
VIVENCIAS: Reports from the Field

Immigration and the state of labor: Building a movement in the valley of the sun

Michelle Téllez, Cristina Sanidad and Nicolas de la Fuente

Arizona State University, Glendale, Arizona.

E-mail: Michelle.Tellez@asu.edu

Latino Studies (2011) 9, 145–154. doi:10.1057/lst.2011.10

The Workers' Rights Center

The Arizona Interfaith Alliance for Worker Justice (AIAWJ – hereafter referred to as the Workers' Rights Center) is a worker rights center (located in Phoenix, AZ) affiliated with Interfaith Worker Justice, a national network of faith-labor alliances and other worker rights centers. The Worker Rights Center was formed by Rev. Trina Zelle in 2006 to serve the community in the capacity of a faith-labor alliance, supporting local political and union campaigns and resourcing low-income faith communities in civic engagement. The day-to-day work of the center changed focus in August 2008, when the Workers' Rights Center opened. Our initial work focused on educating and servicing individual workers whose rights had been violated, but as we continue to re-evaluate the community's needs with the help of community members, we have included three key components: *community education* on civil and workplace rights, *services* such as translation or assistance with filing unpaid wage claims and *campaigns* both against target employers and policy change.¹

1 For an in-depth discussion of the structures, mission

and characteristics of workers' rights centers around the nation, see Fine, 2006.

These changes have allowed us to become more effective, both reactively and proactively, in achieving our mission:

AIAWJ exists to challenge workplace injustice in partnership with the working men and women of Arizona and in collaboration with faith and labor communities, ethical business owners, and government agencies. AIAWJ strives to serve the broader community through education, outreach, and advocacy for worker friendly economic policies.

Population Served

Though we acknowledge workers of all backgrounds are victims of wage theft, safety violations and discrimination, the Workers' Rights Center has chosen to focus on those who are most vulnerable in Phoenix and who are least likely to pursue justice without support. For this reason, our services and education campaigns are targeted toward both documented and undocumented, low-income Latino/a immigrants, specifically those with low English language proficiency and low educational attainment. According to the staff's approximation, 85 per cent of those we serve are foreign born Mexicans, 99 per cent are Spanish speaking and 85 per cent are men. On the basis of the numbers of those who have revealed their documentation status, we estimate that 70 per cent of our clients are undocumented. The workers we have served largely work in residential and commercial construction with a significant number also working in cleaning services and landscaping.

2 For research on nationwide trends, see: Fine, 2006; De Castro *et al*, 2006; Martin *et al*, 2007; Bernhardt *et al*, 2009.

Documentation of Abuses²

There are five main types of abuse that we have documented and assisted workers in resolving. Approximately 75 per cent of our cases are wage theft complaints. According to Kim Bobo, the founder of Interfaith Worker Justice, wage theft occurs when "an employer violates the law and deprives workers of legally mandated wages" (Bobo 2009, 7). Bobo outlines numerous ways in which wages are stolen, for example: violations of minimum wage (which in Arizona in 2010 is US\$7.25) and overtime, misclassification of non-exempt salaried employees and independent contractors and employers either not paying for all hours worked, or not properly paying tips or commission. The cases we have documented at the Workers' Rights Center often involve a criminal intent to deprive a person of wages. (It is less often a misunderstanding of the law.) A common situation we hear is a pay scheme in which an employer begins paying workers correctly and on time, developing rapport with them; after several weeks, the employer begins paying workers in partial payments claiming he has not been paid by the contractors and soon, workers are working without pay for weeks or months at a time as they wait for the next paycheck.

Workers that report wage theft have chosen to pursue recourse (for various ends) through staff-mediated negotiations, delegations and protests or by filing complaints with small claims and civil court, the Better Business Bureau, the city police department, the Registrar of Contractors (against contractor's insurance bonds), and the state and federal Department of Labor (DOL).

The second type of complaint we document is worker injury, and we assist these workers in filing workers' compensation claims. Several reasons workers have cited for not filing workers' compensation claims include: being told by the employer he/she is not covered by workers' compensation insurance or that the employer does not have insurance; being threatened with job loss, a pay cut or being reported to immigration authorities or the sheriff; and, being offered a deal (a one time payment) by the employer to avoid the workers' compensation process.

A third complaint we receive relates to hazardous working conditions or employer non-compliance with safety and health standards (for example, providing training, information on health risks and safety equipment free of cost to the employee). Interestingly, workers very rarely, if ever, come to the Workers' Rights Center solely with a health and safety complaint. Generally, workers come to the office because of a primary concern (such as wage theft) and, through the training, identify secondary concerns related to health and safety standards. Workers with health and safety concerns have chosen to anonymously file complaints with the Occupational Safety and Health Administration (OSHA), because addressing violations directly with the employer or supervisor has proven to have serious consequences (that is, retaliation such as job loss).

A fourth complaint we receive is of discrimination, mostly related to gender (specifically sexual harassment or job loss due to pregnancy) and one's race/skin color/national origin/language. Under state and federal law, there are six protected categories under which workers can file discrimination complaints: race/national origin/skin color/language, disability, religion, gender, age and (as of November 2009) genetic information. The Workers' Rights Center is able to help workers prepare detailed testimonies complete with dates and locations for any and all discriminatory events, lists of names and contact information of witnesses and a detailed summary of each event (what was said or done and by whom). These workers are then referred to the Equal Employment Opportunities Commission (EEOC).

The final type of complaint we have received regards unemployment fraud by employers. In some cases, employers have submitted fraudulent documents (that is, false complaints or write ups), or misrepresented how a worker's employment ended in order to make the latter ineligible for benefits. In these cases, staff are able to assist workers in preparing for appeals hearings, or, in worst case situations in which the employee has lost a hearing, file an application documenting one's inability to repay benefits already paid out.

To understand the importance of the Workers' Rights Center and the unique situation in which workers find themselves in Phoenix, we must situate our

work within the socio-legal and geographic context of Arizona, and the political context created by US/Mexico border policy.

Political Climate and Demographic Setting for the Struggle

Economic policies and media discourse serve to legitimize the micro-level abuses that we consider common practice among Arizona's employers, particularly as they target migrant workers, creating anti-immigrant/worker sentiments in the state of Arizona and more specifically in Maricopa County.³ Although a national phenomenon, wage theft and abusive employers have seemingly been validated through a lack of labor law enforcement (or very inconsequential penalties when they have been investigated), and a renewed focus on immigration enforcement (such as the controversial bill SB 1070⁴) over employer sanctions.

3 Maricopa County is in the south-central part of the state, ranking fourth in size among the nation's counties. The Workers' Center is located in downtown Phoenix within Maricopa County.

4 See: Arizona State Legislator, 2010.

The implementation of the North American Free Trade Agreement (NAFTA) in 1994 has deepened the asymmetrical relation between Mexico and the United States, creating huge profit margins for the US based multi-national corporations that are free to cross borders at the expense of the Mexican laborers who work for these companies. Furthermore, NAFTA has forced thousands of Mexican workers off of their communal land through the privatization of land properties and the commercialization of local crops, compelling more and more Mexicans to migrate north.

Implemented alongside NAFTA, Operation Gatekeeper (at the San Diego port of entry) and Operation Hold the Line (at the El Paso port of entry) militarized historically urban points of entry, forcing thousands of immigrants to cross in the rural desert areas of northern Sonora and southern Arizona, where many have perished as a result of their attempt to avoid the militarized urban sites of Ciudad Juarez and Tijuana.⁵ The actual number of deaths since the implementation of the above policies is unknown, but over 2000 bodies have been recovered in the desert since 1994.

5 According to the organization "No More Deaths," there have been 252 bodies or remains found in the Arizona desert between 1 Oct 2009 and the time of this writing. See: No More Deaths, 2010.

In Arizona, these shifts in migration patterns have created a growing migrant worker community, mostly from Mexico and Central America, and, as witnessed in our daily interaction with employers, an anti-immigrant sentiment influenced by the systematic demonization of immigrants in the mass media and among local government. Anti-immigrant sentiments are validated through Arizona's politics, and falsely give employers a sense of entitlement to "rip-off," exploit, and threaten the safety of so-called "illegals." This form of scapegoating against primarily Mexican migrant workers is not a new phenomenon; in economic downturns over the past 100 years, Mexicans have been targeted and deported in waves (whether or not they were US citizens).

Although historically, the state of Arizona has had a large Latino/a population, the increasing numbers are notable. For example, by 2006, 29.1 per cent

of the population in Arizona was Latino/a; 15 per cent were foreign born and 11 per cent were estimated to be undocumented (Pew Hispanic Center, 2008). By 2008, the percentage of Latinos/as had risen to 30 per cent, about two times the national average of 15.4 per cent (Arizona Quickfacts, 2009), and, in their 2008 report, the Pew Hispanic Center stated that the undocumented population comprised at least 10 per cent of Arizona's working population.

Socio-Legal Setting for the Struggle

Understanding the implications of immigration law enforcement on workers' rights in Phoenix is timely, as the nation is focused on Arizona as a model for state-based immigration reform. To demonstrate how immigration enforcement measures and anti-immigrant legislation have created a culture of fear, leading to the underreporting of wage theft, deterioration of workplace rights and lack of enforcement of employment law, we will briefly outline one federal and two state laws and their effects on the environment in which we work.

The Illegal Immigration Reform and Immigrant Responsibility Act, effective 30 September 1996, added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act. This authorizes the secretary of the US Department of Homeland Security to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, pursuant to a Memorandum of Agreement, provided that the local law enforcement officers receive appropriate training and function under the supervision of sworn US Immigration and Customs Enforcement (ICE) officers.⁶ In Arizona, the 287(g) agreement was not enacted until 2004, at which time agents of street and jail task forces were trained to verify the immigration status of any person they might encounter during the officer's daily work (US ICE). Workplace raids and roadblocks became more commonplace as an aggressive measure to identify people illegally working and residing in the country. Undocumented workers and documented workers of mixed status families became frightened to leave their homes as racial profiling led to increased scrutiny of all Latinos, police harassment and human rights abuses.

The second law, English as the Official Language Act (Proposition 103, "English Only law"), passed in 2006, making English the official state language in Arizona. The law required that all "official state business" – which includes all activities in the court and government agencies such as the Arizona Division of Occupational Safety and Health, EEOC and the State DOL – be conducted in English (Arizona Secretary of State's Office, 2006). Following the passage of the proposition, Spanish language complaint forms, instructions and information were removed from the DOL website,⁷ and while complaints could be submitted in Spanish, the department was not well equipped to process these complaints in

6 See: US Immigration Customs and Enforcement, 2008.

7 Despite local decisions to create

“English only” or “English as the Official Language” laws, “<http://www.lep.gov/13166/eo13166.html>” mandates that federally funded programs and agencies provide “language assistance” for those with limited language proficiency. Though the Obama administration has made the enforcement of Executive Order 13166 and Title VI of the Civil Rights Act of 1964 a priority, limited funding has impacted the DOL’s ability to provide “meaningful” access to services (that is, the hiring of additional bilingual staff). However, since early 2010, the state DOL reposted some Spanish language resources on its website. See: Federal Interagency Working Group, 2003.

a timely fashion. This law effectively severs access to government resources, legal recourse, information about workplace rights and complaint processes by those that do not have English language fluency, regardless of documentation status.

Finally, in 2008, the Employer Sanctions law (officially known as the Legal Arizona Worker’s Act) took effect. In name, the law penalizes employers for knowingly hiring undocumented workers; however in practice, this law targets undocumented employees as, to date, only one employer has been prosecuted despite hundreds of arrests of workers (Hensley and Kiefer 2009).

These laws combine to create a state endorsed culture of fear affecting both documented and undocumented immigrants in the workplace and everyday life. The constant patrolling and policing of immigration status in Arizona reinforces the liabilities and constraints associated with the lack of proper documentation, and every day activities become a risk. In the workplace, being silenced is the penalty for lack of citizenship or documentation; workers are further silenced by state policy and local law enforcement, which impede their access to resources, services and labor law enforcement.

Consequences of Political Climate

Although the cases we have documented represent a small percentage of the violations of workers’ rights that occur in the metropolitan Phoenix area, they do indicate a clear trend of how the social and political climate challenges workers’ access to recourse and justice. Notably, a culture of fear is driven by the efforts of individual employers and, more broadly, hateful anti-immigrant sentiments within the larger community. The fear that employers and the community perpetuate has real, damaging consequences for both documented workers of mixed status families and undocumented workers.

Fear prevents many immigrant workers from confronting their employers about wage and hour or health and safety violations. Many prefer to keep the jobs they have rather than risk unemployment or retaliation. Some examples of employer retaliation we have documented include cut hours and pay, constant harassment to pressure an employee to quit, job loss, physical and/or verbal abuse (including racial slurs), threats to one’s safety and the safety of one’s family (including brandishing a pistol and pointing it at workers) and threats that the sheriff, the police or immigration authorities will be called. Owing to very real threats to their physical safety, economic security and ability to continue residing in the United States, workers who do not have a safety net (specifically friends or family who can assist in paying bills or securing another job) are pressured into enduring long hours, low wages and substandard health conditions to maintain work. Those who choose to confront their employers are met with a host of other obstacles. In this way, underreporting of serious

workplace violations has become commonplace, leading to a lack of enforcement of labor law and the deterioration of all workers' rights.

Fear is one obstacle that prevents immigrant workers from utilizing government agencies (such as OSHA or DOL) or civil courts to resolve their workplace complaints, as they are told and believe that their immigration status makes them ineligible or that their status will be verified and they will be deported if they do not legally reside in the country. It must be noted that when Senate Bill(SB) 1070 was signed into law on 29 May 2010, the fear of police and government officials in the courts and at government agencies increased, though this fear had always been a factor in workers' decisions around recourse.⁸

Another obstacle to filing recourse in cases of wage theft, for example, is the "English Only" law, mentioned above made utilizing the complaint process difficult and cumbersome (Personal Interview, 22 October 2009)⁹. Low English language writing and reading proficiency and a general lack of knowledge of the law and the wage claim process were also obstacles to utilizing the civil court processes. Not only are Spanish language materials unavailable,¹⁰ but for workers with cases in the justice courts (civil court or small claims), a translator cannot be guaranteed even on request because of limited staffing and resources.¹¹

Effects of Workplace Violations on Workers and Families

Perhaps the most obvious effect of wage theft is the difficulty or inability to pay bills, including rent or a mortgage, public utilities, phone service, insurance or car payment or repay loans or debts in their home country.¹² Many of the workers who have filed complaints with the Workers' Rights Center do not have access to credit or to public services (such as health care, unemployment benefits or food stamps)¹³ and must rely on friends and family (who are often also living paycheck to paycheck) to survive financially.

Several workers have reported loss of housing and were forced to move in with family members, down-size from a house to an apartment, and a few became homeless as a result. The lack of consistent income could have a deleterious impact on future socio-economic mobility. Because of the inability to save money (or more often, the depletion of a family's savings), workers are less likely to be able to invest in family assets (such as a home or car), the children's education, adult education or job training.

For some, however, the most severe effects of wage theft are the emotional instability and psychological distress, tension in family relations and reduced self-esteem (because of the feeling of not being able to provide for all the family's needs both in the United States and in the home country), depression and isolation (especially when one must stay at home because of financial

8 SB 1070 required, among many things, that if an officer has contact with an individual through normal course of dealings (that is, pulling someone over for a traffic violation), and the officer has a reasonable suspicion that the person might be in the country illegally, he or she is required by law to investigate the person's documentation status. Judge Susan Bolton determined that this part of the law would not go into effect on 29 July, though other pieces of the bill continue to be litigated (Rau *et al*, 2010). To read the full text of the bill, please see: Arizona State Legislator, 2010.

9 Rev. Trina Zelle, director and founder of the Worker Rights Center reported: "It used to be, until July 1 of 2008,

most of the websites of the enforcement agencies in Arizona were bilingual in English and Spanish both. After this ballot initiative about English only all of the websites scrubbed their Spanish language, which means that if you're not strong in English or you don't speak it at all, even if you were to get the number and call them, the [voice] message is in English. Now if you can finally get down there, they might have somebody that can translate. But, that's not even a guarantee. It's not a friendly system. Even though the individuals that work there tend to want to help, they're not equipped to help."

10 Though some Spanish language materials have since been reposted to the DOL website, the state DOL still does not offer an official Spanish language complaint form, nor are all resources

restrictions), and constant stress that affects their physical health, (for example, weight gain, sleep patterns) and family relations.

Moving Forward

The barriers faced by undocumented workers are immense. The polls indicate that the majority of Arizonians are in favor of SB 1070, and the constant growth of the Tea Party movement indicates that the political tide will not be easily shifted. Politicians continue to take advantage of the popularity gained by anti-immigrant efforts, and are changing their priorities to win votes. Sheriff Joe Arpaio continues to terrorize entire communities and 287(g) is still being implemented in Arizona jails.

We are not going to see a swift change in politics that will easily rid Arizona of its harsh anti-worker and anti-immigrant laws and culture. Therefore, as a worker center based on the ideology of partnering with workers to solve injustice in the workplace, we have recently taken steps to incorporate them into our governance structure through the formation of a worker-led advisory committee called *Comité de Voces Unidas* (Committee of United Voices). It is in recognition of the workers' expertise and their ability to relate to other workers that they are the ones who will decide what services and educational workshops and trainings the center provides and where the focus of public campaigns should be.

In addition to driving the Center's work and response to the community's needs, the *comité* will also serve as a think tank to address the consequences, for workers, of Arizona's hateful political climate. As the experts, these workers are best positioned to strategize to effectively address the obstacles immigrants confront such as language barriers, lack of a safety net and their silencing in the workplace. If the worker led *comité* becomes a tight knit community in itself, they will create an alternative form of information-sharing (for example, around employment and housing opportunities or rights). This is the "reactive" piece of our work. Equally important is the proactive piece through which the *comité* will identify and mobilize the community around a realistic policy change. This work requires that the *comité* partner with existing, well-established grassroots organizations, already working on campaigns. The linking of the various grassroots organizations in the Phoenix Metropolitan Area will ultimately decide the power of the Latino movement in Arizona.

One successful step we have already undertaken to transition leadership is the implementation of a "train the trainer" program for community education and development. We recognize that the more informed our community is regarding their rights and recourse, the better prepared they will be to make decisions that will positively shape their lives. Therefore, with the intention of educating more workers and meeting people where they are most comfortable (given our socio-legal climate), we have trained 10 workers to facilitate the civil and

workers' rights training in churches, community centers, other public gathering places and in workers' homes.

We have also undertaken alliance building in an effort to diversify our leadership. In addition, we are currently working to recruit and train bilingual volunteers to increase our capacity for service provision, community outreach and campaign work. We also continue to seek free legal support to improve the services and education we can provide to workers. Finally, we are actively expanding our network within faith communities and worker organizations such as unions to create a coalition working to protect and advance immigrants' and workers' rights.

We believe that being community-based and worker led is instrumental to the effectiveness of the Workers' Rights Center in meeting immediate needs for individuals and groups of workers (such as filing a wage complaint). It is also essential for creating long-term change to improve standards in the workplace, enforce the state and federal laws we already have and increase access to recourse for all workers. The workers' rights movement in the Valley of the Sun is steadily growing.

About the authors

Dr. Michelle Téllez is Assistant Professor in the Women's Studies Program and the Masters in Social Justice and Human Rights Program at the New College of Interdisciplinary Arts and Sciences at Arizona State University. She specializes in women of color feminist theory, globalization studies, Chicana/Latina studies, social movements and border studies. Dr. Téllez serves on the Board of Directors for the Arizona Interfaith Alliance for Worker Justice in Phoenix, Arizona.

Cristina Sanidad is a graduate student in the Social Justice and Human Rights Masters Program at Arizona State University. Her current research centers on workers' and immigrants' rights, wage theft, and borderland studies. She has served as a Labor Rights Promoter at the Arizona Interfaith Alliance for Worker Justice in Phoenix, Arizona since its opening in August 2008.

Nicolas de la Fuente is a graduate student in the Social Justice and Human Rights Masters Program at Arizona State University. His research focus is on discourse analysis around immigration and US Foreign Policy. He has served in the capacity of Labor Rights Promoter for the Arizona Interfaith Alliance for Worker Justice since September 2009.

References

Arizona QuickFacts. 2009. Arizona US Census Bureau, <http://quickfacts.census.gov/qfd/states/04000.html>.

available in English also offered in Spanish. The website still states its English only policy "Pursuant to Article XXVIII of the Arizona Constitution, the official language of the State of Arizona is English. Except as otherwise provided by law, translations or communications in a language other than English are unofficial and are not binding on this state" (See Industrial Commission of Arizona, 2010).

- 11 Preference is given to those requiring a translator in the highest courts (superior court).
- 12 Given the extreme costs of crossing into the United States, migrants often arrive with a high debt that they must pay off immediately.
- 13 The following publication lists the eligibility requirements for federally funded programs, to which undocumented immigrants do not have access (including

Temporary assistance for needy families (TANF), Supplemental security income (SSI), Food stamps, Medicaid, Children's Health Insurance Program (CHIP), Medicare, Housing and Urban Development (HUD), Social Security or any other federal benefits) – with the exception of emergency Medicaid. See: National Immigration Law Foundation, 2006.

- Arizona Secretary of State's Office. 2006. Ballot Proposition Guide, http://www.azsos.gov/election/2006/info/pubpamphlet/sun_sounds/english/prop103.htm.
- Arizona State Legislator. 2010. Senate Bill 1070, <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>, accessed 23 August 2010.
- Bernhardt, A.R., et al. 2009. Broken Laws, Unprotected Workers, unpublished Report.
- Bobo, K. 2009. *Wage Theft in America*. New York: The New Press.
- De Castro A.K., E. Fujishiro, and J. Oliva. 2006. How Immigrant Workers Experience Workplace Problems: A Qualitative Study. *Archives of Environmental and Occupational Health* 61: 249–58.
- Federal Interagency Working Group. 2003. LEP Policy Guidance for DOL Recipients. 29 May, http://www.justice.gov/crt/lep/guidance/guidance_index.html, accessed 23 August 2010.
- Fine, J. 2006. *Worker Centers: Organizing Communities at the Center of the Dream*. Ithaca, NY: Cornell University Press.
- Hensley, J.J. and M. Kiefer. 2009. Waterworld Suspended Under New Employer-Sanctions Law. The *Arizona Republic*, 18 December, <http://www.azcentral.com/news/articles/2009/12/17/20091217lawasuspension1217-ON.html>.
- Industrial Commission of Arizona. 2010. English is Arizona's Official Language, http://www.ica.state.az.us/NavB/NAV_B_EnglishAsOfficialLanguage.aspx.
- Martin, N. S. Morales and N. Theodore. 2007. Migrant Worker Centers: Contending With Downgrading in The Low-Wage Labor Market. *GeoJournal* 68: 155–165.
- National Immigration Law Foundation. 2006. Guide to Immigrant Eligibility for Federal Programs Update, http://www.nilc.org/pubs/Guide_update.htm, accessed 23 August 2010.
- No More Deaths. 2010. No More Deaths: Humanitarian Aid is Never a Crime, <http://www.nomoredeaths.org/Updates-and-Announcements>, accessed December 2010.
- Pew Hispanic Center. 2008 January 23. Arizona: Population and Labor Force Characteristics, 2000–2006, www.pewhispanic.org, accessed 4 February 2010.
- Rau, A.B., G. Rough and J.J. Hensley. 2010. Arizona Immigration Law: State to Appeal Injunction. July 28, <http://www.azcentral.com/news/election/azelections/articles/2010/07/28/20100728arizona-immigration-law-court-ruling-brk28-ON.html>, accessed 26 October 2010.
- US Immigration and Customs Enforcement. 2008. August 18 Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, <http://www.cdpsweb.state.co.us/immigration/Meetings/October21/10-21-08%20287%20Delegation%20of%20Authority.pdf>, accessed 13 July 2010.