

Voces de la Esquina: Migrant Workers Counteracting Wage Theft, Wage Deduction, and Underpayment



J. Adrian Castrejón¹

Justice Policy Journal • Volume 14, Number 2 (Fall, 2017)

© Center on Juvenile and Criminal Justice 2017 • www.cjcj.org/jpj

Abstract

The National Day Labor Survey, the most comprehensive study with day laborers, reports that day labor working conditions are rife with abuse and violations of worker rights. But, the exploitation of this predominantly undocumented migrant workforce would not be possible if this workforce had the same rights as U.S. citizen workers in the primary labor market, and to some extent in other sectors of the secondary labor market. Undocumented migrant workers from Mexico and Central America comprise 75% of the labor force in this labor market. This paper examines the manner in which day laborers in Las Vegas negotiate their wages and other terms of employment and how these terms conflict and/or coincide with labor laws. Also, this paper explores wage theft, which occurs in many different ways, and the impact on the livelihood of day laborers. This study employs *testimonio* and ethnographic methodologies at an informal hiring site, *la esquina*, in Southeast Las Vegas where *jornaleros* gather daily to seek work. The National Day Labor Survey, Critical Race and Latino Critical Theory, and Chicana feminist thought inform this study.

Introduction

The economy of the United States has increasingly become dependent on migrant labor. According to the 2010 U.S. census there are nearly 40 million foreign-born immigrants (13% of the total US population) who reside in the United States, and the Bureau of Labor statistics estimate that foreign-born immigrants comprise 16% of the American labor force, which translates to 25 million immigrants in the workforce (Pew Hispanic Center). Nearly half of these workers are Latino/a. Undocumented migrant workers, close to one-third of the migrant workers, comprise five percent of the total U.S. workforce. More than 8 million workers work without immigration status in the U.S.; many of them work as day laborers (*jornaleros*² in the

¹ University of Minnesota, Twin Cities

Corresponding Author: J. Adrian Castrejón, acastrej@umn.edu

secondary labor market. The day labor market, one type of work in the secondary labor market or what Cherrie Moraga describes as survival work (2011), has spread across the entire U.S. Every day, approximately 120,000 day laborers seek work in the open-air market standing by nursery stores, home improvement stores, by the side of the road, and at busy intersections mostly in construction, landscaping, and janitorial jobs (National Day Labor Survey, 2003). More than three-quarters of day laborers are undocumented migrant workers from Mexico and Central America (National Day Labor Survey, 2003).

Day labor work is a complex issue that has generated conflict and anti-immigrant sentiment against “undocumented” migrant workers. This study examines the manner in which day laborers in Las Vegas- the largest concentration of day laborers in the West- 42% (National Day Labor Survey, 2003) - negotiate their wages and other terms of employment and how these terms conflict or coincide with labor laws. Additionally, the study explores the occurrence of wage theft against day laborers, and, how day laborers respond, cope and manage to this form of employer abuse and mistreatment. This study aims to generate data on the day labor work phenomenon that can advance reflective policy approaches, and foster a public and scholarly discussion on this sociopolitical issue. To situate this project it is important to recognize that although men are at the forefront of day labor work, women are at the forefront of the proliferation of labor-intensive domestic and service work.

Urban, underserved, racial, minoritized workers are disproportionately represented at the bottom of this labor market (performing survival work). Furthermore, immigrant workers from Latin America are ubiquitous in the lower levels of the U.S. workforce (Robinson, 2008). Workers from Mexico and Central America provide much of the labor in the secondary labor market: agriculture, construction, landscaping, hotels, restaurants, janitorial and house cleaning, childcare, domestic service, meat and poultry packing, food processing, light manufacturing, and retail (Valenzuela et al., 2002). Additionally, undocumented workers, the majority from Mexico and Central America, work in low paying, and unsafe jobs that are volatile and unstable (Chomsky, 2007). According to the National Day Labor Survey, the day-labor market is rife with violations of worker rights; day laborers are regularly denied payment for their work, many are subjected to dangerous jobs with little to no protection/safety, and most endure insults, violations, and abuses from their employers.

To understand immigration patterns to the U.S. it is important to understand global capitalism and free trade agreements between the U.S. (and other rich nations) and developing countries (Robinson, 2008). U.S. foreign policies foster global inequality, while domestic policies foster domestic inequality and the demand for secondary labor market workers. The exploitation of global inequalities in the U.S. has created a high-profit/cheap-labor product model by increasing immigration (Chomsky, 2007). Global capitalism reorganizes the supply of labor to the global economy (Robinson, 2008). Rich countries have experienced an influx of transnational immigration over the past few decades as developing countries and regions have been integrated, often violently, into global capitalism through foreign invasions and occupations, free-trade agreements, neoliberal social and economic policies, and financial crises (Mora and Davila, 2009). Millions of people have been displaced from their home countries and have been forced to migrate with the upsurge of global capitalism and free trade agreements. As a result, a new pool of exploitable laborers has been created for the global economy as national labor markets have increasingly merged into a global labor market (Robinson, 2008).

² Day laborers use different terms to refer to themselves and to describe their work. The most common term used is *jornalero* (shares the same etymology as “journeyman”), which originates from the word *jornada* meaning working day shift. Hence, *jornaleros* are laborers who work during the day or “day laborers.” I use the terms workers, day laborers, *jornaleros*, and *esquineros* (“men in the corner”) interchangeably to highlight the multiple struggles in their experience as migrant workers in the U.S. as *jornaleros* to some and day laborers to others.

Latino Critical Theory

LatCrit theorists argue that Critical Race Theory (CRT) exclusively focused on a black-white paradigm. As a result, LatCrit theory has extended critical race thought to issues specific to Latina/os and examines the intersectionality of race, class, gender, sexuality, immigration, and other social categories that shape the lived experiences of struggle and hardship for Latina/os (Revilla, 2012). Although, there is a defined distinction between race and ethnicity, here I use both terms interchangeably because for Latina/os the distinction is not acknowledged in policy as it pertains to brown migrant workers. In this project, CRT focuses on the oppression and discrimination of migrant workers of color; LatCrit focuses on an overwhelmingly brown, exploitable and marginalized community- *jornaleros*, and Chicana feminist thought informs their *testimonios*.

Although race and racism are at the forefront of critical race theory, other forms of subordination intersect with CRT (Delgado Bernal, 1998) - including immigration and social status and their intersectionality with race and ethnicity, hence the need for LatCrit. For *jornaleros* all three social markers (immigration status, socioeconomic status, and ethnicity) account for the oppression and discrimination they experience as an exploitable labor force of color. These complex social categories are contested here because they are interconnected with other complex political and social issues that establish and sanction the exploitation of displaced migrant workers. These issues often have been sidelined and neglected politically, but also by mainstream research. In this project, the *jornaleros* offer their *testimonios* as counterstories outlined by CRT and LatCrit in which their voices are represented, but more importantly in which their stories are told by them in counteracting worker exploitation in the form of wage theft, wage deduction, and underpayment.

I use social status, social class, and socioeconomic status interchangeably to demonstrate that class, beyond being an identity, is central to the day laborers inability to engage in work that allows upward mobility, but instead they perform work that relegates them to a second-class status in the labor force and subsequently in the community. Class as a form of oppression encompasses relations of power in social processes that reproduce structural inequality: "...class is tied intrinsically to material conditions within society and how we understand the manner in which relations of production and asymmetrical structures of power are at work in very concrete ways within the daily life [Latina/o migrant workers]" (Darder and Torres, 2003, pg. 310). Thus, I argue that the relationship between social status and Latino ethnicity impact the inability of day laborers to contend with ideologies of power and structures of racialized inequalities that persist in anti-immigrant rhetoric and efforts to negate their immigration status, which result in worker exploitation, often times in the form of wage theft. Social status is central to our understanding and advocacy for Latina/o migrant working communities in our effort to emancipate marginalized, exploitable workers- *jornaleros*.

The lack of immigration status for undocumented migrant workers sanctions the exploitation of this growing labor force. The mainstream claim that the immigration system in the U.S. is broken focuses on the barriers for undocumented immigrants to adjust their immigration status, but ignores the elements of current immigration laws that govern undocumented migrant workers of color and their exploitation. Policymakers and other stakeholders that benefit from the cheap labor of these workers would stop profiting if immigration reform that protects workers is enacted. Immigrations laws and the agencies that comprise the immigration system are in place to ensure the existence of an exploitable workforce; therefore, the immigration system is not broken. Only, through the critical lens that CRT and LatCrit offer this phenomenon can be explained and deconstructed, which I extend to my work with brown migrant workers here. Of particular importance to my work is the centrality of race and racism and their intersection with other forms of subordination (in this case: immigration status and social class).

Day Labor Work and Jornaleros in the U.S.

No formal definition of day labor exists, but non-standard employment is inclusive of day labor. Non-standard employment- in the form of part-time work, temp agencies, contract company employment, short-term and contingent work, and independent contracting- has transformed work and the economy in significant ways. In the past four decades, non-standard employment has grown rapidly and has become an important component of the U.S. economy (Valenzuela, 2003). At the same time, it is an important employer for migrant workers and other marginalized workers in large and mid-sized cities. Here, it is important to recognize that although these attempts to define day labor work (and other similar work in which migrant workers are forced into and exploited) are important in efforts to advocate for more labor rights and for more policies that protect vulnerable workers, the work that day laborers engage in is survival work. In *A Xicana Codex of Changing Consciousness*, Cherrie Moraga (2011) situates displaced indigenous workers in the U.S. that illustrates day labor work. “And it’s all indigenous workers now. All. Washing our cars and cleaning our houses and pulling our weeds and pouring our patios and building our fences. And yet, *they* are the criminals, as are the other twelve million undocumented migrants living in the United States...” (p. 139).

The vast majority of immigrants who come to the U.S. do so to seek employment (Bacon, 2008; Chomsky, 2009; Johnson-Webb, 2003). But, recent federal immigration policies have also contributed to the influx of migrant labor; these same policies have had an effect on the supply of migrant labor both historically and in recent decades. According to Johnson-Webb (2003), employer recruitment is viewed as the most salient factor in immigration. She also suggests that once migration patterns start this way it is impossible to renege. Also, jobs tend to be low-paying resulting in low social status, and often involve hard and dangerous working conditions. Furthermore, jobs to which migrant workers are constrained to seldom offer advancement, happen in unstructured work environments, and involve informal negotiations between employer and employee (Johnson-Webb, 2003).

According to Gomberg-Munoz (2011), there is a misconception that labor migration, particularly from Mexico to the U.S., is fueled by a lack of economic development in Mexico. However, labor migration is generated by uneven economic development. The movement of labor and goods across the U.S-Mexico border has always been an essential component of the economic development of both nations (p. 27). But, uneven economic development has generated mass migration patterns from Mexico and Central America to the U.S., and massive importation of labor. Many of these undocumented immigrants participate in the day labor market. As a result of restructuring economic, social, and political agencies informal employment (day labor work) has increased in visibility (Valenzuela, 2003). Economic restructuring also helps us understand the origins and the growth of the day labor market (Valenzuela, 2003). Global cities connect to remote geographies and points of production, consumption, and finance, thereby fueling changing economic structure. Furthermore, global cities reproduce “low-skill” workers, which I contest here, because of their polarized economy (primary labor market/secondary labor market) and influx of foreign-born workers who respond to the demand for their labor (Valenzuela, 2003, p. 315) - many participate in the day labor market.

According to the Pew Hispanic Center, 11.1 million undocumented immigrants live in the U.S. (constituting 4% of the total U.S population). The Pew Hispanic Center also reports that 8.3 million are active in the workforce, which comprises 5.4% of the total U.S. workforce population. In Nevada, undocumented immigrants constitute 12.2% the labor force. Many of these workers engage in day labor. In Nevada, the Office of the Labor Commissioner in the Nevada Department of Business and Industry is responsible for ensuring that all workers are treated fairly under the law, while monitoring employment

standards in work-hours and safe working conditions. The provisions for compensation, wages and hours, and employment practices are compared to reports of day laborers violations of these provisions.

According to the National Day Labor Survey (2003), every day close to 120,000 day laborers participate in this secondary labor market (although some estimates suggest that up to 260,000 workers participate in the day labor market). Participation in the day labor market is fluid; workers enter and leave this job market regularly. At the same time, hiring sites appear and disappear in the same manner. The largest concentration of day laborers is in the West and Southwest comprising 60% of the total day labor workforce. Day laborers seek work in different types of hiring sites (home improvement stores, nursery stores, moving rental stores, and *paradas* or *esquinas* as day laborers refer to these informal hiring sites).

Working as a *jornalero* is an unsafe endeavor with constant dangers accompanied by exploitation and discrimination on many fronts (Reavis, 2010; Lazo de la Vega and Steigenga; Ordonez, 2015). Day laborers embody stereotypes of migrant workers that further drive them into the margins of an already ostracized community. Although, they are inherently devoid of social and political recognition and legal protections, their work plays an integral role in the development and maintenance of the sanctuary of our communities (Ordonez, 2015). But, despite the positive impact they have on such sanctuaries, they remain vulnerable. Cherrie Moraga (2011) describes the most flagrant human rights abuses leveled against poor migrant workers as “Anti-[immigrant] sentiment justified in the face of a weakening economic system and threats of international contagion. But what disease is the immigrant passing across the border except the illness of impoverished dislocation, engineered by the corrupt treaties between governments fueled by corporate interest? We are certainly no better off than we were forty years ago in terms of the racialization of poverty” (p. 165). Moreover, I ask, where does this situate poor, displaced, migrant workers of color (*jornaleros*) in a perceived struggling economy that further instigates racist, anti-immigrant sentiment and praxis? What is it like to be a *jornalero* in the current social and political climate? And, given the little we know about *jornaleros*, what more can we learn about this workforce to join them in their plight for liberation from abuse and exploitation?

Legal Landscape for Migrant Workers

Jobs in the U.S. are governed by complex laws, policies, and industry norms, some of which are more firmly enforced than others (Gleeson, 2013), and some not enforced at all (e.g. day labor work). Employers often manipulate norms and strategize to evade formal laws. They may also directly engage in practices that violate the law. These actions and evasions are governed by federal, state, and some local laws. At the same time, employers may also promote an organizational culture that violates workplace protections, and may refuse to provide benefits that are not mandated under the law (Gleeson, 2013). After surveying the political field of immigrant worker rights in San Jose and Houston, Gleeson (2013) determined that the challenges of immigrant workers who participate in the secondary labor market further discourages undocumented workers from reporting violations, and often forces them to make decisions that prioritize economic stability/security over notions of justice (Gleeson, 2013). The protections provided by federal and state governments are a last resort for many workers. Furthermore, Gleeson (2013) identified three structural challenges that make accessing protections difficult for low-wage, non-union workers. These challenges include bureaucracies that by default poorly coordinate their efforts, a system of penalties that fosters litigation while neglecting employer violations, and a body of laws that neglect workers protections. Gleeson states that: “For undocumented workers, each of these barriers is intensified many times over” (p. 57).

Day laborers in the U.S. struggle to secure their limited rights, sanctioned by federal and state law. In a case study, Smith (2008) explored the day labor workforce from surveys of day laborers to identify strategies to elevate their working/workplace rights. To address the issue of vulnerable low paid workers that are excluded from labor protections, activists have developed a number of strategies. These strategies include litigation and legislative campaigns that have recently been expanded to facilitate and develop leadership in a new social movement (Smith, 2008). She also suggests that litigation can establish that the workers meet the statute's definition of employment relationship because currently day laborers are misclassified as independent contractors. Also, advocates have urged administrative agencies to enforce improved workplace/working protections for day laborers. Lastly, advocates of day laborers have engaged in state-based legislative work that seeks to establish a clear definition of "employee." For the purposes of this project the definition of "employee" is a key factor to determine the extent of labor protections against labor and employment violations. According to Smith (2008), the legal structures of employment/labor in the U.S. has fallen behind the economic structures. Workplace/working rights and systems that guarantee social insurance only apply to workers who are classified as "employee." Therefore, workplace benefits (e.g. unemployment compensation, worker's compensation, and Social Security benefits) are only applicable to those who meet the specific definition of "employee."

In this way *jornaleros* in Las Vegas are protected by Nevada Revised Statute (NRS) 608.010 which recognizes them as "employees," NRS 608.016 which guarantees payment by the employer for each hour worked (including trial and break-in periods), NRS 608.190 which prohibits the employer the failure or the refusal to pay wages, and the Fair Labor Standards Act which also establishes a minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments for covered nonexempt workers- day laborers included under this designation. Discharge of employment without pay is also prohibited by Nevada revised statutes. NRS 608.020 dictates that whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge is due and payable immediately, however this is seldom the case for the day laborers in *la esquina* who are arbitrarily dismissed by employers.

Wage theft/deduction is unlawful and sanctioned by Nevada Revised Statutes and federal guidelines. According to the Fair Labor Standards Act, the federal minimum wage is \$7.25 per hour since July 2009. However, many states also have minimum wage laws and in cases where employees are subject to both state and federal minimum wage laws, they are entitled to the higher minimum wage. In Nevada, the Office of the Labor Commissioner regulates employee wages. The minimum wage in Nevada is \$7.25 for employees who receive health benefits from the employer; \$8.25 for all other employees regardless of the appointment or contract expressed or implied, oral or written, whether lawfully or unlawfully employed.

Critical Ethnographic and Testimonio Methodology

Using critical race, *testimonio*, and ethnographic methods I seek a more profound understanding of the racialized, socioeconomic, and immigration processes and structural barriers of day labor work and their impact on day laborers. Furthermore, the methods exemplified in this dissertation explore the working conditions for *jornaleros* and the depth of how and in what ways they respond to labor law violations and employer abuse. These methods challenge traditional methodologies and seek the development of theories of social transformation to deconstruct patriarchy, racism, xenophobia, citizenship³, poverty, discrimination, exploitation, and other forms of oppression (Delgado Bernal, 1998; Solorzano and Yosso, 2001; Revilla, 2004). Hence, it is important to discuss the ways in which scientific research is associated to the legacy of

³ Citizenship is a term used to describe discrimination based on citizenship status.

colonialism, and subsequently patriarchy that remains and continues to impact the world's colonized people of color (Tuhiwai Smith, 2012).

The vast majority of *jornaleros* are displaced workers that come from countries in which U.S. imperialism and capitalism has resulted in the displacement of poor migrant workers and which perpetuates human suffering. The day laborers in this project are keenly aware of this knowledge and through their *testimonios* and counterstories of survival and resistance, we will learn how they respond to the human suffering they endure. They are also keenly aware of my positionality in this project and my privilege in a wider sense (as am I). Knowing that someone is “studying” them may offend their sense of who they are and what they do for work, even if my desire is to work in solidarity with them to create political, economic, and social change in the lives of marginalized and exploited workers. I am also profoundly aware that the *jornaleros* shared more knowledge with me than I could ever aspire to share with them.

Critical Ethnography

A critical ethnography is a type of ethnographic approach in which the researcher advocates for the emancipation of marginalized groups; the researcher also speaks out, through research, against inequality and oppression (Creswell, 2007); and begins with an ethical responsibility to address processes of injustice within a particular domain (Madison, 2011). The major components of a critical ethnography include the empowerment of culture sharing groups by giving them more authority, challenging the status quo, and addressing concerns about power and control. A critical ethnographer will study issues of power, empowerment, inequality, inequity, dominance, repression, hegemony, and victimization (Creswell, 2007; Madison, 2011). According to Thomas (1993), critical ethnography is conventional ethnography with a political purpose.

A critical ethnography is an appropriate method to conduct this study because the intent is to generate a scholarly discussion on an urban issue in which the group is marginalized and exploited; and one in which the researcher advocates for the emancipation of the group by addressing concerns of power and control, repression, inequality, and victimization. This study employs critical ethnography to understand the values, behaviors, and language of workers when they negotiate wages and terms of employment. Also significant to this study is how workers experience abuse to document their experience for consideration in policy ratification and future research. The study also seeks a policy approach/discussion to manage labor law violations against workers engaged in survival work.

Testimonio Methodology

The hallmarks of *testimonio* methodology are personal narratives connected to larger group experiences (Russell y Rodriguez, 2007) and in bridging individual personal narratives of oppression to the collective group experience of marginalization, oppression and marginalization are deconstructed to bring about social change (Delgado Bernal et al., 2012). *Testimonio* has deep roots in the oral culture and human rights struggles that expose brutality and convey the persecution of poor people of color by governments and other sociopolitical forces of Latin America, while it disrupts silencing and builds solidarity (Delgado Bernal et al., 2012). Unlike Eurocentric methodological approaches that seek to produce objective knowledge, *testimonio* methodology challenges objectivity and situates the individual in communion with a collective experience marked by marginalization, oppression, exploitation, and survival and resistance. Consequently, *testimonio* has produced a new urgency for solidarity in marginalized communities as a response to dominant white, Eurocentric, and patriarchal laws and policies that perpetuate inequity and human suffering (Delgado Bernal et al., 2012).

Testimonio methodology and epistemology is a tool for the researcher to bring to the forefront the community's experience (Delgado Bernal, 1998; Delgado Bernal et al., 2012). Thus, I must be cautious to give meaning to the *testimonios* of the *jornaleros* conceptually rather than literally, especially when translating them from Spanish to English I must translate cultural-specific knowledge carefully to reproduce knowledge that is not affected by language. Therefore, listening is crucial to the pedagogical practice of *testimonio* and "is the precursor telling" (Delgado Bernal et al. 2012). I must engage the *jornaleros* in an effort to understand and reveal the meaning of their *testimonios*. The *testimonio* of one can reveal the collective accounts of many.

Field Work

I use multiple methodological approaches to cross-analyze the data and ensure an accurate account of the fieldwork conducted throughout this project. The fieldwork lasted close to four years and required close, long-term contact with the day laborers at this particular hiring site to acquire the knowledge and understanding of the day laborers experiences. The workers in this project are day laborers who gather at an informal hiring site that is not administered by the city or county, or managed by an organization, and it is not connected to a specific industry. It is a medium-sized site of 26 to 50 day laborers as defined by the National Day Labor Survey. Small sites have fewer than 25 day laborers, and large sites have between 51 and 100 day laborers; mega sites have more than 100 day laborers. This hiring site is well established; it has been in operation for more than 10 years with little attrition. There is nothing distinctive about this hiring site or the day laborers who gather at this corner seeking work. The majority of day laborers arrive between 6:30 am and 10:00 am, and wait for work as late as 5:00 pm, which follows the trend with other hiring sites. In Las Vegas, day labor hiring sites are ubiquitous, and most are similar in the number of day laborers that frequent the sites, the ethnic and racial composure of the workers, and mostly men visit the hiring sites.

Day laborers visit the corner every day of the week; my visits were conducted regularly throughout the duration of the ethnography. Extensive notes were collected of the ongoing events at the Torino corner, and *testimonio* interviews were conducted towards the end of my fieldwork. To gain their trust, I communicated with them mostly in Spanish and shared stories about myself the same way they did. All the *testimonio* interviews were conducted with the day laborers that participated during the duration of my fieldwork. The number of interviews conducted was determined by the fieldwork, a total of 22 *testimonio* interviews were conducted. Additionally, the interviews were conducted in the preferred language of the participants. Interviews conducted in Spanish were later translated to English (reverse translation was also employed). According to the NDLS, the day labor workforce in the U.S. is predominantly immigrant and Latino. Most day laborers were born in Mexico and Central America (87%), and three out of four day laborers are undocumented immigrants. I had a strategic advantage because there was no language barrier, and share some of the values, culture, and phenotype of the day laborers.

Findings

Day labor work has become an alternative response to manual labor demands that lacks lawful and responsible hiring practices where mistreatment and law violations are ubiquitous (Ordonez, 2015). I argue that employer abuse and mistreatment and labor law violations in day labor work are interconnected given the ominous circumstances in which the *jornaleros* work in and the continuous law violations by the part of the employers and the police; one cannot take place without the other one playing a part. I observed that employers continuously place the workers in danger, physically and emotionally, while violating the Occupational Safety and Hazard Act and the Fair Labor Standards Act with little accountability and even

less attention given to the safety of the workers. Additionally, the seriousness of employer abuse and mistreatment and labor violations has dire consequences for the *jornaleros* ranging from financial hardship to unreasonable work expectations to serious injury and emotional distress. Employers and the police alike are engaged in the mistreatment and discrimination of day laborers.

An important area to carefully examine in day labor work is wage theft. According to the NDLS, wage theft is ubiquitous in day labor work. All the *jornaleros* report that they have experienced wage theft and/or wage deduction. Additionally, the workers are often offered wages below minimum federal and state requirements and/or are offered other forms of payment not agreed upon during the negotiation of wages. When asked about the most difficult aspect of being a day laborer, overwhelmingly the workers described the most challenging hardship is being denied payment. A day's loss of payment for many of the workers translates into hunger and even homelessness not just for them but for those who depend on their wages too. The day laborers explained that employers deny their payment in different ways: some of the workers have received fraudulent checks, others have been promised payment at the completion of the work and have not been hired again to complete the work, others have been paid with household items that are not necessarily useful to them while others with drugs, and others have been assaulted and abandoned to deny their payment. As a result, *jornaleros* struggle with poverty while recognizing that others benefit economically, and in other ways, from their labor.

The *jornaleros* indicate that many of the employers assume that most of them are out of immigration status (*sin papeles*) and use this supposition to their advantage. I learned that employers have asked the day laborers about their immigration status during the negotiation process or at the work sites. Intimidation and threats by employers (sometimes by the public) of calling the police or immigration authorities on the day laborers are common occurrences *en la parada*. These forms of threats often take place when the workers are denied payment or are not paid the agreed wage by the employer and the worker demands to be compensated. Moreover, the workers have also been threatened when they refuse to work for a known employer who doesn't pay well and by people who stop by *la esquina* to harass them. Most times, the day laborers are hesitant about calling the police when they are intimidated because of fear of the police. The police instead have harassed the few workers who disclosed calling the police to report harassment. According to the day laborers, the police have done very little in helping the few workers who have reported any form of discrimination.

Another serious aspect of day labor work that has severe implications for the workers is getting hired to work, but learn at the work site that there is no work to be completed and consequently no pay. The day laborers report that when this happens it is very likely that they are not compensated for the time spent at the work site and for the potential loss of work elsewhere. Moreover, the day laborers reveal that the employers are never held accountable for compensating the workers when they hire them, but don't give them the job once at the work site, which makes them feel powerless. Some of the physical violence by the employers that the *jornaleros* experience takes place when they demand to be compensated for the loss of work and the loss of time. The majority of the workers who ask to be compensated with little success also risk getting abandoned by the employers at the work sites. Some of the workers have had to walk several miles to a bus stop to get back to *la esquina* and for many, this means losing a day's work with little recourse.

The day laborers often times also find themselves getting hired to perform one job and then are expected to complete more work than initially agreed for the same pay. All of the workers have experienced this form of manipulation, especially when the work is completed in less time than the allotted time by the employer. When the day laborers refuse to do more work than what was agreed upon they risk not getting paid fully or not getting paid at all, thus most are forced to work more for the same pay. The *jornaleros*

explained that this is a very common occurrence with similar consequences to other employer mistreatment. At the same time, if they feel that they may complete the work promptly and take more time to finish it, the employers may complain that they are not working expeditiously and their wages may be reduced. The day laborers are often negotiating their wages from the time they are hired through the completion of the work and point out that this does not happen in other more formal and highly sanctioned work environments. Nonetheless, they feel they risk too much by not agreeing to do more work for the same pay and most times they will agree to do the work without being properly compensated for it.

Regardless of the protections guaranteed to day laborers by federal and state legislation, all of the workers in *la esquina* have been denied payment, their pay has been reduced, or they have been underpaid for work that they have completed as day laborers. Many of the workers have also experienced fraud in the form of counterfeit checks and other deceptive forms of payment (e.g. goods and supplies). Additionally, many of the *jornaleros* are asked to wait for payment under deceitful or misleading assurances, which often times are not fulfilled. The majority of the workers report that they have been paid with checks with insufficient funds or checks from fake bank accounts. Many of them also report that they negotiate to be paid in cash, but have been denied cash payment and instead have been offered household goods, tools, food, drugs, and other supplies as forms of payment. Some of the day laborers have also been asked to wait for payment until the end of the workweek or after the completion of the work, but the employers have not returned to *la esquina* to hire them again or to pay them for the work they have completed.

The workers also reveal that they have been underpaid for work, especially when the job takes longer than the anticipated time, and often times they are not compensated for the additional time it takes to complete the work. I also witnessed an employer offer work for \$15 for a three hour job, which is below the mandated federal and state minimum wage. Many of the workers also report that they are not paid fairly for intensive labor work, especially for jobs that require specific skills, like laying tile or repairing sprinkling systems. The *jornaleros* have a clear understanding that they are sought out to work, including highly skilled work, by employers for lower wages, yet they feel cheated because most employers try to negotiate unreasonably low wages that violate lawful mandates. The day laborers are continuously offered wages below the mandated federal and state laws for their work and expected to complete additional work with little compensation by the employers. These occurrences are common in *la esquina* and the employers are never held accountable for these unlawful practices. Instead, the *jornaleros* argue that the police protect unscrupulous employers.

The police (the times they have been called [mostly] by the employers) have consistently failed to ensure that the *jornaleros* are compensated monetarily for their work as established by federal and state law. NRS 608.100 prohibits the unlawful decrease in compensation by part of the employer, yet the few times the police have been called during a wage dispute, every time, according to the *jornaleros* accounts, the police encourage or coercively ask them to accept the reduced pay offered by the employer. Moreover, some of the workers also report that the police have told them that their other option is to receive no payment at all. Either the police are not aware of the protections guaranteed to employees by federal and state law or they explicitly ignore them. Whichever, the police fail to uphold the lawfully guaranteed protections to day laborers while taking the side of the employers they are also engaged in unlawful practices that contribute to the exploitation of day laborers. The day laborers most times decide to receive the reduced pay; their reason is that it's better to receive something than nothing. The workers also suggest that this does not happen to other workers in other labor markets. I argue here that these practices on the part of the police reflect their racist, xenophobic, classist practices against migrant workers of color in informal and unsanctioned labor markets.

Finally, some of the *jornaleros* explained that in many instances they are fired by employers with the intention of not paying them. One of the day laborers was fired for drinking a beer after the employer denied him water and was not paid because he was accused of drinking on the job. Others have been fired for asking for higher wages after they are asked to do more work and denied payment for the work they have already completed. While others have been threatened by employers of calling immigration authorities to detain them, assuming they're out of immigration status, to deny their wages. Although many of the workers try to help each other recuperate payment for their work, the majority of the *jornaleros* have had little success in recovering unpaid wages. For example, when they are offered forms of payment not agreed upon (drugs or household items) many of the workers accept them hoping to sell them to recuperate their wages, but this also creates more unwelcomed risks and work for them.

The *jornaleros* have a clear understanding that they are sought out as alternative labor work because the cost to hire them is much less than the cost to hire other workers in other more formal labor markets. Although the day laborers agree to work for lower wages, they also seek fair wages that align with the difficulty of the work they are performing. But, despite their constant efforts to be compensated fairly for their work they are paid much less than their set expectations and significantly less than workers in sanctioned labor markets. The *jornaleros* partly attribute this form of exploitation to their fear of seeking lawful help because they are out of immigration status. Many of the workers prefer to remain invisible and silent, and even lose wages than to report these violations to authorities because of the risks associated with entering the criminal justice system and the immigration system. According to many of the workers, these are the costs of coming to this country *sin papeles* (without papers). Thus, their immigration status has intrinsic implications to the ways that *jornaleros* negotiate wages and manage wage theft and wage deduction.

Voces de la Esquina

These accounts collectively demonstrate the ways in which the *jornaleros* at this informal hiring site are engaged in survival work, while resisting discrimination and exploitation because of their immigration status and their socioeconomic standing as migrant workers. At the same time, their narratives reveal the hardships that day laborers endure from the time they make the decision to leave their home countries to migrate to the U.S. to their time in *la esquina* seeking work and at the work sites by part of the employers, the public, and law enforcement.

CESAR

Cesar has been in the US since the 1980's and became a permanent resident through marriage, but has been divorced since. He became familiar with immigration laws and learned the intricacies of immigration policy and the benefits of having permanent legal resident status. He has been visiting this hiring site for about five years. Prior to coming to *la esquina* to seek work he worked in apartment maintenance, but was sentenced to prison for a weapon felony charge, consequently, he lost his job. He was also served prison time for violating his parole to go work out of state- as I learned, an overt form of criminalizing migrant workers. During his time in prison he also learned about the criminal justice system and became critical and vocal of the ways in which the system works against him as a migrant worker and against the other *jornaleros* in *la esquina*:

Since I got out of prison I haven't really been able to find a good paying job that would allow me to help my family more. My record now [dictates] the type of work I can find and that is never going to change. I feel trapped even when I'm not in prison anymore. ...the others here also have it bad because they don't have papers. But, I might as well not have papers either. I don't even have an ID either because I

*don't want the police to know who I am when I get stopped. I don't want them to harass me because of my record. The less they know about me the better, that's what I tell the others.*⁴

However, not having an identification card has also resulted in Cesar getting detained by the police for using false names. Cesar also disclosed that he is not inclined to seek permanent work elsewhere because he owes child support and doesn't see the advantages to finding a steady job because he believes that he would earn very little income to be able to pay the child support. He also stated that he prefers to work en *la esquina* because he doesn't have to wait for a paycheck every two weeks, which allows him to help his children more financially when they ask him to purchase items they need.

Cesar is one of the workers who visit *la esquina* daily. But he only works an average of three times a week. He worries that not coming to seek work every day would result in working even less. At the same time, he has regular employers who seek him; although they don't pay well, he has found permanency with them. However, many of the regular employers have withheld or reduced his wages and he has difficulty recuperating them because he fears that an attempt to recover his wages may result in the loss of work. It is clear that he is engaged in a joint effort to shift the expectation of employers of paying the *jornaleros* low wages:

I have regular employers who look for me because they like that I agree to get paid less than others here. I only let it happen because I've known a lot of them for a long time, but I don't allow it with new [employers]. Some of them still owe me money, but I only let it happen so that they continue to give me work. It's [messed up], but I have to do it otherwise I won't work sometimes. Some of them just pay me half, but I just hope that they do pay me what they owe me. That's why I don't trust the new [employers] because they're all trying to take advantage of us here. But we have to stop it and do it together, it has to stop.

Cesar also worries about the dangers and risks that he and the other workers are exposed to by some employers. He witnessed an employer getting high while driving to a work site and has seen other employers smoke crack at the work sites; other employers drive recklessly while transporting the day laborers to the work sites, and other employers have engaged in physical violence at work sites with little regard for the safety of the workers. He described these incidents as unsafe, but considered that there was nothing he could do to make the situations safe, other than to write down plate numbers and ask for telephone numbers.

Cesar has also been seriously injured at a work site and has been hurt several times at the hiring site from physical altercations that he has been a part of. Additionally, he witnessed another day laborer get seriously injured at a work site when he fell from a rooftop. Again, he considered that there was nothing he could do, but feels remorse that he remained silent to many of the accidents and dangers that he has experienced and witnessed. He also disclosed that the employers were not held accountable for any of the incidents. Moreover, most employers refuse to assist the workers with expenses and monetary compensation when accidents occur:

There is no way for us to [hold accountable] the employers when accidents happen. They don't even help us when we get hurt. I think they get scared, but I don't think that's a good reason because we get scared too. Sometimes I feel bad that I don't say anything, but even if we don't say anything they should still help us. Even when someone gets badly [injured], they never help. It feels like they're robbing us. That's why we have to be trucha (stay alert).

⁴ Excerpts of the *testimonios* that are shared here have been translated from Spanish to English by J. Adrian Castrejon.

But, profound safety concerns extend beyond *la esquina* to their homes for Cesar and some of the *jornaleros*. His home has also been burglarized (thus, he acquired a weapon, which subsequently resulted in prison time for him). Furthermore, Cesar disclosed that some of the day laborers carry weapons to work, which further puts them at risk of harm and police scrutiny. However, I was unable to verify this claim. Yet, during many of the informal conversations that I had with other workers, some of them also suggested that a few of the *jornaleros* carry weapons for protection, especially those who have vehicles because it's easier for them to hide them when they go to work sites. Cesar explained that is just one of the many advantages of having a vehicle for the day laborers and a disadvantage for the majority who don't have vehicles.

As I learned, day laborers use their vehicles as a tool for negotiating with employers, which very few have and only occasionally. The majority of the day laborers disapprove of the workers who offer their car during negotiation with employers, only when the employers ask the *jornaleros* to use their vehicles the other workers consider it acceptable. Nonetheless, when the workers are asked to use their vehicles other day laborers encourage them to negotiate compensation for the cost of fuel. I observed Cesar ask an employer to cover the cost of fuel for another day laborer. Cesar speaks English more so than many of the other *jornaleros*, which gives him an advantage when negotiating with employers. While observing, I noticed that often times other workers let Cesar negotiate with employers in English, which reveals some of the ways in which the day laborers collaborate to secure fair wages that align with the type of work they are hired to complete. Cesar asked me to share his *testimonio* to highlight the *jornalero's* joint undertaking in seeking better terms of employment and working conditions.

VICTOR

Victor is one of the first workers that I observed engaged in rejecting and resisting low wages and other forms of worker exploitation. He explicitly vocalizes his discontent with the employers who seek them as cheap labor and offer them low wages and also with the day laborers who accept low wages and those who he doesn't consider hard workers. He also candidly disagrees that some of the workers drink in *la esquina* or that some of them come to hang out because he believes that employers may not consider them serious workers and consequently offer them lower wages or won't seek them for work at this site any longer:

This is my job. Working in la esquina pays the bills. I take it serious because me and my family depend on it. That's why I don't like it when some of the [workers] here accept work, but don't do it right, or when they just come here to drink. Sometimes I'll drink a beer too, but I don't come here just for that. The people who know about this parada can also find out that workers here don't do the work right and they will want to pay us less or they will stop coming here seeking [workers]. It's too risky to agree to do jobs that they can't do because they may lose their wages, but they can also get sued.

It is clear that many of the workers do not agree with the way Victor verbalizes his discontent with employers and with other of the workers, or that he gives the day laborers nicknames (everyone has a nickname *en la esquina* and it's not just Victor who uses monikers, but he earned a reputation for doing it), yet the majority agree with him that they must shift the way in which employers perceive them and the way in which they negotiate wages and other terms of employment. Furthermore, Victor explained that working in *la esquina* pays more than a steady job after accounting for federal income taxes and social security deductions, and buying lunch.

Victor is from Mexico, has been in the U.S. twelve years, seven in Las Vegas, and has been coming to this *parada* to seek work for six years. He was referred to *la esquina* by a friend and estimates that he works between three to five times per week. Victor also explained that he has found permanency at this hiring site and now prefers this type of work versus permanent jobs because of the flexibility to work at different days

and times and the flexibility to negotiate work and decline work when the employers offer low wages. He also argues that he doesn't do work that doesn't pay well, although he did not specify what type of work does not pay well, he was very clear about the employers and the type of work that he's willing to do if he is paid well:

Cleaning dog [waste] pays well, up to one hundred dollars for one hour, but not all type of work pays this much. You also have to consider the [employers] because some of them pay well, but others just want to take advantage of us. I don't like to work for [landscaping] companies because it's a lot of hard work and they only pay ten dollars [hourly]. But, I have worked for la migra and police officers and they have paid me well. I took a risk because they could detain me, but I don't think they would hire us and then take us, they probably would just come here to arrest us. That time I was confident that they would not detain me without a good reason.

Nonetheless, Victor has experienced violence and intimidation by law enforcement and immigration authorities. He has been arrested several times in Las Vegas and in other cities and is concerned that he can be detained and consequently deported given the numerous arrests in his record. He has also attempted to adjust his immigration status with little success and has been informed that he will not be allowed to adjust his immigration status because current immigration policies and practices exclude him. Victor revealed that he crossed the desert in Arizona paying a *coyote* a total of \$2000. He paid \$1000 to cross and another \$1000 to be transported to other cities where he would be able to find work first.

I learned through other workers, and later he confirmed, that Victor has also been engaged in physical altercations with other workers. He has also been hired by employers who have tried to physically attack him or who they themselves have been involved in physical altercations. Consequently, he has experienced the loss of work and wage theft numerous times. Victor also revealed that he has been abandoned at work sites without pay. Of all the workers, Victor has experienced more violence, abuse and mistreatment than others in *la esquina*. I argue that this is a result of the ways in which he engages in resistance against employer mistreatment and his efforts to engage other workers in transformative resistance.

At the same time, Victor expresses concern for the physical and economic situation of many of the other workers. He has invited some of the *jornaleros* who have become homeless and some of the workers who suffer from alcoholism and other addictions to his home and I observed him purchase food and beverages or share money with other workers:

I'm aware of the situation of other workers and I try to be fair about the work with others when we work together, unless they are not doing their part. We all depend on each other, even if we don't get along and we have to help each other. Most have us here have struggled a lot to get here and even more [living] here. When some of the [workers] here don't have anywhere to stay I bring them to my house for a few days until they get work or find another place to stay. They've also helped me when I don't have money, even if it's one dollar or five dollars, we always look out for each other. Even if we don't like each other, we know that we have to help each other to make it.

Victor has a complex relationship with other of the *jornaleros*, nevertheless, he recognizes that they must collectively engage in transformative resistance to change workplace conditions and safety and shift wages and work expectations that benefit the workers. Victor also foresees that the living situation as undocumented workers for many of the *jornaleros* may be aggravated during current anti-immigrant mainstream diatribe and political climate. He was very critical of Joe Arpaio because he lived in Arizona and was aware of the mistreatment of undocumented immigrants who were detained during his term as an

elected official. Throughout my time in *la esquina*, Victor became more critical of the multidimensional struggle that the workers are engaged in and openly spoke out against employer abuse and mistreatment.

Conclusion

All the *jornaleros* report that they have experienced wage theft, wage deduction, and underpayment. Additionally, the workers are often offered wages below minimum federal and state requirements and/or are offered other forms of payment not agreed upon during the negotiation of wages. The *jornaleros* recognize they are hired as alternative labor work because the cost to hire them is much less than the cost to hire other workers in other more formal labor markets, and although the day laborers at times may agree to work for low wages, they also seek fair pay that aligns with the difficulty of the work they are hired to complete. Yet, despite their constant efforts to be compensated fairly for their work they are paid much less than their set expectations and significantly less than workers in sanctioned labor markets. The *jornaleros* partly attribute this form of exploitation to their fear of seeking lawful help because they are out of immigration status.

Many of the workers have also experienced fraud in the form of counterfeit checks and other deceptive forms of payment. Additionally, many of the *jornaleros* are asked to wait for payment under deceitful or misleading assurances, which often times are not fulfilled. Additionally, the police have consistently failed to ensure that the *jornaleros* are compensated monetarily for their work as established by federal and state ordinances. When the police have been called during wage disputes, every time, according to the *jornaleros* accounts, the police strongly encourage or coercively ask the workers to accept the reduced pay offered by the employer. Moreover, some of the workers also report that the police have told them that their other option is to receive no payment at all. Either the police are not aware of the protections guaranteed to employees by federal and state law or they explicitly ignore them. I argue that this is a result of the racist and classist traditions of law enforcement. In any case, the police fail to uphold the lawfully guaranteed protections to day laborers, while taking the side of the employers they are also engaged in unlawful practices that contribute to the exploitation of day laborers.⁵

References

- Bacon, D. (2008). *Illegal People: How Globalization Creates Migration and Criminalizes Immigrants*. Boston: Beacon Press.
- Chomsky, A. (2007). " *They Take Our Jobs!* ": And 20 Other Myths About Immigration. Beacon Press.
- Creswell, J. W. (2007). *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (2nd ed.). Thousand Oaks, CA: Sage.
- Darder, A., & Torres, R. D. (2003). Mapping Latino Studies: Critical Reflections on Class and Social Theory. *Latino Studies*, 1 (2), 303-324.
- Delgado B. D. (1998). Using a Chicana Feminist Epistemology in Educational Research. *Harvard Educational Review*, 68(4), 555.

⁵ This has been documented by Shelden and Vasiliev (2018) who note that in labor disputes throughout the 19th and 20th century the police invariably supported owners and management. The practice has continued in the 21st century.

- Delgado-Bernal, D., Burciaga, R., & Flores Carmona, J. (2012). Chicana/Latina Testimonios: Mapping the Methodological, Pedagogical, and Political. *Equity & Excellence in Education*, 45(3), 363.
- Gleeson, S. (2013). *Conflicting Commitments: The Politics of Enforcing Immigrant Worker Rights in San Jose and Houston*. Ithaca, NY: ILR Press.
- Gomberg-Munoz, R. (2011). *Labor and Legality: An Ethnography of a Mexican Immigrant Network*. New York: Oxford University Press.
- Johnson-Webb, K. D. (2003). *Recruiting Hispanic Labor: Immigrants in Non-Traditional Areas*. New York: LFB Scholarly Publishing.
- Lazo de la Vega, S., Steigenga, T. (2013). *Against the Tide: Immigrants, Day-Laborers, and Community in Jupiter, Florida*. Madison, WI: University of Wisconsin Press.
- Madison, D.S. (2011). *Critical Ethnography: Method, Ethics, and Performance*. Thousand Oaks, CA: Sage.
- Moore, J. W. (1978). *Homeboys: Gangs, Drugs, and Prisons in the Barrios of Los Angeles*. Philadelphia: Temple University Press.
- Mora, M. T. & Davila, A. (2009). *Labor Market Issues along the US-Mexico Border*. Tucson: The University of Arizona Press.
- Moraga, C., & Rodriguez, C. H. (2011). *A Xicana codex of Changing Consciousness: Writings, 2000-2010*. Durham, NC: Duke University Press.
- Ordóñez, J. T. (2015). *Jornalero: Being a Day Laborer in the USA*. University of California Press.
- Reavis, D. J. (2010). *Catching Out: The Secret World of Day Laborers* (1st ed.). Simon & Schuster.
- Revilla, A. T. (2004). Muxerista Pedagogy: Raza Womyn Teaching Social Justice through Student Activism. *The High School Journal*, 87(4), 80-94.
- Revilla, A. T. (2012). What happens in Vegas Does Not Stay in Vegas: Youth Leadership in the Immigrant Rights Movement in Las Vegas, 2006. *AZTLAN - A Journal of Chicano Studies*, 37(1), 87.
- Robinson, W. I. (2008). *Latin America and Global Capitalism: A Critical Globalization Perspective*. Baltimore: Johns Hopkins University Press.
- Russel y Rodríguez, M. (2007). MESSY SPACES: Chicana Testimonio and the Undisciplining of Ethnography. *Chicana/Latina Studies*, 7(1), 86-121.
- Shelden, R. G. and P. Vasiliev. (2018). *Controlling the Dangerous Classes: A History of Criminal Justice in America* (3rd ed.). Long Grove, IL: Waveland Press.
- Smith, R. (2008). "Legal Protections and Advocacy for Contingent or 'Casual' Workers in the US: A Case Study in Day Labor." *Social Indicators Research*. 88, 197-213.
- Solorzano, D. G., & Yosso, T. J. (2001). Critical Race and LatCrit Theory and Method: Counter-storytelling. *International Journal of Qualitative Studies in Education*, 14(4), 471-495.
- Thomas, Jim. (1993). *Doing Critical Ethnography*. Newbury Park, CA: Sage.
- Tuhiwai Smith, L. T. (2012). *Decolonizing Methodologies: Research and Indigenous Peoples* (2nd ed.). Zed Books.
- Valenzuela, A. (2001). Day Laborers as Entrepreneurs? *Journal of Ethnic and Migration Studies*, 27(2), 335-352.

Valenzuela, A. (2003). Day Labor Work. *Annual Review of Sociology*, 29(1), 307-333.

Valenzuela, A., Kawachi, J. A., & Marr, M. D. (2002). Seeking Work Daily: Supply, Demand, and Spatial Dimensions of Day Labor in Two Global Cities. *International Journal of Comparative Sociology*, 43 (2), 192-219.

About the Author

J. Adrian Castrejón is a visiting professor in the Department of Chicano and Latino Studies at the University of Minnesota, Twin Cities. He received his Ph.D. in Public Affairs with a focus on Race and Gender from the University of Nevada, Las Vegas in the Greenspun College of Urban Affairs with an affiliation in the Department of Interdisciplinary, Gender, and Ethnic Studies. His work primarily focuses on race and migration, the sociopolitical economy of migrant workers, immigration policy, barrio and Latinx urbanism, and Chicano masculinities. He is an active community advocate and student mentor. His email is acastrej@umn.edu