves because they are uncomfortable and feel hot.²¹⁶

Another worker, who had fallen from a roof, likewise had access to protective equipment but did not use it. He explained as follows:

The boss said I should be using a harness and had them available. But I wasn't wearing one. It was not comfortable to wear it, given the hot weather. I also had to carry the staple gun and didn't want one more thing to deal with.²¹⁷

The reflections of another worker suggest that even when employers make protective equipment available, they do not insist on its use. This worker, whose thirty-foot fall from scaffolding is mentioned above, added the following about protective equipment on the jobsite:

The employer had given us a hard hat. But we were not required to wear it. I was not wearing a hard hat or harness when I fell. But after the accident, everyone was required to wear a hard hat.²¹⁸

This worker reflected that he "should have been working more carefully and with more protection."²¹⁹ As noted above, many of the workers were able to name specific ways that their accident or exposure could have been prevented; the most common solution was the use of protective clothing or equipment. Based on these clear trends in the responses, it appears, that specific training in that kind of work, along with provision *and* use of protective equipment, could operate to mitigate workplace risks.

²¹⁵ *Id.*

²¹⁶ Confidential Interview No. 82 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014).

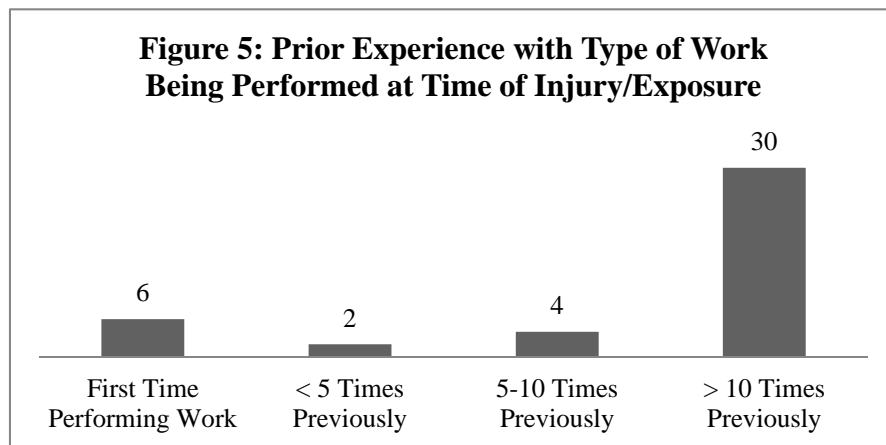
²¹⁷ Confidential Interview No. 12 with Immigrant Day Laborer, in N. Va. (July 1, 2014).

²¹⁸ Confidential Interview No. 65 with Immigrant Day Laborer, in N. Va. (Aug. 7, 2014).

²¹⁹ *Id.*

Scholars have also suggested that a worker's relative inexperience with a particular task may render them more susceptible to injury.²²⁰ Likewise, an unfamiliar worksite (or even an unfamiliar employer) may also enhance the risk of injury or exposure. Along these lines, some scholars have hypothesized that newly arrived immigrant workers, who are unfamiliar with U.S. work culture (and who are often saddled with other layers of vulnerability, including limited English proficiency and economic insecurity), are more susceptible to injuries and illnesses.²²¹ The present research study allowed for some exploration of these possible connections.

Interestingly, a significant majority of the workers who reported a workplace injury or exposure had performed that kind of work more than ten times previously. These responses suggest that prior familiarity with that type of work does not necessarily insulate a worker from occupational risks. Figure 5 below details the workers' prior familiarity with the work.²²²



²²⁰ See, e.g., Fred Siskind, *Another Look at the Link Between Work Injuries and Job Experience*, 105 MONTHLY LAB. REV., Feb. 1982, at 38, 40 (“[W]orkers . . . generally experience disproportionately high injury rates during their first year on a new job or working for a new employer Almost all age and sex groups have disproportionately high injury experiences during their first few months and first full year on a new job.”).

²²¹ See, e.g., Rathod, *supra* note 33, at 289–90.

²²² As with Figure 4, this chart does not capture the worker who experienced a workplace assault. Confidential Interview No. 45 with Immigrant Day Laborer, in N. Va. (July 26, 2014); see also *supra* note 208. Also omitted is a worker who did not experience harm at a specific moment in time, but rather developed an illness due to exposure to particles over time. Confidential Interview No. 76 with Immigrant Day Laborer, in N. Va. (Aug. 23, 2014).

As reflected in the chart, only six of the incidents occurred when the worker was performing that type of work for the first time. Three of these six incidents involved severe cuts to the hand or arm;²²³ one involved a foot getting punctured by a nail,²²⁴ another was a case of heat exhaustion,²²⁵ and yet another related to poison ivy exposure.²²⁶ Notably, there was a significant overlap between those workers who had received no training and those who had done that kind of work more than ten times previously. One can reasonably infer that these workers, despite their “experience” with the work, had never learned how to perform the work in a safe manner, with the use of protective equipment. For example, one worker who had been employed in the kitchen of a Vietnamese restaurant described the following:

The owner asked me if I had done this before and I told him I had worked at a restaurant in New York. So he just put me to work. One day after about six months on the job, I was cutting meat to remove the fat. I was holding it in my left hand and had the knife in my right hand. But the meat was so soft that when I went to cut it I cut open the palm of my hand. I wasn't wearing any gloves.²²⁷

This worker's case is typical of many, in that lack of training and protective equipment coincided with an on-the-job injury or exposure incident.

Although unfamiliarity with the work did not directly correlate to workplace injuries and illnesses among this population of workers, a slightly stronger correlation can be seen with unfamiliarity with the *employer*. As reflected in Figure 6 below,²²⁸ twelve of the self-reported injury/exposure incidents occurred during the worker's first week with a particular employer. These twelve incidents were reported by a total of eleven workers; a closer look at the group and their workplace

²²³ Confidential Interview No. 83 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014); Confidential Interview No. 75 with Immigrant Day Laborer, in N. Va. (Aug. 15, 2014); Confidential Interview No. 16 with Immigrant Day Laborer, in N. Va. (July 8, 2014).

²²⁴ Confidential Interview No. 69 with Immigrant Day Laborer, in N. Va. (Aug. 8, 2014).

²²⁵ Confidential Interview No. 78 with Immigrant Day Laborer, in N. Va. (Aug. 23, 2014).

²²⁶ Confidential Interview No. 26 with Immigrant Day Laborer, in N. Va. (July 3, 2014).

²²⁷ Confidential Interview No. 54 with Immigrant Day Laborer, in N. Va. (Aug. 5, 2014).

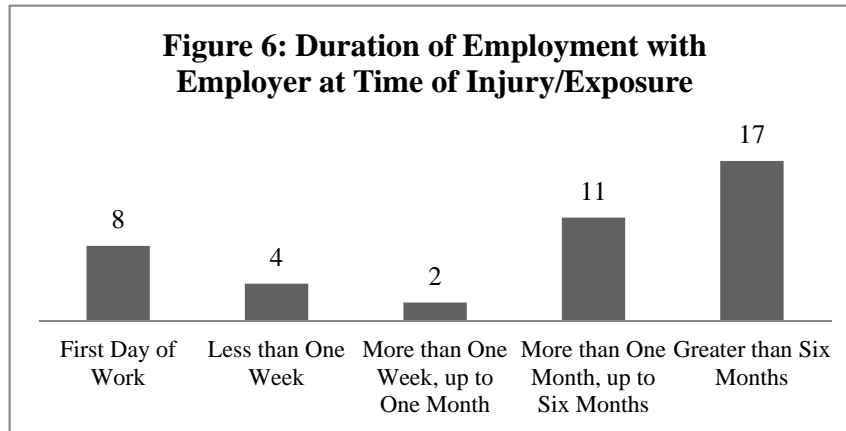
²²⁸ This chart omits one worker who could not recall the duration of employment and the worker who developed an illness over time due to particle exposure. Confidential Interview No. 76 with Immigrant Day Laborer, in N. Va. (Aug. 23, 2014); Confidential Interview No. 26 with Immigrant Day Laborer, in N. Va. (July 3, 2014).

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experiences yields some interesting insights. In each of the twelve incidents, subcontractors or homeowners had hired the workers off of the street for explicitly short-term engagements.²²⁹ In six of the twelve cases, the worker could not effectively communicate in a shared language with the supervisor.²³⁰ These incidents, reported by six separate workers, all involved manual construction or landscape work.



²²⁹ Confidential Interview No. 83 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014); Confidential Interview No. 81 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014); Confidential Interview No. 74 with Immigrant Day Laborer, in N. Va. (Aug. 15, 2014); Confidential Interview No. 69 with Immigrant Day Laborer, in N. Va. (Aug. 8, 2014); Confidential Interview No. 58 with Immigrant Day Laborer, in N. Va. (Aug. 8, 2014); Confidential Interview No. 57 with Immigrant Day Laborer, in N. Va. (Aug. 8, 2014); Confidential Interview No. 16 with Immigrant Day Laborer, in N. Va. (July 8, 2014); Confidential Interview No. 26 with Immigrant Day Laborer, in N. Va. (July 3, 2014); Confidential Interview No. 5 with Immigrant Day Laborer, in N. Va. (May 29, 2014); Confidential Interview No. 4 with Immigrant Day Laborer, in N. Va. (May 29, 2014).

²³⁰ Confidential Interview No. 83 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014); Confidential Interview No. 81 with Immigrant Day Laborer, in N. Va. (Sept. 13, 2014); Confidential Interview No. 58 with Immigrant Day Laborer, in N. Va. (Aug. 8, 2014); Confidential Interview No. 57 with Immigrant Day Laborer, in N. Va. (Aug. 8, 2014); Confidential Interview No. 26 with Immigrant Day Laborer, in N. Va. (July 3, 2014); Confidential Interview No. 4 with Immigrant Day Laborer, in N. Va. (May 29, 2014).

Over the course of the interviews, many of the workers explained that they would engage with their employers on workplace safety matters if there was a level of trust or security in the relationship. The word in Spanish invoked by many of the workers was *confianza*—which is literally translated as “trust,” but as used by the workers, had a broader connotation that combined trust with a sense of security, stability, and mutual understanding. In scenarios where workers are hired off of the street corner for short-term positions, and by individuals who do not speak Spanish, this sense of *confianza* is nearly impossible to cultivate. The resulting lack of communication may, in certain circumstances, enhance the risk of injury.

Although language difference certainly inhibits communication and trust-building in relationships, none of the workers directly identified language difference as a proximate cause of an injury. Nor does it appear, based on the workers’ descriptions of what occurred, that language difference was the primary cause of the injury or exposure incident. That said, however, very few of the interviewed workers had a strong command of English. Additionally, when asked about language dynamics in the workplace, approximately one-third of all the workers who reported injuries and illnesses indicated that they were unable to communicate in a shared language with the foreman or supervisor on the jobsite where the accident or exposure occurred.²³¹ It is possible, therefore, that language difference operated in combination with other factors to indirectly enhance the risk of occupational harm.

Finally, the interviews did not reveal any meaningful correlation between the workers’ date of arrival in the United States and the occurrence of the reported injury or exposure. In fact, the vast majority of the incidents occurred three or more years after the worker had arrived in the United States. This finding is consistent with the research of Pransky et al., who found that the workers who reported injuries were more likely to have lived in the United States longer than those who were not injured.²³²

²³¹ Among the thirty-nine workers who reported that they had suffered a work-related injury or illness, native speakers of indigenous languages were not overrepresented, as compared to the overall pool of interviewees. The native language(s) of the thirty-nine workers are as follows: Spanish (twenty-five), Ixil (ten), Ixil and Spanish (two), Quiché (one), and Tz’utujil (one).

²³² Pransky et al., *supra* note 7, at 119.

E. Worksite Location and Workforce Composition: A Perfect Storm?

Another interesting—and somewhat unexpected—finding relates to the location where the accident occurred and the composition of the workforce at that jobsite. In short, most accidents transpired in private settings, in the presence of very few (if any) co-workers, all of whom were fellow immigrants. Although scholars have previously suggested that smaller worksites can be more hazardous for workers, the privacy of the settings adds an interesting overlay. This combination of conditions might operate to create a “perfect storm,” where conditions of work are shielded from scrutiny and where fellow workers might be similarly inhibited from raising concerns.

The largest number of self-reported injuries and illnesses occurred or developed in residential environments—either in private homes (thirteen reports) or in apartment complexes that were being renovated (seven reports). Eleven of the reported injuries can be traced to construction sites, and five occurred in kitchen restaurants. The remaining reports stemmed from different kinds of business settings. Notable is the fact that many of the injuries or exposure incidents occurred in private settings—homes, apartment buildings, and the back spaces of restaurants.

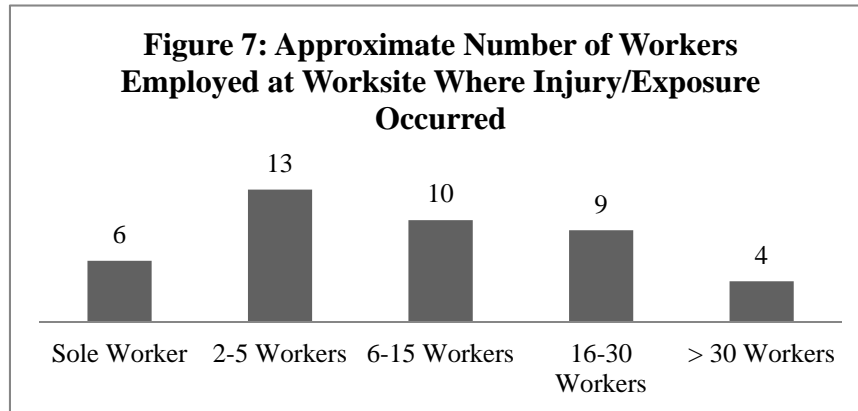
In other employment law contexts, scholars and advocates have argued that the physical privacy of the setting enables violations by unscrupulous employers. For example, wage theft and labor trafficking perpetrated against immigrant domestic workers is often invisible because their household work—and in many instances, their very presence—is shielded from view.²³³ Similarly, advocates have also drawn attention to pervasive sexual harassment experienced by female immigrant workers, typically in isolated settings, such as farms or in office buildings late at night.²³⁴ It follows, therefore, that workplace safety violations are also prone to occur when hazardous conditions are shielded from public scrutiny.

Following this reasoning, one might hypothesize that hazardous conditions are more likely to be found at smaller worksites, where

²³³ See, e.g., HUMAN RIGHTS WATCH, HIDDEN IN THE HOME: ABUSE OF DOMESTIC WORKERS WITH SPECIAL VISAS IN THE UNITED STATES 6 (2001), <https://www.hrw.org/reports/2001/usadom/usadom0501.pdf> (describing how invisibility and social isolation enhance the vulnerability of noncitizen domestic workers).

²³⁴ See, e.g., Robin R. Runge, *Failing to Address Sexual and Domestic Violence at Work: The Case of Migrant Farmworker Women*, 20 AM. U. J. GENDER SOC. POL'Y & L. 871, 877 (2012) (noting that farmworker women are especially vulnerable because “they are isolated, not considered credible, often do not know their rights, and may lack legal status”).

fewer workers are present who will demand accountability. Figure 7 below provides a breakdown of the approximate number of workers employed at the site where the reported injury or exposure incidents occurred.²³⁵ As reflected in the table, a large proportion of these incidents did, in fact, take place at worksites with relatively small numbers of workers.



One other aspect of the worksite bears mention here: the demographics of the co-workers. Twenty-nine of the forty-four injury/exposure incidents occurred at worksites where all of the interviewees' co-workers were immigrants. Twenty-six of the incidents occurred at worksites where all of the co-workers were male. There was significant overlap between these two groups: twenty incidents occurred at worksites comprised entirely of male immigrant workers. These findings point to a possible correlation between immigrant-heavy and male-heavy worksites, and the incidence of occupational injuries and illnesses. A complex mix of causal factors likely informs this finding, including employer propensity for immigrant labor, other labor market considerations (e.g., the unavailability of native-born workers to perform the work at the wage rates set by the employer), the gendered nature of work, and more. Further study is required to definitively confirm a link between these employee demographics and the occurrence of workplace harms.

²³⁵ Two of the interviewed workers could not recall the number of co-workers or did not answer this question. Confidential Interview No. 78 with Immigrant Day Laborer, in N. Va. (Aug. 23, 2014); Confidential Interview No. 26 with Immigrant Day Laborer, in N. Va. (July 3, 2014). As previously noted in the context of other charts, the worker who developed an illness over time is likewise omitted from this chart. Confidential Interview No. 76 with Immigrant Day Laborer, in N. Va. (Aug. 23, 2014).

One could reasonably hypothesize, however, that these overlapping layers of vulnerability might operate to enhance occupational risks for immigrant workers. As noted above, the very structure of the day labor economy disadvantages immigrant workers, given the lack of regulatory oversight and the employers' powerful incentives to cut costs. When one's actions are hidden from view, and when fewer workers are present, forces of accountability quickly erode. And when the workers present are all immigrants, heavily burdened with economic worries, there is less likelihood that a worker would challenge those conditions. Taken together, these various layers of vulnerability create a hospitable environment for occupational harms.

F. Occupational Harms Symptomatic of a Generally Noncompliant Employer?

As noted in the literature review *supra*, worker advocates have hypothesized that employers who tend to engage in one type of employment law violation are likely to engage in others, thereby creating a "sweatshop" culture.²³⁶ To examine this possible connection, during the interviews, the researchers asked a series of follow-up questions to the workers who had experienced an occupational injury or illness, to determine whether the same employer had violated independent employment law norms or otherwise mistreated the workers. An analysis of the interviews suggests a small, but notable co-occurrence of both wage theft and verbal abuse in the reported cases of occupational harms.

Seven of the workers who had suffered a workplace accident or exposure reported wage-related concerns with the employer. Of these seven, five spoke about wage issues that had preceded the accident, and four noted ongoing wage issues *after* the accident. One worker described his experience as follows:

Before the accident happened, there were a lot of overtime problems at that job. They didn't pay it. Afterwards, the boss told me that he wanted to reduce my salary. He was more abusive and would make fun of me. Basically, he forced me to quit.²³⁷

Another described how his employer had refused to pay wages owed to him after he stopped working due to poison ivy exposure:

He didn't want to pay me for the work I did. He was not understanding at all and said there was nothing he could do

²³⁶ See *supra* notes 69–71 and accompanying text.

²³⁷ Confidential Interview No. 1 with Immigrant Day Laborer, in N. Va. (May 27, 2014).

for me.²³⁸

In reviewing the interview data, the nature of these employers varied considerably and included subcontractors, restaurants, a medium-sized business, and a homeowner. The nature of the work likewise varied (everything from landscaping to exterior painting to supermarket work), as did the duration of employment with that employer (anywhere from a few days to multiple years). Given the extensive literature on wage theft in the day laborer community, the number of instances of co-occurrence is surprisingly low.

Along these lines, nine of the workers who had experienced accidents or illnesses reported a verbally abusive or hostile environment at their place of work. In this way, employers are able to maintain an oppressive environment even without resorting to explicit immigration-related threats.²³⁹ At times, the abusive treatment both preceded and followed the accident. One worker describes his experience:

Last year I worked at a construction site doing ironwork. The supervisor was Hispanic, but he was very abusive and yelled a lot. One day I was walking, carrying a heavy piece of metal. I got too close to another worker who was also walking, and I fell into a ditch and hurt my shoulder and cut my knee. I told my supervisor I was hurt, and he told me to just keep working. Three days later I could not bear the pain so they just sent me home.²⁴⁰

Abusive treatment such as this operates to lessen the sense of trust between the workers and employers which, as noted above, is critical to mitigating occupational risks. Overall, the narratives shared by the workers suggest that the noncompliant, “sweatshop” employer does, in fact, exist, but is not ubiquitous among this population of workers.

CONCLUSION & RECOMMENDATIONS

The results from the present study reveal a complex, dynamic picture of occupational risk for immigrant day laborers in Northern Virginia. The immigrant workers interviewed for this study continue to experience dangerous working conditions, and many have sustained work-related injuries and illnesses during their years in the United States. Based on the interview data collected and the themes that

²³⁸ Confidential Interview No. 20 with Immigrant Day Laborer, in N. Va. (July 11, 2014).

²³⁹ Gleeson, *supra* note 22, at 583.

²⁴⁰ Confidential Interview No. 32 with Immigrant Day Laborer, in N. Va. (July 10, 2014).

emerged, this Article offers the following final observations and recommendations for future work.

A. *Creative and Collaborative Regulatory Approaches*

Many of the findings in this study can be traced back to a regulatory deficit and, therefore, invite calls for enhanced agency oversight. For example, the majority of the interviewed workers had never received any kind of workplace safety training in the United States. The workers' narratives also suggest the need to focus on the provision and use of protective equipment, attention to work speed, and oversight of smaller worksites. Regulatory efforts in each of these areas continue to be critical. But in a country with eight million worksites and with limited agency resources,²⁴¹ perfect government oversight is a near impossibility. In the face of this reality, more creative and collaborative regulatory approaches can begin to fill the gap.

For example, the findings signal the need for intersectional regulatory approaches, as several of the workers who sustained an injury or illness had also fallen victim to wage theft or abusive work environments. These results suggest that the regulatory silos in employment law could better coordinate to detect unlawful working conditions. Additionally, the research reveals the important, positive role that worker centers can play with respect to occupational safety and health. In the present study, the CLRC provided critical protection for the immigrant day laborers, and the CLRC's role as facilitator and intermediary appears to have insulated workers from different types of workplace hazards. Although some collaboration between OSHA and worker centers already exists,²⁴² the present study highlights the need for sustained partnerships and a closer examination of how worker centers can mediate safety-related concerns.

²⁴¹ *Commonly Used Statistics*, U.S. DEP'T LAB., <https://www.osha.gov/oshstats/commonstats.html> (last visited Feb. 20, 2016) ("Federal OSHA is . . . responsible for the health and safety of 130 million workers, employed at more than 8 million worksites around the nation – which translates to about one compliance officer for every 59,000 workers.").

²⁴² *OSHA's Areas of Emphasis: Hispanic/Latino Workers*, U.S. DEP'T LAB., https://www.osha.gov/dcsp/alliances/focus/emphasis.html#hispanic_latino (last visited Feb. 20, 2016) (listing OSHA partnerships focusing on Hispanic/Latino workers, including alliances with a handful of worker centers around the country).

B. *De-Essentializing “Immigrant Workers” and the Importance of the Local*

In both academic and advocacy circles, “immigrant workers” are often described, in monolithic terms, as a group of individuals uniformly subject to the same motivations and fears. This essentializing of the immigrant worker population leads to ill-fitting policy proposals premised on an incomplete, outdated, and/or stereotyped understanding of the immigrant worker community. By contrast, a more nuanced and context-specific approach is likely to be more effective for a wildly diverse population of workers who face broad-ranging occupational risks.

In the present study, for example, the significant numbers of workers of indigenous origin was a surprising finding with potentially important implications for the promotion of occupational health and safety. Indeed, language difference can complicate training efforts and inhibit communication in the workplace. Likewise, the diverse types of work that the day laborers have undertaken point to the need for specific safety-related training across a range of job types. Indeed, few of the workers who experienced an occupational injury had been properly trained on how to perform that work.

At the same time, the findings from this study are unquestionably informed by the local context in Northern Virginia. The workers’ relative empowerment *vis-à-vis* safety and health concerns may stem from the organizing work that has occurred in the region, or from the sizeable Latino immigrant population in the area and the accompanying social networks and support services. Broader socio-legal shifts regarding the salience of immigration status might also shape, in small part, the workers’ day-to-day experiences and how they navigate questions of rights and legal status in the workplace. Given this context, the optimal regulatory approach for this group of day laborers may be distinct from a suitable approach for another population of immigrant workers in a different part of the country.

The need for a localized understanding of the immigrant worker population points to the important roles that state and local regulatory actors can play. Currently twenty-six states, along with Puerto Rico and the U.S. Virgin Islands, have opted to implement their own OSHA state plans and therefore serve as the primary regulatory entity on workplace safety matters in their jurisdictions.²⁴³ Many of these state-plan states

²⁴³ *State Plans: Office of State Programs*, U.S. DEP’T LAB., <https://www.osha.gov/dcsp/osp/> (last visited Feb. 20, 2016). Six of these plans cover only state and local government workers. For a more precise breakdown of the state

have adopted innovative regulatory approaches.²⁴⁴ A renewed focus on data collection, with monitoring and targeted regulatory efforts at the state and local levels, will almost certainly benefit at-risk populations of immigrant workers.

C. Status, Economic Insecurity, and Immigration Pathways

Few of the workers interviewed for this study reported that they had experienced explicit immigration-related threats. Indeed, several of the interview responses, when viewed in the aggregate, betrayed a growing strand of worker empowerment or “normalization” of undocumented status that may be attributable to a range of causes. At the same time, however, immigrant workers are burdened by notable economic insecurities, which similarly shape outcomes relating to workplace safety. Although immigration status does not operate as a blunt instrument among this population of day laborers, their inability to access formal labor markets (often because of undocumented status) relegates the workers to under-regulated markets where difficult and dangerous work is the norm.

For workers to be relieved of these economic and status-related burdens, major structural changes would be required. A comprehensive regional strategy regarding economics and migration seems elusive, as does a broad-based effort to regularize the immigration status of the undocumented population in the United States. That said, even absent formal legalization, concession of employment authorization would likely enhance the workers’ mobility in the labor markets and thereby alleviate, at least in small part, some of the economic burdens that they shoulder. In this regard, a positive development is the Obama administration’s recent efforts to insulate undocumented workers from the threat of removal and provide them with work authorization.²⁴⁵ More broadly, the United States immigration system lacks sufficient pathways for individuals to immigrate for the purpose of performing low-skilled work.²⁴⁶ The

plans, see *Table of OSHA-Approved State Plans: Basic Facts and Information*, U.S. DEP’T LAB., https://www.osha.gov/dcsp/osp/approved_state_plans.html (last visited Feb. 20, 2016).

²⁴⁴ Washington State’s Division of Occupational Safety & Health, for example, has adopted a multi-pronged outreach strategy targeting Latino workers. See OCCUPATIONAL SAFETY & HEALTH STATE PLAN ASS’N, GRASSROOTS WORKER PROTECTION: STATE PLAN ACTIVITIES OF THE OCCUPATIONAL SAFETY AND HEALTH STATE PLAN ASSOCIATION 61 (2014).

²⁴⁵ See *Executive Actions on Immigration*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Apr. 15, 2015), <http://www.uscis.gov/immigrationaction>.

²⁴⁶ Madeleine Sumption & Demetrios G. Papademetriou, *Legal Immigration Policies for Low-Skilled Foreign Workers*, MIGRATION POLICY INST. ISSUE BRIEF, Apr. 2013, at 1, 5

creation of more opportunities for noncitizen workers to work lawfully for a dignified wage, while ensuring employer accountability through adequate regulatory oversight, will lay the foundation for more favorable health and safety outcomes.

While the findings from this study allow us to understand possible determinants of occupational risk, the data also invite further, in-depth inquiries focused on numerous research questions. Empirical studies, such as this one, are critical for crafting appropriate legal and policy responses to the health and safety concerns that immigrant workers face. The specific challenges identified in this study range from trenchant, systemic barriers to regulatory deficits that can be more easily corrected. Immigrant workers will continue to face occupational risks, and related research and data collection must likewise continue. Over time, as scholars and policymakers better understand the determinants of risk, steps can be taken to curb injury and fatality rates, and to promote safe and dignified work environments for immigrants.

(“The absence of a meaningful employment-based visa system for year-round employment—with only 5,000 permanent visas reserved annually for low-skilled workers—is one of several drivers of illegal immigration.”).