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The Aftermath of Katrina: Race, Undocumented Workers, and the Color of Money

D. Aaron Lacy

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THE AFTERMATH OF KATRINA: RACE, UNDOCUMENTED WORKERS, AND THE COLOR OF MONEY

D. Aaron Lacy†

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I. INTRODUCTION

Hurricane Katrina devastated several states in the southern part of the United States leaving a desperate need for reconstruction.¹ Many people who lived in this area before Hurricane Katrina hit land were poor African-Americans with a long history of connection to this area.² Some were too poor to leave in time; some are too poor to return.³ When it came time for our nation to rebuild, we did not call upon these available minority workers to rebuild.

Even though the illegal nature of their presence is difficult to enumerate, there have been recent headlines stating that there is an esti-

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1. See Seth Borenstein, *Rebuilding of Devastated Region May Call for Record U.S. Effort*, THE SEATTLE TIMES, Aug. 30, 2005, at A10.

2. See Sharon Sharpe, *Mementos Lost; Treasured Artifacts Destroyed by Storm*, TIMES-PICAYUNE (New Orleans), June 4, 2006, at 14 (discussing the loss of important photographs and other mementos from the first school for African-American students in a New Orleans parish).

3. *Jonathon Tilove*, In the Aftermath of Hurricane Katrina, Some are Finding the Rev. Martin Luther King Jr.'s Message is More Poignant Than Ever, TIMES PICAYUNE (New Orleans), Jan. 15, 2006, at 1.

mated 11 to 13 million undocumented immigrants in this country.⁴ These undocumented immigrants need to feed, house, and clothe themselves. For years, these undocumented workers have been identified as doing America's dirty and dangerous work—work that Americans did not want.⁵

Some argue that no matter what the politicians and activists want, African-Americans will not be the first in line to rebuild the states devastated by Hurricane Katrina.⁶ Primarily undocumented immigrants will do the rebuilding.⁷ There is a controversy in the air that illegal immigration is the greatest threat to African-Americans since slavery.⁸ There are an estimated 30,000 foreign workers actively working in the rebuilding process, and many of them are identified as illegal.⁹ It appears likely that these workers will remain after the rebuilding process. Many are afraid that this will compare to the immigration boom in Florida after Hurricane Andrew in 1992.¹⁰ Undoubtedly, this will hamper the return of storm victims to the area they once called home. Many of the displaced people sought employment elsewhere because undocumented immigrants filled reconstruction jobs.¹¹

You may wonder why the devastation of Katrina attracted so many undocumented workers. The answer is not simply that there were many vacant jobs; there were plenty of storm victims who lost their jobs due to the storm that could have filled the void. In other words, it was not simply the same factor that pushed occupants of the area out that pulled undocumented immigrants in but the approach the federal government took in handling the aftermath of Hurricane Katrina.

First, the President suspended, in what seemed to be a possible beneficial move in the beginning, the Davis-Bacon Act,¹² better known as

4. Fed'n for Am. Immigration Reform, *HOW MANY ILLEGAL ALIENS?*, AUG. 2006, http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecentersb8ca.

5. *New Orleans Residents Pass on Cleanup Jobs; Immigrants are Willing to Tackle the Dirty Jobs Local Resident's Won't Do*, Toronto Star, Oct. 8, 2005, A10.

6. See Penny Brown Roberts, *Nueva Orleans: Hispanics Rebuilding Crescent City Likely To Stay - and Affect Culture*, THE ADVOCATE (BATON ROUGE), May 7, 2006, A1.

7. See *id.*

8. Keyonna Summers, *Blacks See Threat from Hispanic Illegal Aliens*, WASH. TIMES, May 15, 2006, A1.

9. See Roberts, *supra* note 6.

10. See *id.*

11. See *id.*

12. Press Release, Office of the Press Sec'y, Proclamation by the President: To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina (Sept. 8, 2005), available at <http://www.whitehouse.gov/news/releases/2005/09/20050908-5.html>.

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the Prevailing Wage Law, which was enacted in 1931.¹³ The Act seeks to preserve local area wages and labor standards when businesses are in the process of obtaining contracts for federal construction work.¹⁴ The law states that contractors for federal projects must pay their workers no less than the wage rates prevailing in the local area for each craft as determined by the United States Department of Labor.¹⁵ Second, the Department of Homeland Security subsequently decided to waive sanctions imposed on employers who hire undocumented workers by the Immigration Reform and Control Act, effectively working against the meaning of the suspension of the Act.¹⁶

This Article examines the possibility of an inter-minority coalition aiding the ongoing rebuilding in the aftermath of Hurricane Katrina. Part II of this Article discusses the history of both the Davis-Bacon Act and the Immigration Reform and Control Act. Part III discusses the aftermath of Hurricane Katrina as it relates to the aforementioned Acts. Part IV discusses the needs of both undocumented workers and African-Americans following Hurricane Katrina, and Part V discusses the proposed emergence of an inter-minority coalition to fulfill those needs.

II. HISTORY OF THE DAVIS-BACON ACT AND THE IMMIGRATION REFORM AND CONTROL ACT

A. *The Davis-Bacon Act*

Following World War I, a movement began to shape and improve the lack of professionalism within the construction industry.¹⁷ Contractors were practicing different kinds of devious bidding, which created, as some suggested, an unrelenting reduction in standards and construction quality with no concern for the workers actually engaged in construction or with the eventual consumer of the work product.¹⁸ In other words, contractors were bidding to make money, even if they could not produce quality work.

By the 1930s, nearly all the key unions in the United States representing skilled construction workers totally excluded African-Americans.¹⁹ The goal of the Davis-Bacon Act, passed at the beginning of the Depression era, was to prevent African-American construction

13. See 40 U.S.C. § 3142 (2005) (effective Mar. 3, 1931).

14. See 40 U.S.C. § 3142(a).

15. See *id.* at § 3142(b).

16. See Roberts, *supra* note 6.

17. WILLIAM G. WHITTAKER, DAVIS-BACON SUSPENSION AND ITS LEGISLATIVE AFTERMATH 1 (2005), available at http://www.opencrs.com/rpts/RS22288_20051003.pdf.

18. See *id.* at 1–2.

19. David Bernstein, *The Davis-Bacon Act: Let's Bring Jim Crow to an End*, Cato Institute Briefing Papers, Jan. 18, 1993, available at http://www.cato.org/pub_display.php?pub_id=1458&full=1.

workers from working on Depression era public works jobs.²⁰ The Act maintains constraints on opportunities for African-American workers on federal or federally subsidized jobs by favoring white workers who are unionized and skilled over African-American workers who are non-unionized and unskilled.²¹ The Act has endured the civil rights revolution along with “every attempt to repeal it, and most attempts to reform it, because it is a legislative jewel in organized labor’s crown.”²²

The story of the Davis-Bacon Act began when an Alabama contractor brought a team of African-American construction workers from Alabama to New York to complete work on the Veterans’ Bureau Hospital in Long Island, New York.²³ When Representative Bacon realized the migration of African-American workers from the South, he submitted H.R. 17069, the antecedent to the Davis-Bacon Act.²⁴ Representative Bacon’s constituency, in particular white union workers, was angry that non-unionized African-American workers were moving to the North seeking building trade jobs and undercutting the unionized “white” wage.²⁵

Over the next four years, Bacon presented 13 more bills to institute labor regulations concerning federal public works projects.²⁶ At last, a bill submitted by Representative Bacon and Senator James J. Davis, and supported by the American Federation of Labor, was passed in 1931.²⁷ The law provided that all federal construction contractors with contracts in excess of \$5,000 must pay their workers the “prevailing wage,” which in practice meant the wages of unionized labor.²⁸

“The measure passed because congressmen saw the bill as protection for local, unionized white workers’ salaries in the fierce labor market of the Depression.”²⁹ The remarks of different congressmen divulged the racial disposition that motivated the sponsors and supporters of the bill.³⁰ For example, Representative John J. Cochran of Missouri commented that he had “received numerous complaints in recent months about southern contractors employing low-paid colored mechanics getting work and bringing the employees from the South.”³¹ Representative Clayton Allgood, in support of the Davis-

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

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Bacon Act, griped about “cheap colored labor” that “is in competition with white labor throughout the country.”³²

Not long after the Davis-Bacon Act became law, unions complained that the law was not effectively protecting their members’ jobs. Congress was forced to reduce the minimum contract amount to \$2,000 and provide for the predetermination of the prevailing wage rates by the Department of Labor.³³ The regulations assured that nearly all wages would be set according to union wages.³⁴

Davis-Bacon’s effect on skilled African-Americans was enormous, and its effect on unskilled African-Americans were detrimental.³⁵ The Department of Labor’s regulations neglected to classify categories of unskilled workers other than union apprentices.³⁶ Regulations “required that if a contractor wanted to hire an unskilled worker who was not a union apprentice, the worker had to be paid the same as a skilled worker.”³⁷ Because “unions rarely allowed blacks into their apprenticeship programs, the result was almost the complete exclusion of unskilled black workers from Davis-Bacon projects.”³⁸ Not only did this limit the employment opportunities of unskilled African-Americans, but it also prevented them from acquiring needed additional skills.³⁹ It appears that the Act was passed with the goal of “preventing non-unionized black and immigrant laborers from competing with unionized white workers for scarce jobs during the Depression.”⁴⁰

By the late 1970’s, President Carter began further reformations of the Act, which were carried on by President Reagan.⁴¹ Through the

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *See id.*; Scott Bullock & John Frantz, Removing Barriers to Opportunity: A Constitutional Challenge to The Davis-Bacon Act, http://www.ij.org/economic_liberty/davis_bacon/backgrounder.html (last visited Oct. 9, 2006). Overall during the Great Depression jobs were scarce and white laborers were often chosen first for jobs. NELL IRVIN PAINTER, CREATING BLACK AMERICANS: AFRICAN-AMERICAN HISTORY AND ITS MEANINGS, 1619 TO THE PRESENT, 199 (2006). Employers would often fire African-Americans to employ whites in occupations of domestic service and manufacturing, leaving more than half the African-American men in the cities unemployed. *See id.* Even Roosevelt’s New Deal program, following the Great Depression, did not solve nor seek to remedy this inequality. *See id.* at 205–06. Many programs aided employers who were usually white and not workers who were usually African-American. *See id.* at 206. For example, the Agriculture Adjustment Program (AAA) paid farmers not to grow crops. *Id.* However, many African-Americans did not own land, and therefore they became the employees who were no longer needed. *See id.*

41. WHITTAKER, *supra* note 17, at 2. In the early 1980’s, the Department of Labor altered the Davis-Bacon Act regulations in order to make the Act relatively easier for “open shop firms” to compete for contracts covered by the Act. Bernstein, *supra* 501

years, ideological positions have been reflected in the varying levels of disapproval of the Act with criticism from conservatives and support from union crews.⁴² Some legal professionals argue that the “law continues to have devastating discriminatory effects, as minorities tend to be vastly underrepresented in highly unionized skilled trades and over-represented in the pool of unskilled workers who would benefit, if the prevailing wage laws were abolished.”⁴³ The Davis-Bacon Act currently encompasses a major section of the projects accepted by the construction industry.⁴⁴ Roughly 20% of all construction projects in the United States today are covered by the Act, affecting more than 25% of all construction workers in the nation at any given time.⁴⁵

B. *Immigration Reform and Control Act*

For many undocumented immigrants, employment is the major motivation for entering the United States,⁴⁶ even though unauthorized employment in the United States is illegal.⁴⁷ Consequences for an undocumented immigrant partaking in unauthorized employment include “deportability, because it violates the alien’s status, and ineligibility to change from one nonimmigrant status to another or to adjust from a nonimmigrant status to permanent residence.”⁴⁸

In 1980, the United States Census Bureau calculated that there were over two million undocumented immigrants in this country.⁴⁹ The Immigration and Naturalization Services (INS), now the United States Citizenship and Immigration Services (USCIS), endeavored to face the unwieldy matter of undocumented immigrants present in the United States with insufficient resources.⁵⁰ While the USCIS faced

note 19. The Department also redefined the term “prevailing wages” from the “old 30 percent rule to the new 50 percent rule.” *Id.* This change in the definition of prevailing wages coupled with the actuality that significantly less construction workers are unionized today, unlike their predecessors many decades ago, indicates that Davis-Bacon wage rates will be established according to union rates in unionized cities. *Id.* Over the last few decades the number of open shop contracting firms has more than doubled from thirty percent to seventy percent with forty-five percent of the top 400 construction firms being open shop, compared to just 8 percent in 1973. *Id.* at n.61. Additionally, the reform in the 1980’s neglected to decrease the amount of onerous paperwork requirements, which often prevent small, minority-owned companies from bidding on Davis-Bacon contracts. *Id.*

42. See WHITTAKER, *supra* note 17, at 2.

43. Bullock & Frantz, *supra* note 40; see also Bernstein, *supra* note 19 (discussing the various reformations of the Act since its enactment).

44. Bullock & Frantz, *supra* note 40.

45. *Id.*

46. ROBERT C. DIVINE & R. BLAKE CHISAM, IMMIGRATION PRACTICE 2006–2007 EDITION, § 19-2 (2006).

47. *Id.*; see also 8 U.S.C. § 1101 (1994) (codifying the ways an alien may legally be employed in America).

48. DIVINE & CHISAM, *supra* note 46, at § 19-2.

49. DAVID WEISSBRODT & LAURA DANIELSON, IMMIGRATION LAW AND PROCEDURE IN A NUTSHELL 21 (5th ed. 2005).

50. See *id.*

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the problem of undocumented immigrants, it was scrutinized for ineffective internal procedures, wrongdoing, and an overall failure to manage the surge of undocumented immigration across our borders.⁵¹

On November 6, 1986, President Ronald Reagan signed the Immigration Reform and Control Act of 1986 (IRCA),⁵² signifying a momentous change in the attitude toward American immigration law.⁵³ It had been 34 years since the last major immigration reform was enacted,⁵⁴ and the reform marked the first time that the knowing employment of undocumented immigrants was unlawful.⁵⁵ The Act also established a procedure requiring every employee hired after November 6, 1986 to have his or her employment eligibility verified.⁵⁶ Accordingly, the Act produced the beginning of employer sanctions and the I-9 verification law.⁵⁷

The Act embodied four distinct political interests including “deter[ring] illegal immigration by discouraging unauthorized employment in the United States;” advocating a “one-time amnesty for non-citizens who, for years, had been locked out as illegal immigrants;” “insur[ing] continued access to low-cost agricultural labor without elaborate federal regulation;” and “insur[ing] that penalizing employers for illegally hiring undocumented workers would not encourage discriminatory employment practices.”⁵⁸

Prior to the enactment of the Act, efforts to prevent employment of undocumented immigrants were limited to deportation.⁵⁹ Proponents of the Act believed that the only way to gain control of the United States borders and decrease illegal immigration was to prohibit the jobs that drew the illegal migrants to our nation by sanctioning employers.⁶⁰ In a report of the House Committee on the Judiciary, proponents of the Act stated “[e]mployment is the magnet that attracts undocumented immigrants here illegally. Employers will be deterred by the penalties in this legislation from hiring unauthorized aliens and this, in turn, will deter aliens from entering illegally”⁶¹

Those opposing the legislation worried that such a law would lead to discrimination against those eligible to work based on appearance

51. *See id.*

52. Immigration Reform & Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended at 8 U.S.C. §§ 1101–1537. *See* DIVINE & CHISAM, *supra* note 46, at § 19-3 (providing an in-depth discussion on the amendments to prior laws and the other effects of the IRCA).

53. CHARLES GORDON ET AL., IMMIGRATION LAW AND PROCEDURE § 7.01 (Matthew Bender, rev. ed. 2006).

54. WEISSBRODT & DANIELSON, *supra* note 49, at 21.

55. GORDON ET AL., *supra* note 53, at § 7.01[1].

56. *Id.*

57. *See id.* at § 7.04[2].

58. WEISSBRODT & DANIELSON, *supra* note 49, at 21–22.

59. *See* GORDON ET AL., *supra* note 53, at § 7.01[1].

60. *See id.*

61. *Id.*

alone.⁶² The opposition was supported by the Comptroller General, who reported in March of 1990 that the provisions of the Act regarding employer sanctions have “resulted in widespread discrimination, [have] apparently reduced illegal immigration without unnecessarily burdening employers, [have] generally been carried out satisfactorily by the INS and the Department of Labor, [and have] not generally been used to launch frivolous complaints against employers.”⁶³ The Senate subsequently held hearings on the report and entertained new proposed legislation; however, the IRCA remains predominately unchanged.⁶⁴

III. KATRINA AFTERMATH

In the last week of August 2005, Hurricane Katrina collected force in the Atlantic Ocean as it approached the Gulf of Mexico and the United States.⁶⁵ Aerial views depict houses submerged under water, with only roofs peering through the water top along with battered, buckled, and broken bridges. All the while, victims of the devastation questioned whether they will ever reclaim the lives they had only days before.⁶⁶ As locals dealt with the ruins from Katrina’s fierce hand, the federal government was making distant decisions certain to impact African-Americans and threaten their very livelihoods. Jobs were lost because of the devastation, and the victims of Hurricane Katrina needed jobs.⁶⁷ It was painfully obvious that the area needed to be rebuilt.

A. *Suspension of the Davis-Bacon Act*

In the beginning, the federal government thought that the devastated area would benefit from suspending the Davis-Bacon Act.⁶⁸ Therefore, on September 8, 2005, through increasing pressures upon the administration, President Bush suspended the highly controversial Davis-Bacon Act as it applied to certain jurisdictions in Florida, Alabama, Mississippi, and Louisiana.⁶⁹ The President stated that potential inflationary wage pressures caused him to suspend the Act.⁷⁰ His

62. *See id.*

63. *Id.*

64. *See id.* The reforms that were accepted can be found in the Immigration Act of 1990. *Id.*; *see also* Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (codified as amended at 8 U.S.C. §§ 1101–1537 (2000)).

65. *See* WHITTAKER, *supra* note 17, at 1.

66. Kevin Chappell, *The Aftermath of Hurricane Katrina*, EBONY, Nov. 2005, at 290.

67. New Orleans Residents, *supra* note 5.

68. *See* WHITTAKER, *supra* note 17, at 3.

69. *See id.* at 2–3; Press Release, Office of the Press Sec’y, *supra* note 12.

70. WHITTAKER, *supra* note 17, at 3. *see also* HAROLD C. RELYEA, NATIONAL EMERGENCY POWERS 18–19 (2006), available at <http://www.fas.org/sgp/crs/natsec/98-505.pdf> (concerning the procedure for suspension of such acts as the Davis-Bacon Act).

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announcement of the suspension specified that both the Act and “provisions of all other acts providing for the payment of wages, which provisions are dependent upon determinations by the Secretary of Labor” would be suspended.⁷¹ Even though the President possesses the authority to suspend such acts in a national emergency, this authority has rarely been used.⁷²

When the President suspended the Davis-Bacon Act, critics suggested that Republicans in Congress were using Hurricane Katrina as a means of advancing their agenda, an agenda that which could not be advanced under ordinary circumstances.⁷³ However, Representative Feeney declared that a “[t]emporary suspension of Davis-Bacon will help avoid costly delays that impede clean-up and reconstruction efforts along the Gulf Coast.”⁷⁴ Additionally, a group of representatives, including Representative Feeney, urged the President to issue a presidential proclamation to suspend the Davis-Bacon Act until the country is once again whole.⁷⁵ Other representatives joined stating that “we need to be as flexible as possible in helping the Gulf Coast region and ease the burden on the state and local officials as we begin one of the largest reconstruction projects in modern history.”⁷⁶

Following the suspension of the Davis-Bacon Act, congressional representatives also introduced several pieces of legislation that sought to change the Act and its effects.⁷⁷ Some representatives sug-

71. Press Release, Office of the Press Sec’y, *supra* note 12.

72. See Suspension of Provisions of the Davis-Bacon Act, Relative to Public Building Contracts, 37 Op. Att’y Gen. 544, 545 (1936); See WILLIAM G. WHITTAKER, THE DAVIS-BACON ACT: SUSPENSION (2005), available at http://www.opencrs.com/rpts/RL33100_20050926.pdf (discussing the history of the suspension initiative); JOHN R. LUCKEY & JON O. SHIMABUKURO, , PREVAILING WAGE REQUIREMENTS AND THE EMERGENCY SUSPENSION OF THE DAVIS-BACON ACT (2005), available at http://www.opencrs.com/rpts/RS22265_20050916.pdf (providing a legal analysis of the suspensions of the act).

73. See Press Release, Rep. George Miller, President Bush Exploits Katrina Disaster to Undermine Key Wage Law (Sept. 8, 2005), available at http://www.house.gov/apps/list/press/edlabor_dem/rel9805b.html; Jonathan Weisman & Amy Goldstein, *In the Floods, Parties’ Agendas Surface*, WASH. POST, Sept. 10, 2005, at A4.

74. Press Release, Rep. Tom Feeney, FEENEY, FLAKE, MUSGRAVE ASK PRESIDENT TO SUSPEND DAVIS-BACON FOR HURRICANE RECOVERY: PRESIDENTIAL PROCLAMATION WOULD HASTEN RECOVERY EFFORT (Sept. 7, 2005), http://www.house.gov/list/press/fl24_feeney/DavisBacon.shtml.

75. See Press Release, Rep. Jeff Flake, Congressmen Flake, Feeney, Musgrave and Other House Members Ask President Bush to Suspend Davis-Bacon for Hurricane Recovery Effort: Presidential Proclamation Would Hasten Recover Effort (Sept. 7, 2005), <http://flake.house.gov/News/DocumentSingle.aspx?DocumentID=41765>.

76. Press Release, Rep. Charlie Norwood, Administration Grants Norwood Request for Temporary Suspension of Davis-Bacon Act Restrictions on Rebuilding After Katrina (Sept. 8, 2005), available at http://www.house.gov/list/press/ga09_norwood/DavisBacon.html.

77. See WHITTAKER, *supra* note 17, at 4.

gested either broadening the suspension or making it mandatory, while others suggested overturning the Act.⁷⁸

At first glance, the proposed legislation was thought to protect many smaller, minority owned contractors and drive down costs of administrative issues.⁷⁹ It was predicted to allow these smaller, minority businesses to bid on construction contracts that they otherwise would not be able to afford with the Act intact.⁸⁰ However, when the Department of Homeland Security subsequently decided to waive sanctions on employers who hire undocumented workers, it appeared to work against the meaning of the suspension of the Act.

B. *Suspension of the Immigration Reform and Control Act*

Through the IRCA, Congress adopted penalties for employers who hired illegal aliens.⁸¹ The idea was that aliens would cease to enter the United States or stay in the United States illegally if they were made aware that they were not going to find work because employers would not hire them for fear of being sanctioned.⁸² With the waiver in effect, contractors in the devastated areas were allowed to hire mainly undocumented workers who were willing to work for much less than prevailing wages, in some cases even slave wages.⁸³ The increase of employed illegal workers is a direct result of the federal government's actions. The government effectively invited undocumented workers to work for slave wages and offered no incentive for victims to return to these jobs. These undocumented immigrant workers have been migrating to New Orleans ever since Katrina left its mark on the city.⁸⁴

78. *Id.* Representative Flake introduced a bill following the Presidential proclamation of September 8, 2005, advocating a mandatory suspension of the Davis-Bacon Act for one year when the President has declared an area a major disaster as defined under the Stafford Act. Cleanup and Reconstruction Enhancement Act, H.R. 3684, 109th Cong. (2005). Representative George Miller introduced a bill seeking to overturn the Presidential proclamation of September 8, 2005 and reinstate the Davis-Bacon Act. Fair Wages for Hurricane Victims Act, H.R. 3763, 109th Cong. (2005). Senator Kennedy introduced the companion bill to that of Representative Miller. Fair Wages for Hurricane Katrina Recovery Workers Act, S. 1749, 109th Cong. (2005). Senator Boxer introduced a bill requiring twenty-five percent of the reconstruction workforce to be displaced workers as well as a reinstatement of a prevailing wage rate. Hurricane Katrina Reconstruction and Displaced Worker Assistance Act, S. 1763, 109th Cong. (2005).

79. *See* WHITTAKER, *supra* note 72, at 16–19.

80. *See id.*

81. *See* 8 U.S.C. § 1324a(a)(1) (2000).

82. GORDON ET AL., *supra* note 53, at § 7.01[1].

83. Summers, *supra* note 8. A local councilman said that there is plenty of skilled labor from the area that is capable of doing reconstruction work. Sandra Amrhein, *In Big Easy Cleanup, 'Us' vs. 'Them'*, ST. PETERSBURG TIMES, Oct. 23, 2005, at A1. However, some interviews with victims of Katrina suggest that they are not in a hurry to return to these jobs. *See id.* Instead, they are finding work elsewhere because there is a better opportunity to make more money. *See id.*

84. *Id.* For example, one African-American construction and trucking business owner said that his employees are scattered across several states. *Id.* They have no

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Relying on undocumented workers to rebuild after major catastrophes is nothing new for the United States.⁸⁵ Many undocumented workers helped in the reconstruction after September 11 and after Hurricane Andrew.⁸⁶ According to the United States Census, only about 3% of New Orleans's population was Hispanic in 2000.⁸⁷ Civic and immigration experts say that this number will increase dramatically due to the federal government suspending both the Davis-Bacon Act and the IRCA penalties.⁸⁸

Undocumented immigrants argue that the lack of jobs for local New Orleans residents is not their fault.⁸⁹ Undocumented immigrants migrated to the area alone, leaving their families back in their home country.⁹⁰ They were able to live with practically the clothes on their back, earn more money than they would normally earn, and send that money home.⁹¹ The displaced workers, who could not find a place to sleep, missed out on roofing jobs that could pay \$25 an hour.⁹²

An employment agency sent African-American laborers to construction sites for rebuilding efforts, but about two weeks after their arrival, the laborers were sent home.⁹³ The undocumented immigrant workers had arrived and cost employers less money.⁹⁴ The rejection

place to stay so they can't come back to work. *Id.* He stated that he would hold out on his construction jobs for American workers because he wants the money to circulate back into the local economy where it will do the most good. *Id.*

85. See Roberts, *supra* note 6; Amrhein, *supra* note 83.

86. Amrhein, *supra* note 83.

87. *Id.*

88. See *id.*

89. See Sam Quinones, *Migrants Find a Gold Rush in New Orleans*, L.A. TIMES, Apr. 4, 2006, at A10; Amrhein *supra* note 83.

90. See Sam Quinones, *Migrants Find a Gold Rush in New Orleans*, L.A. TIMES, Apr. 4, 2006, at A10.

91. See Amrhein, *supra* note 83. The Los Angeles Times reported that a man named Leonel Santos was working in Virginia when a New Orleans roofing contractor he knew from his hometown in Mexico called. *Migrants Find a Gold Rush in New Orleans*, *supra* note 90. The contractor sent a car to pick up Santos and seven other workers in Virginia and North Carolina and brought them to New Orleans. *Id.* Undocumented immigrants have migrated to New Orleans and they have no incentive to leave as long as there is still work. *Id.*

92. Amrhein, *supra* note 83.

93. Jerry Seper, *Arrival of Aliens Ousts U.S. Workers*, WASH. TIMES, Apr. 10, 2006, at A1.

94. *Id.* At an Oversight Hearing on Gulf Coast Reconstruction Contracting, the general manager of Knight Enterprises addressed the issue that BE&K, a subcontractor of Halliburton, requested 75 qualified electricians from Knight Enterprises to work on a project they had begun at the Naval Air Station in Belle Chase, LA. *An Oversight Hearing on Gulf Coast Reconstruction Before the S. Democratic Policy Comm.*, 109th Cong. 1 (2005) (statements of Sen. Dugan; Al Knight, Gen. Manager, Knight Enterprises; Mike Moran, general foreman, Knight Enterprises). Knight Enterprises was told that the project would take 20 months. *Id.* Knight Enterprises then gave preference to workers that were directly impacted by Katrina. *Id.* When they arrived at the work site, BE&K had a staff of approximately 30 to 40 of their own workers designated to perform electrical work. *Id.* Almost all of the workers were from out of state, and most did not speak English. *Id.* Only a few of them appeared

of African-American displaced workers was a direct result of the suspension of the Davis-Bacon Act and the waiver of sanctions on employers who hire undocumented workers. African-Americans complain that the reason African-American unemployment is high is because undocumented immigrant workers are taking the lower skilled jobs at lower wages, which African-Americans in poorer areas of the nation normally qualify for.

Perhaps a solution would have been for our government to obtain and reserve temporary housing, allowing for local African-American residents to quickly return to well-needed and desired employment. There is a wealth of African-American history in New Orleans, and this history means a great deal to the residents of the area. Many African-Americans feel that New Orleans is their city, and they should be rebuilding it with pride. A huge problem for many displaced African-American residents of the area was that they did not have housing to return to in time to find jobs before the immigrants swept them away for practically slave wages.⁹⁵ They could have returned to work but would have done so without a place to live.

IV. WORKING CONDITIONS OF UNDOCUMENTED WORKERS AFTER KATRINA

Undocumented immigrants will herd to where work is abundant.⁹⁶ Undocumented immigrants helping in the reconstruction of the devastated areas stricken by the wrath of Hurricane Katrina are working in hazardous conditions without appropriate protective gear. Moreover, these workers are earning considerably less than citizens.⁹⁷

A study by professors at Tulane University and the University of California at Berkeley revealed that almost one-third of the undocumented immigrants interviewed described working with unsafe materials and in precarious surroundings.⁹⁸ Additionally, 19% stated they were not provided with protective gear.⁹⁹ Immigrants are sleeping in tents and working 12 to 14-hour days cleaning moldy motel rooms, tearing out contaminated floors, and breaking down soggy sheet-

to be experienced and qualified electricians. *Id.* According to the BE&K workers, they were being paid two-thirds of Knight Enterprise's prevailing wage with no benefits due to the suspension of the Davis-Bacon Act. *Id.* After work began, BE&K stated their intent to form work crews consisting of one Knight Enterprise electrician and several BE&K workers. *Id.* In effect, the electricians working for Knight Enterprises were supervising and training BE&K workers to replace them for a lesser wage. *Id.*

95. Summers, *supra* note 8.

96. See Mary Sanchez, *Will Someone Answer Nagin's Question?*, TULSA WORLD, Nov. 7, 2005. Mary Sanchez is an opinion columnist for the Kansas City Star.

97. Rukmini Callimachi, *Illegal Workers Face Hardship in Big Easy*, June 7, 2006, <http://abcnews.go.com/US/wireStory?id=2047962>.

98. *Id.*

99. *Id.*

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rock.¹⁰⁰ They spend weeks scooping the rotted guts of flooded homes.¹⁰¹ Twenty-eight percent of undocumented immigrants interviewed said they had difficulty receiving their pay, contrasted with 13% of those working legally. Moreover, more than one-third stated that they were either not paid as much as they were promised when they were hired or they were paid for fewer hours than they worked.¹⁰²

It has also been reported that medical attention is an issue for undocumented immigrant workers.¹⁰³ Eighty-three percent of documented workers who were interviewed by researchers stated that medical attention was available when needed.¹⁰⁴ However, only 38% of the undocumented immigrants interviewed in the same research stated that they received medical attention when needed.¹⁰⁵

Thus, it is worthwhile to consider what happens to workers who fall ill and are unable to seek medical attention. These workers are not afforded the same on-the-job protections as documented workers. These undocumented workers are working to rebuild our nation and are not afforded healthcare benefits, livable wages, or safe working conditions. Basically, they are not working in conditions fit for human habitation.

When asked whether they understood the hazardous conditions they were working in, only one-third of undocumented workers compared with almost two-thirds of documented workers understood.¹⁰⁶ Moreover, many of the undocumented immigrant workers are threatened with deportation if they complain about their working conditions.¹⁰⁷ One way for undocumented workers to protect themselves is to band together with another group to help protect their rights. African-Americans are a group that might be able to benefit from a coalition with the undocumented workers.

100. Sanchez, *supra* note 99.

101. See Roberts, *supra* note 6. In one instance, three friends from Nicaragua ripped out the second floor of a house in a neighborhood in New Orleans. *Id.* All the windows in the house were open, but there was no breeze, leaving a white mist of powder lingered in the air from the milled sheetrock. Similar work in Nicaragua would pay \$4 a day compared to \$12 and hour here. *Id.*

102. See Manuel Roig-Franzia, *A Day's Work Does Not Come Easy in New Orleans; Latino Laborers Drawn to City Live in Squalor, Often With Little Reward*, WASH. POST, Dec. 18, 2005.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. See *id.* An undocumented immigrant from Guanajuato, Mexico stated, “[i]t’s too dangerous for my body . . . But I don’t say anything. If I do, the boss says, ‘Hey, if you don’t work hard, I’ll take you to immigration.’” *Id.*

V. A SOLUTION TO THE INTER-GROUP CONFLICT

As mentioned earlier, when the Davis-Bacon Act was enacted, white workers sought the elimination of low paid African-American workers from their jobs. However, when the Davis-Bacon Act was suspended, African-American workers sought the elimination of white dominated contractors from being able to give all of the available reconstruction jobs to undocumented Latino workers. One possible way for African-Americans and undocumented Latino workers to improve their situations may be construction of an inter-minority group coalition. This coalition could allow both African-Americans and undocumented Latino workers to come together to achieve both of their goals. The general goal of African-Americans in the rebuilding effort after Katrina is to reclaim their jobs so that they may repopulate the cities where they once lived. The general goal of the undocumented Latino workers in the rebuilding effort after Katrina is to be able to work under better conditions and receive an honest wage. While a combination of these two groups will probably not survive for the long haul, the history of inter-group coalition shows that racially and ethnically diverse groups can make some significant strides.

There has been an abundance of scholarship written regarding inter-minority group coalitions.¹⁰⁸ Instead of African-Americans blaming undocumented Latino workers for taking their jobs, these two groups can get a great deal more accomplished if they join forces.¹⁰⁹ Additionally, the entire country would benefit from this coalition.¹¹⁰ However, in the early years of the Critical Race Theory (CRT) movement, Professor Derrick Bell advocated his interest-convergence the-

108. See Adrien Katherine Wing, *Civil Rights in the Post 9-11 World: Critical Race Praxis, Coalition Building, and the War on Terrorism*, 63 LA. L. REV. 717, 745 (2003); Richard Delgado, *Rodrigo's Fifteenth Chronicle: Racial Mixture, Latino-Critical Scholarship, and the Black-White Binary*, 75 TEX. L. REV. 1181 (1997) [hereinafter Delgado, *Fifteenth Chronicle*] (reviewing LOUISE ANN FISCH, *ALL RISE: REYNALDO G. GARZA, THE FIRST MEXICAN AMERICAN FEDERAL JUDGE* (1996)) (discussing the black-white paradigm); ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* (1999) (discussing relationships between different racial communities); LANI GUINIER & GERALD TORRES, *THE MINER'S CANARY; ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* (2002); Richard Delgado, *Linking Arms: Recent Books on Interracial Coalition as an Avenue of Social Reform*, 88 CORNELL L. REV. 855 (2003) (reviewing GUINIER & TORRES, *supra* and YAMAMOTO, *supra*); Haunani-Kay Trask, *Coalition-Building Between Natives and Non-Natives*, 43 STAN L. REV. 1197 (1991); Robert A. Williams, Jr., *Linking Arms Together: Multicultural Constitutionalism in a North American Indigenous Vision of Law and Peace*, 82 CAL. L. REV. 981 (1999) (discussing historic Iroquois diplomacy and historical alliances of indigenous peoples); Kevin R. Johnson, *The Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions Among and Within Minority Groups*, 63 LA. L. REV. 759 (2003) (discussing the current state of civil rights and the need for unity between minorities).

109. See GUINIER & TORRES, *supra* note 108, at 17, 30, 54.

110. See *id.*

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ory of racial reform, which holds that progress for African-Americans will come only when that progress benefits powerful whites as well.¹¹¹ Therefore, if African-Americans and Latinos added disenfranchised working-class whites, they might be able to accomplish their goals.¹¹² If the coalition has a common-end objective, the coalition is likely to last longer.

The CRT movement is one example of a very successful coalition involving a diverse group of individuals with the same objective. This movement was started by a racially and ethnically diverse group of legal scholars that dramatically changed both the style of legal scholarship and the make-up of the legal academy. This movement used narrative scholarship to challenge the dominant norms and remains an important movement with many derivative movements including Latino Critical Race Theory and Asian Critical Race Theory.¹¹³ The CRT coalition boosted diversity in law administrations and faculties, student bodies, and law school curricula.

Unfortunately, it appears that the historical record of inter-minority coalitions is not as positive. Shortly after the Civil War and the ensuing end of slavery, African-Americans joined the Buffalo Soldiers and helped squelch Native-American uprisings.¹¹⁴ Latinos have adopted the “other white” approach as a method of fighting discrimination in

111. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524–25 (1980) (arguing that civil rights advances for African-Americans will only come when the self-interest of whites calls for it).

112. See GUINIER & TORRES, *supra* note 108, at 17, 30–31. However, Derrick Bell has argued that working class whites are unlikely to side with blacks, even though whites face many of the same obstacles, because of an implicit property interest in whiteness. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1720 (1993).

113. See Robert S. Chang, “Forget the Alamo”: Race Courses as a Struggle Over History and Collective Memory *Coalitional Theory and Praxis: Social Movements and LatCrit Community*, 13 LA RAZA L. J. 113, 114 (2002); Francisco Valdes, *Foreword: Latina/o Ethnicities, Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities*, 9 LA RAZA L. J. 1 (1996); Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997); Elvia Arriola, *Foreword: March!*, 19 CHICANO-LATINO L. REV. 1 (1998); Elizabeth M. Iglesias, *Foreword: Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575, 576 (1999); Rex Perschbacher, *Welcoming Remarks for LatCrit IV*, 33 U.C. DAVIS L. REV. 751, 751–52 (2000); Elizabeth M. Iglesias & Francisco Valdes, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 5 MICH. J. RACE & L. 787, 788 (2000); Pedro A. Malavet, *LatCritical Encounters with Culture in North-South Frameworks*, 55 FLA. L. REV. 1, 1–2 (2003); Guadalupe T. Luna, *Foreword: LatCrit VI, America Latina and Jurisprudential Associations*, 54 RUTGERS L. REV. 803, 804 (2002).

114. Richard Delgado, *Derrick Bell’s Toolkit—Fit To Dismantle That Famous House?*, 75 N.Y.U. L. REV. 283, 294 (2000).

employment, housing, public accommodations, and education.¹¹⁵ With this approach, Mexican-Americans made the argument that discrimination against Mexican-Americans was illegal because Mexican-Americans are white and no state permitted discrimination against whites.¹¹⁶

During World War II, no major African-American organization filed an amicus brief in *Hirabayashi v. United States*¹¹⁷ or *Korematsu v. United States*,¹¹⁸ the two United States Supreme Court cases challenging the legality of Japanese internment.¹¹⁹ At the same time, many Japanese-Americans fought in the United States Armed Forces while their families were being held in concentration camps.¹²⁰ No group of color has shown prominent solidarity with Middle Easterners facing discrimination in the United States today.¹²¹ Japanese parents disagreed with a San Francisco school board policy that assigned their children to schools attended by Chinese and Korean-Americans.¹²² Much later, Chinese-Americans successfully sued the San Francisco school board to eliminate an admissions policy at an influential high school, which favored the admission of African-Americans and Latinos while placing a ceiling on the admission of other groups.¹²³

Even among intra-minority groups there are divisions in coalitions that occur when the benefit for one side is high than another. For example, during slavery times, the master would typically have lighter-skinned slaves perform the easier house work or watch over the work of darker-skinned field slaves.¹²⁴ The higher-status slaves were expected to spy on the lower-status slaves and report to the master any rumor of uprising or escape.¹²⁵ In more recent times, law schools

115. See *id.* 295–96; Delgado, *Fifteenth Chronicle*, *supra* note 108, at 1188 (voicing Latino-Critical scholarship view of black/white binary).

116. See Delgado, *supra* note 114, at 295–96 (2000).

117. See 320 U.S. 81 (1943) (upholding petitioners conviction of violating an order requiring those of Japanese ancestry to remain in their residence between 8 p.m. and 6 a.m. as a constitutional delegation of power).

118. See 323 U.S. 214 (1944) (upholding petitioners conviction of violating a military order by remaining in an area from which he had been excluded). The Court held that the exclusion prevented espionage in compliance with the military's responsibility to defend the nation. See *id.* at 218.

119. Delgado, *supra* note 114, at 302.

120. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 339 (1987).

121. See Adam Cohen, *Making Money Backwards*, N.Y. TIMES, Oct. 13, 2002, § 7 (Magazine), at 20 (“In the midst of a lengthy attack on racial profiling of blacks, [Johnnie Cochran] volunteers that profiling on airlines, presumably of Middle-Easterners, is just fine.”).

122. See Richard Delgado & Jean Stefancic, *California's Racial History and Constitutional Rationales for Race-Conscious Decision Making in Higher Education*, 47 U.C.L.A. L. REV. 1521, 1565 (2000); Delgado, *supra* note 118, at 295–96.

123. See *Ho v. San Francisco Unified Sch. Dist.*, 147 F.3d 854 (9th Cir. 1988); Delgado *supra* note 118, at 303.

124. Delgado, *supra* note 114, at 294.

125. *Id.*

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often assign lower level deans of color the task of dealing with student complaints, and corporations often employ Asian Americans or light-skinned Latinos as personnel directors assigned with responsibility of firing workers of color.¹²⁶ These examples show that an inter-minority coalition between African-Americans and undocumented Latino immigrants would not only be difficult to begin, but difficult to maintain. Coalitions tend to fail because of the “zero sum game,” which means that one minority group in the coalition progresses at the expense of another minority group.¹²⁷

VI. CONCLUSION

Because Hurricane Katrina destroyed a large portion of the southern United States, it is going to take a vast amount of people to assist with the rebuilding effort. When the federal government suspended the Davis-Bacon Act and the penalties for hiring undocumented workers, it caused a ripple effect. This ripple effect pushed the residents of the area out and allowed employers to hire undocumented immigrants to do the jobs for wages far below a livable wage. Instead of attacking undocumented immigrants for doing what is in their family’s best interest, these undocumented Latino workers and African American residents of the affected areas should form an inter-minority group coalition to achieve both of their goals. While this coalition would probably not survive for a long time, it definitely would benefit both African Americans and undocumented Latino immigrants. African-Americans would benefit by an increase in pay from corporations for rebuilding jobs, whereas Latino undocumented workers would benefit from receiving the same benefits as all other employees. The benefits to both groups, though perhaps not universal to a person, would be undeniable and greater than either group could accomplish working separately.

126. See generally *id.* at 294–96, 295 nn.75 & 77 (recounting instances of whites pitting minority groups against each other).

127. Kevin R. Johnson, *The Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions Among and Within Minority Groups*, 63 LA. L. REV. 759, 776 (2003) (citing Orlando Patterson, *Race by the Numbers*, N.Y. TIMES, May 8, 2001, at A27).