



# Ironbound Underground

## Wage Theft & Workplace Violations Among Day Laborers in Newark's East Ward

### **Student Attorneys**

Nicholas Norcia  
Rafael Perez Jr.

### **Supervising Attorneys**

Anjana Malhotra, Practitioner in Residence  
Bryan Lonagan, Visiting Assistant Clinical Professor

Immigrant Workers' Rights Clinic  
Center for Social Justice  
Seton Hall University School of Law  
833 McCarter Highway  
Newark, N.J. 07102

July 2010

## ***ACKNOWLEDGMENTS***

The Seton Hall University School of Law Center for Social Justice's Immigration and Immigrant Workers' Rights Clinic ("IWR Clinic") would like to extend our deepest thanks to the following people for their valuable contributions to this project:

Augusto Amador, Labinot Berljolli, Ellen Bernstein, Zoragina Castillo, Rosa Chilquillo, Rev. Maristela Freiberg, Amy Gottlieb, Rochelle Kaplan, Dr. Gregory Maney, Maria Martino, Diana Mejia, Marien Casillas Pabillon, John Peterson, Damaris Rostran, Diana Sanchez, Sebastian Sanchez, Leda Shumbris, Joshua Trojak, Dr. Abel Valenzuela, David Walker, and Rev. Moacir Weirich.

The IWR Clinic would also like to thank St. Stephen's Church, the New Jersey Department of Labor and Workforce Development, New Labor, members of the Newark Police Department, the American Friends Service Committee, and the National Employment Law Project.

Finally, we are especially grateful to the Ironbound day laborers for having the courage and humility to entrust us to tell their stories.

***Table of Contents***

Executive Summary and Recommendations .....1

Methodology .....5

Background: Day Laborers in New Jersey .....6

Day Laborers in the Ironbound Section of Newark .....8

Wage Theft.....10

Safety Violations .....12

Community Issues.....13

Legal Issues under Wage and Hour and Occupational Safety Laws .....16

Conclusion and Recommendations.....18

Notes.....21

## ***Executive Summary and Recommendations***

***“It’s a hard life.... We’re not trying to steal anything from anyone. We’re just looking for work. We need more people with good hearts who know why we’re here.”***

**- Newark Ironbound day laborer**

Day laborers are workers who are employed on a day-by-day, temporary basis.<sup>1</sup> Each morning, at informal hiring sites throughout the country known as “shape-up sites,” day laborers and employers negotiate short-term employment arrangements in an

“open-air market.”<sup>2</sup> For employers, these day labor markets “provide easy access to a large pool of workers that they can hire when needed and release them when not.”<sup>3</sup> While there is limited official information on the nature and size of the day laborer workforce, the United States Government Accounting Office (“U.S. GAO”) and the 2004 National Day Labor Survey indicate that the day laborer community consists of mostly males with limited English proficiency that have recently migrated to the United States.<sup>4</sup> Government reports and national surveys indicate that on any given day there are approximately 117,600 to 260,000 day laborers looking for work in the United States.<sup>5</sup> Day laborers work in many different industries, including manual labor, construction, landscaping, moving, and food services.<sup>6</sup> Homeowners also frequently employ day laborers for simple maintenance and home improvement projects.<sup>7</sup>

In the State of New Jersey, day laborers are entitled to the same legal protections that apply to all workers, regardless of immigration status.<sup>8</sup> However, both federal government reports and the New Jersey Governor’s Blue Ribbon Advisory Panel on Immigrant Policy have found that day laborers are among the most economically vulnerable workers. Day laborers are exposed to workplace abuses because they are often unaware of their rights, fearful of complaining to authorities, have limited English proficiency, and work in high risk jobs.<sup>9</sup> U.S. government reports have also found that due to inadequate data on day laborers, state and local government agencies responsible for enforcing workplace laws have failed to appropriately investigate workplace violations or enforce day laborers’ workplace rights.<sup>10</sup>

This report attempts to fill this information gap by profiling for the first time, the large contingent of day laborers that congregate daily in the Ironbound section of Newark to look for work. Since 2007, the Immigrant Workers' Rights Clinic ("IWR Clinic") at Seton Hall University Law School's Center for Social Justice has been involved in efforts to assist the workers by conducting legal workshops regarding wage theft and work safety violations and working with the workers, community leaders and officials to improve community relations. In January 2010, the IWR Clinic held an intake session for individual workers to advise and represent the workers on wage complaints. The response was overwhelming. While addressing the workers' complaints and related community tensions, we realized that we had only a limited understanding as to who these workers were and the breadth of workplace violations they suffered. The IWR Clinic decided to systematically investigate and analyze the status of day laborers in the Ironbound section of Newark for a comprehensive report. Between February and April 2010, the IWR Clinic studied the problem by engaging directly with community leaders, government officials, police officers, business owners, national and local experts, and the day laborers themselves. The IWR Clinic observed and documented conditions at the Ironbound site where workers gather for work each morning on a daily basis, regularly attended several of the day laborers' weekly meetings and conducted a survey of 26, or approximately half of the workers at the Ironbound site. As a result of its investigation, the IWR Clinic found:

- **The Ironbound Day Laborers Endure a Significant Level of Workplace Violations, Especially in Wage Theft.** Almost all (96%) reported experiencing at least one occurrence of wage theft (either non-payment or underpayment), a significantly higher proportion than day laborers face elsewhere in the country.
  - *Seventy-seven percent reported at least one instance of an employer paying them less money than originally promised, compared to 48% of day laborers nationally;<sup>11</sup>*
  - *Sixty-two percent reported at least one instance of not being paid at all, compared to 48% of day workers nationally;<sup>12</sup>*
  - *Eighty-eight percent reported that employers had not always paid them overtime for working over 40 hours a week, as required by state and federal laws.<sup>13</sup>*

- **The Financial Loss to the Workers Due to Wage Theft is Substantial.** Thirty-eight percent of those surveyed reported being unpaid or underpaid by \$800 or more (not including lost overtime pay) in the past year. Half reported being unpaid or underpaid by a total of \$400 or more during the same period.
- **Workers Have Limited Recourse to Obtain Unpaid Wages.** Six day laborers reported filing complaints with the New Jersey Department of Labor and Workforce Development (“NJ DOL”), but as of the release of this report only one day laborer reported recovering overdue wages. Seven day laborers reported filing complaints in small claims court, but only two workers reported recovering overdue wages.
- **Working Conditions are Unsafe.** Eighty percent of those surveyed reported that employers rarely, if ever, provided safety equipment, (safety goggles, hard hats, protective masks, etc.) and one in five reported being injured while on the job.
- **The Transient Nature of the Shape-Up Site is Dangerous.** The workers currently congregate alongside a busy highway and are regularly forced to relocate by the police to adjacent lots. Twenty percent of the workers reported being assaulted at least once while going and returning to the informal hiring site. Officials from the state, city, and Newark police who were interviewed agreed that a hiring hall would help stabilize the situation. In addition, all the workers indicated they would participate if there was a hiring hall, with 88% stating they would financially contribute to maintaining the hiring hall.

Based on our survey, as well as interviews with various public officials, community leaders, and national experts on day laborers, the IWR Clinic recommends the following:

- **The City of Newark Should Establish a Hiring Hall for Day Laborers.** All persons interviewed for this report, including day laborers, Newark Police officials, elected officials, New Jersey Department of Labor personnel, community organizers, and business owners recommended the establishment of a hiring hall as a means to alleviate the serious workplace violations that workers face.

- **The City of Newark Should Enact a Wage Theft Ordinance That Prohibits Employers From Engaging in Wage Theft and Imposes Strong Monetary and Criminal Penalties for Violations.** By enacting and enforcing a wage theft law that prohibits all employers from failing to pay employees their promised wages or overtime rates, streamlines the process of collecting unpaid wages, and imposes strict criminal and civil sanctions, the City can decrease pervasive wage theft, thus benefiting all Newark residents by improving workplace standards and strengthening the City's relationship with its immigrant residents.
- **The New Jersey Department of Labor Should Proactively Assist Day Laborers on Wage Theft Violations.** In light of the pervasive and disproportionate level of wage theft faced by day laborers in Newark, the NJ DOL should adopt strategic enforcement efforts to target employers who employ day laborers. Specifically, the NJ DOL should designate an agent to visit the Ironbound day laborer site to take complaints from workers, ensure employers do not intimidate workers from bringing and pursuing claims for unpaid wages, and coordinate with law enforcement to prosecute violators.

## *Methodology*

***"[T]he characteristics that make day laborers most susceptible to workplace abuses also make it difficult...to find and protect them."***

**- United States General Accounting Office**

This report is based upon surveys of workers, site visits to the Ironbound “shape-up”<sup>14</sup> site and weekly workers’ meetings, and interviews with government officials and community leaders from January to April 2010. The IWR Clinic made three morning site visits to the shape-up site at the corner of Stockton Street and Wilson Avenue in Newark’s East Ward. On each visit, the IWR Clinic documented fifty to fifty-five workers waiting for work. The IWR Clinic also attended several evening day laborer meetings at St. Stephen’s Grace Community Lutheran Church in the Ironbound (“St. Stephen’s Church”). Some of these meetings were part of a series of “Human Rights” gatherings organized by a community organization called New Labor<sup>15</sup> and attended by community leaders, police officers, government officials, and the general population, as part of an effort to foster harmonious relations in the Ironbound community.<sup>16</sup> The IWR Clinic also conducted interviews with community leaders, police officers, local business owners and local and state government officials who are charged with issues of concern to day laborers. Finally, the IWR Clinic consulted with national experts and reviewed state and federal government documents and private reports that address the day labor market.

Over the course of three evenings and two mornings in March of 2010, the IWR Clinic interviewed 26 (approximately half) of the fifty to fifty-five day laborers that the IWR Clinic observed looking for work at the shape-up site during that period. The evening survey sessions were held at St. Stephen’s Church and the morning survey sessions were conducted directly at the shape-up site.

The survey, modeled after the comprehensive and influential 2004 National Day Labor Study<sup>17</sup> and tailored to the concerns of the Ironbound day laborers, consisted of 66 multiple-choice questions and two open-ended questions. Because the day laborers were all Spanish-speaking, the surveys were primarily conducted in Spanish and the survey



participants were provided Spanish-language copies of the survey questions and answers so that they could follow along. An IWR Clinic student, who had been trained in cross cultural interviewing techniques, conducted each survey and where necessary was assisted by a translator. Each survey took approximately thirty minutes to complete. The IWR Clinic conducted the surveys at St. Stephen's Church to minimize interference with the workers' efforts to find work and conducted the morning surveys at the shape-up site between the hours of 7 a.m. and 11 a.m. to ensure that the survey included workers who had not attended the church meetings. The IWR Clinic promised the survey participants that their identity would remain confidential.

The 26 participants represent approximately half of the workers whom the IWR Clinic observed looking for work at the shape-up site during regular site visits from February and March 2010. The high rates of employer abuse, crime and workplace safety violations reported by the survey participants comports with the findings of other surveys throughout the country and indicates a significant problem in Newark. The main variance was the disproportionately high levels of wage theft that day laborers faced in the Ironbound.

### ***Background: Day Laborers in New Jersey***

While there have been no comprehensive studies of workplace violations among the day labor population in New Jersey, available studies indicate that day laborers in New Jersey look for work in the day laborer market as a necessity and work in hard, dangerous jobs, primarily in construction, often for less money than they are promised.<sup>18</sup> In one

***"Few in our society are as economically and otherwise vulnerable as recent immigrants to this country who toil as laborers, seek work on a day-to-day basis and have limited English proficiency."***

- New Jersey Governor's Blue Ribbon Advisory Panel on Immigration Policy

report, workers stated that their primary problem "isn't the hard work, but the harshness or abusiveness of some employers . . . who constantly pressured them to hurry or did not allow breaks."<sup>19</sup> In addition, this study and other reports indicate day laborers face high

risks and even fatalities on the job, including devastating accidents during and on their way to work.<sup>20</sup> Day laborers in New Jersey also face hostility and harassment from members of the community.<sup>21</sup> In its 2009 report, the New Jersey Blue Ribbon Immigration Panel found that “few in our society are as economically and otherwise vulnerable as recent immigrants to this country who toil as laborers, seek work on a day-to-day basis and have limited English proficiency.”<sup>22</sup> Workplace violations among New Jersey day laborers are common.<sup>23</sup>

Informal day labor markets implicate serious legal issues when employers fail to adhere to wage and overtime laws and do not follow safety standards, which apply to all New Jersey workers regardless of immigration status.<sup>24</sup> Workers are usually paid in cash and there are generally no records linking the employer to the day laborer.<sup>25</sup> By informally negotiating terms of employment with workers on street corners, employers are able to reduce or even avoid their legal obligations and related costs of paying worker’s compensation, unemployment, and health insurance. The underground nature of the day labor market makes enforcement of such laws difficult.<sup>26</sup>

Additionally, informal day labor sites frequently engender a myriad of community concerns as day laborers congregate on street corners, in front of local businesses, or in commercial parking lots to wait for prospective employers.<sup>27</sup> There is fierce competition for work as more workers than the employer needs surround the employer’s vehicle as he chooses the workers he requires, raising concerns for safety.<sup>28</sup> Since workers must stand for hours as they wait for work, members of the community often complain of littering, driving down of property values, and other issues.<sup>29</sup> These community concerns then translate into tension with local police who must force the workers to move on from gathering sites.<sup>30</sup>

Organized hiring halls - places where day laborers obtain work in a fair and orderly fashion - have been established to address many of these legal and social concerns, often with municipal support.<sup>31</sup> Employers must register with the hiring hall and thus create a record of employment. As noted in a study by Rutgers University, hiring halls create the kind of transparency and accountability that is an effective deterrent to abusive

employment practices.<sup>32</sup> The Rutgers study further noted that these worker centers provide an opportunity for day laborers to transition and integrate into the formal economy.<sup>33</sup> Finally, as recognized by a 2007 U.S. Department of Justice Report to State and Local Police Agencies on Day Laborers, by providing a safe place to congregate, many community concerns can be adequately addressed.<sup>34</sup>

### ***Day Laborers in the Ironbound Section of Newark***

***“We are just trying to feed our families.”***

**-Ironbound day laborer**

During each of three early morning visits to the shape-up site on Stockton Street in late February and March 2010, the IWR Clinic research team documented a crowd of fifty to fifty-five day laborers standing in a gravel yard on Stockton Street about fifty feet from the intersection of Stockton/South Street and Wilson Avenue. Stockton Street is a two-way thoroughfare on which there is heavy traffic in the early hours of the morning. The shape-up site is in a largely industrial neighborhood and within easy access to Highway Route 1 and 9. The portion of the yard on which the day laborers stand is approximately one hundred feet long by fifty feet wide and is marked off on the north side by parked trailers and on the south side by a single orange cone. From the orange cone, it is about forty to fifty-feet to a gas station/convenience store.<sup>35</sup>

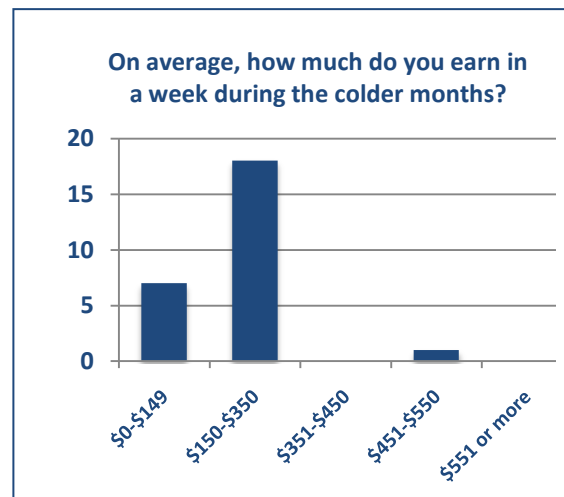
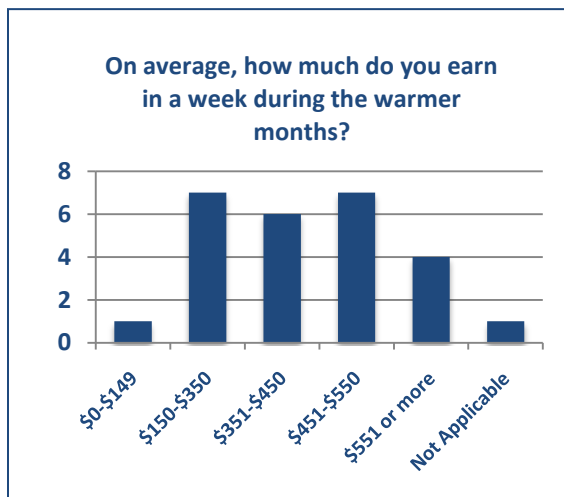
**Day laborers gathered at the Ironbound Shape-up site.**



The workers at the Ironbound shape-up site are Latino males, ranging in age from their mid 20's to late 50's. The majority of the workers came from Ecuador, with a few from Mexico and Honduras. Their educational backgrounds varied; while none of the workers surveyed graduated from college, 58% completed high school.

Nearly all of the workers who participated in the survey were working as day laborers to financially support their immediate families. For example, 54% reported that they were married and 92% reported that they had children. Forty-two percent of the workers reported sending at least \$100 back to their families in their home countries in the previous month. As one worker explained, "sometimes I don't even eat so I can send money back home."<sup>36</sup>

The primary reason the men come to Stockton Street to look for work is because they simply cannot secure full-time employment elsewhere. Of those surveyed, 92% have tried unsuccessfully to obtain full-time work since coming to the United States. Of those, 50% attributed it to the lack of available full-time positions and one in four cited their current immigration status. Twelve percent believed that their inability to speak English prevented them from securing full-time employment, with 77% describing their ability to speak English as "not very well" or "not at all."<sup>37</sup>



The majority of the workers (70%) have looked for work at the Ironbound shape-up site for at least one year. Furthermore, nearly 50% of the workers surveyed look for day

labor work at Stockton Street at least five days a week, while about 30% percent look for work at Stockton Street between three and four days a week. The availability of work, however, varies by season. More than 60% of the workers reported working more than 30 hours a week in warmer months. Conversely, in colder months only 12% reported working more than 30 hours a week and 62% of the workers reported working less than 20 hours a week. Average earnings per week dipped proportionally in the colder months: Only one worker reported making more than \$350 a week in colder months while in warmer months, 65% reported making more than \$350 a week.

## ***Wage Theft***

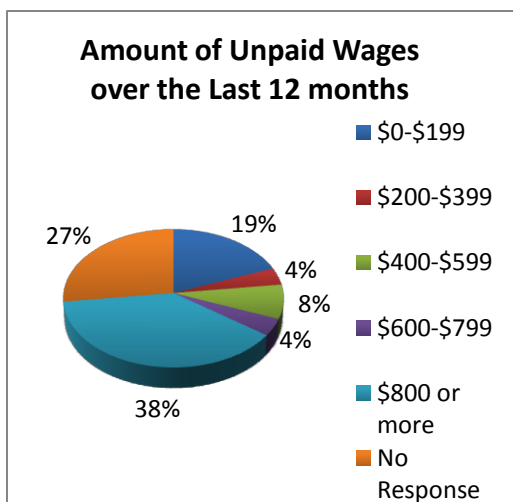
Twenty-five of the 26 survey participants reported being victims of wage theft<sup>38</sup> while working as day laborers on Stockton Street. Seventy-seven percent reported instances of an employer paying them less money than originally promised; sixty-two percent recalled at least one instance where an employer paid them nothing at all for their work; and more than 88% reported employers' failure to pay for overtime. Nearly 40% reported that they had been deprived of more than \$800 of lost wages in the past year with one worker stating that his losses were nearly \$2,000. Furthermore, eleven of the workers who had been underpaid in the past year reported that multiple employers had underpaid them, including four respondents who stated that "five or more" employers in the past year had paid them less than promised.

*"I've seen a lot of contractors that exploit the workers. ... I've seen people abandoned, people being paid \$60-\$70 a day for working 12-hour days. I've also seen contractors tell people that they'll be getting paid by the week, but when the weekends they don't get paid at all... Basically they exploit the day laborers. They know people are looking for work. They know people won't complain because they'll get fired or the employers will go to immigration."*

- Ironbound Day Laborer

The high incidence of nonpayment of wages among the Ironbound day laborers is consistent with the 2002 U.S. GAO study finding that “day laborers [nationally] complained at least once a week about nonpayment of wages.”<sup>39</sup> However, the Ironbound day laborers reported a significantly higher rate of non-payment of wages compared to similar national and regional day laborer studies. In the National Day Laborers Study, 48% of the respondents reported at least one instance of non-payment of wages.<sup>40</sup>

The toll on the workers is significant. Thirty-eight percent of those surveyed reported being unpaid or underpaid by \$800 or more (not including lost overtime) in the past year and 50% reported being unpaid or underpaid \$400 or more during the same period. Despite the high incidence of wage theft, the Ironbound day laborers have few realistic avenues for recourse. Only six day laborers reported that they filed wage and hour complaints with the New Jersey Department of Labor and Workforce Development, with only one having recovered unpaid wages. Rochelle Kaplan, supervisor of the Northern Region of the NJ DOL, told that IWR Clinic that the NJ DOL investigates every wage and hour complaint with which it is presented.<sup>41</sup> Kaplan said that the most significant obstacle that the NJ DOL faces in enforcing wage and hour violations with respect to day laborers is that the complainants often come to the department with scant or no information about the employer who has taken advantage of them. Kaplan acknowledged that the department’s wage and hour personnel has been significantly diminished through attrition over the course of the past few years.<sup>42</sup>



Similarly, the workers have not had much success in pursuing claims for unpaid wages in small claims court. Of the seven workers who reported filing complaints for overdue wages in small claims court, only two have recovered overdue wages as of the time this report was released. Indeed, the IWR Clinic’s experience representing Ironbound workers on wage theft complaints in small claims court demonstrates the problems with the workers

attempting to enforce their rights privately. In May, 2010, the IWR Clinic represented three Ironbound workers (none of whom are included in the survey) in Essex County small claims court seeking unpaid wages. In one case, the employer failed to appear in court, whereby the court entered a default judgment for the worker. Collection, however, has proven elusive as the worker has no information regarding bank accounts or holdings of the employer upon which he can place a lien. In the second case, the worker agreed to a small partial settlement and expressed fear that the employer would seek his deportation. In the final case, where the employer had previously threatened the worker with reporting him to immigration authorities, the client abandoned the complaint on the day of trial.

The IWR Clinic's experience in representing the Ironbound workers in small claims court revealed a profound fear of retribution by employers among the workers. In fact, nearly one-third of the workers report employers unlawfully threatening to contact Immigration and Customs Enforcement if the worker demanded to be paid. One Ironbound worker that the IWR Clinic is currently representing on a wage theft complaint reported that when he complained about not being paid, his employer told him, "my brother is an ICE agent and . . . I will call him if you go to the police and I will make sure that you and your family gets deported."<sup>43</sup>

## ***Safety Violations***

***"When I was injured, my employer took me to the hospital and then disappeared. I didn't have anyone to help me. I had no health insurance. No medicine. I fell from the fourth floor and was practically dead . . . I went to the police. They told me they couldn't help me . . . I have back troubles still. I have to wear a brace and I can't walk well. I pay my own way. I don't have health insurance."***

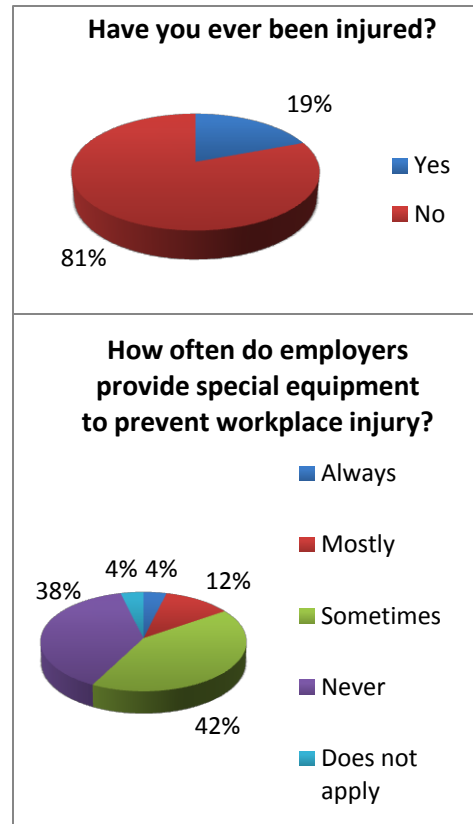
**- Former Ironbound day laborer**

Nearly 20% of the workers surveyed reported being injured while working as day laborers, and 60% of these workers had to pay out-of-pocket to cover resulting medical costs. None of the workers surveyed reported that they had health insurance, or that their

past medical expenses were covered by either employer-provided or publicly-funded health insurance. The workers who were injured reported that they were unable to work for more than twenty days.

Despite the high rate of injury, 80% of the workers surveyed were not supplied with special work equipment such as goggles, hard hats, boots, or masks to prevent workplace injury. Forty-two percent of the Ironbound day laborers reported that their employers “sometimes” provide safety equipment, and 38% reported that employers “never” provide safety equipment.

Further demonstrating the extent of these workplace violations is the fact that 34% of the workers reported being abandoned at the work site and 27% reported being assaulted by either their employer or his agent. The level of abuses the Ironbound workers face is on par with day laborers in this region; 31% surveyed in the Eastern Region of the NDLS reported being abandoned at least once at their work site, while 25% reported experiencing at least one incident of employer violence.<sup>44</sup>



## Community Issues

***“My cousin stands out there sometimes.”***

**-Newark police officer observed by the IWR Clinic ordering day laborers to disperse from a shape-up.**

Even as they wait to find work, day laborers face hazards and instability. Through a series of interviews with government officials and members of the community, the IWR Clinic found that the history of the Ironbound day laborers is a story of transience and dislocation, which continues to this day. The workers initially began to assemble at the “Five Corners” intersection, in front of St. Stephen’s Church, at the corner of Ferry and Wilson Avenue until the Newark Police Department physically moved the workers in vans from Five Corners to



Stockton Street.<sup>45</sup> For a while, the workers assembled outside a hardware store on the corner of Delancey and Stockton Street, but the store owner demanded that the workers move to a different location. In 2007, the workers began to assemble outside a restaurant on the south end of Stockton Street, but the restaurant owner complained to the police on a regular basis and the workers were forced to look for new space. Consequently, the workers began assembling into smaller groups of five to ten workers along the busy thoroughfare.

On February 16, 2010, the IWR Clinic research team observed as Newark police officials and East Ward Councilman Augusto Amador attended a workers' meeting at St. Stephan's Church to open discussions regarding solutions. Soon after the meeting, the day laborers, New Labor organizers, and the pastor of St. Stephen's Church negotiated an agreement with the Newark Police to allow the workers to assemble at a gas station parking lot on the corner of Stockton Street and Wilson Avenue. However, this arrangement proved to be temporary. While the workers believed they had negotiated an agreement allowing them to stand on the lot as long as they stayed within an area marked by cones, within two weeks, the police and gas station owner denied that there was any permanent agreement; the gas station owner has asked the police to remove the workers from his property.<sup>46</sup>

The police force the workers to leave the gas station lot every morning. For instance, on the morning of March 18, 2010, the IWR Clinic observed a Newark Police van pull into the gas station lot, flash its siren, and stop in front of the day laborers. Two police officers in the van ordered the workers to disperse and the workers reluctantly moved on. After the day laborers dispersed, an officer in a patrol car pulled up alongside the police van. "What happened? I thought they were over there," the patrol officer asked, pointing to the lot where the day laborers had been standing. "The owner doesn't want them there," an officer in the van said. The patrol officer shook his head. "Everybody keeps kickin' 'em out," he said. "They've got 'em between a rock and a hard place," the officer in the van said. "I can sympathize with them . . . I still have to do my job."<sup>47</sup> The police officers at the scene told the IWR Clinic that they order the workers to leave whenever they get complaints from the gas station owner, which happens nearly every day.

More than 34% of the workers surveyed reported being ticketed for loitering on Stockton Street in the past year. These police actions, however, appear to be related primarily to complaints from local property owners. Generally, the Newark Police are not as aggressive toward the Ironbound workers as police departments dealing with day laborers in other New Jersey cities.<sup>48</sup> While 38% of Ironbound workers reported that they had been asked to produce identification by the police, only 15% reported that the police asked about their immigration status.<sup>49</sup> As one day laborer said, “we would like for the police to not look bad at us. We are just trying to feed our family. We pay for things and send money to our family. We help this country.”<sup>50</sup>

Finally, there are various safety concerns that arise at the shape-up site. The site is located on a busy thoroughfare with a high volume of commercial traffic. Trucks frequently stop in the middle of Stockton Street looking to hire workers. After employers stop their vehicles, the workers all run across the thoroughfare in an attempt to secure employment. Additionally, Captain Embrey, of the East Ward precinct, stated at the February 16, 2010 town Human Rights meeting at St. Stephen’s Church that the police consider the neighborhood to be a high-crime area. Consistent with this designation, more than 20% of day laborers surveyed have reported being robbed or assaulted on the way to or from Stockton Street.

### **Newark Police ordering the workers to disperse**



## *Legal Violations under Wage and Hour and Occupational Safety Laws*

***“You shall not oppress a hired servant who is poor and needy, whether he is one of your countrymen or one of your aliens who is in your land in your towns. You shall give him his wages on his day before the sun sets, for he is poor and sets his heart on it; so that he will not cry against you to the LORD and it becomes sin in you.”***

- Deuteronomy 24:14

As noted earlier, the Federal Fair Labor Standard Act (FLSA) and New Jersey wage and hour laws apply to all employees whether citizens or non-citizens.<sup>51</sup> Both the FLSA and New Jersey wage and hour laws establish a minimum wage (\$7.25) and overtime at a rate of one and one-half times the worker's regular wage for all hours worked in excess of forty hours in a particular week.<sup>52</sup> New Jersey laws further prohibit wage theft.<sup>53</sup> Moreover, New Jersey employers are required to inform each worker of their rate of pay when they hire the worker and of any changes to the promised rate before changing it.<sup>54</sup>

Furthermore, state and federal laws forbid employers from retaliating against employees for asserting their rights under labor and employment laws.<sup>55</sup> Contacting immigration authorities after a worker has asserted their workplace rights exposes the employer to serious penalties and fines.<sup>56</sup>

Both FLSA and New Jersey wage and hour laws provide for private and public remedies.<sup>57</sup> An employer who willfully and knowingly violates New Jersey wage and hour laws can be criminally charged with a disorderly person offense, fined up to \$1,000 for each offense, and/or sentenced to a term of imprisonment of up to 90 days.<sup>58</sup> The NJ DOL can also collect fees of up to 25% of the amount of unpaid wages from employers who violate wage and hour laws. In February 2010, Governor Chris Christie signed a law which imposes harsh penalties on employers who repeatedly violate the state's wage and hour laws.<sup>59</sup>

Further, the Occupational Safety and Health Act requires employers to provide personal protective equipment to employees.<sup>60</sup> Each willful OSHA violation incurs a fine of between \$5,000 and \$70,000.<sup>61</sup>

New Jersey and the Federal Department of Labor are losing considerable revenue by failing to enforce laws regarding workplace violations. The 26 Ironbound day laborers surveyed report at least 45 instances of employers failing to pay wages in the last year. At a minimum, the NJ DOL could have collected \$56,250 in fines and fees if each of these employers failed to pay workers for one day, and \$123,750 if each employer engaged in violations for two days. If the federal government had imposed penalties against just one of the employers employing each of the 21 workers who reported they had never been paid overtime for hours worked over forty, it could have imposed \$21,000 in fines against such employers.

Similarly, with respect to safety violations, taking the workers who answered that employers failed to provide special equipment to prevent workplace injuries to them as “mostly” and “sometimes” as representing one violation each, enforcement would amount to \$70,000 in fines. Using the conservative figures of one violation per week for 26 weeks for the individuals who responded “never,” would yield an additional \$1.3 million.

## ***Conclusions and Recommendations***

***“To secure to each laborer the whole product of his labor, or as nearly as possible, is a most worthy object of any good government”***

**-Abraham Lincoln**

Our findings demonstrate a staggering degree of workplace violations and exploitation of day laborers by local employers in violation of federal and state law, resulting in a loss of dignity for the day laborer population and a loss of revenue to the public.<sup>62</sup> Yet the day laborers in Newark have found few effective avenues to address the violations of their rights.

The vulnerability and exploitation of the day laborer community undermines the whole labor system and demonstrates the gaping holes left unattended by the current labor model. Ultimately, this results in the exploitation of all workers. When the law is properly enforced with the goal that no individual worker will be exploited, all workers benefit.<sup>63</sup> Therefore, the benefit of protecting the workers in the Ironbound extends beyond their individual circumstances.

- **The City of Newark Should Establish Its First Hiring Hall.**

The workers surveyed for this report were nearly unanimous in their support for the development of a day labor hiring hall with 100% responding that they would participate in a hiring hall and 88% stating that they would be willing to personally contribute funds in order to make it possible. As a result, a group of workers, New Labor, and community members are exploring options for a hiring hall. To demonstrate their commitment to the community, the workers have organized a disciplinary committee to monitor the conduct of the Ironbound workers.

Councilman Augusto Amador, representing the East Ward, believes that there is broad support among elected officials in Newark for the establishment of a hiring hall.<sup>64</sup> Further, according to an NJ DOL official, a hiring hall would curb wage theft violations and provide the NJ DOL with better access to the workers in order to

pursue complaints. Newark Police officials, consistent with U.S. Department of Justice advice to local police that “managed sites will be more orderly and have fewer problems,”<sup>65</sup> have also expressed support for the development of a hiring hall.

A study by Rutgers University determined that hiring halls provide safety for the day laborers in an environment where nonpayment and underpayment of wages are less likely to occur.<sup>66</sup> Moreover, as noted in the study, these worker centers provide an opportunity for day laborers to transition and integrate into the formal economy.<sup>67</sup> The New Jersey Blue Ribbon Immigration Panel also recommended that municipalities establish hiring halls as a positive solution for municipalities seeking to regulate this often chaotic employment practice and protect day laborers from wage theft.<sup>68</sup>

- **The City of Newark Should Enact a Wage Theft Ordinance that Prohibits Employers from Engaging in Wage Theft and Imposes Strong Monetary and Criminal Penalties for Violation.**

Given the resource limitations on the New Jersey Department of Labor’s ability to address wage theft violations among the Ironbound day laborers, the City of Newark should enact a wage theft ordinance that prohibits employers from failing to pay anyone they hire their promised or overtime wages, imposes strict fines and criminal penalties for violations, and streamlines accessible administrative and enforcement procedures. An unequivocal local ordinance prohibiting wage theft would provide workers with a swift and direct mechanism as an alternative to the notoriously slow and cumbersome NJ DOL administrative process. A local ordinance would protect workplace standards for all workers in Newark, reduce the disadvantages faced by businesses that are paying their workers an honest wage, and improve relationships with the immigrant community as a whole.<sup>69</sup> In addition, the ordinance would financially benefit the City of Newark by bringing in revenue for the City, which could help support a hiring hall for day laborers. Cities and

counties throughout the U.S. have enacted similar legislation to effectively curb widespread wage theft among day laborers.<sup>70</sup>

- **The New Jersey Department of Labor Should Proactively Assist Day Laborers on Wage Theft Violations.**

While state law requires the New Jersey DOL to ensure that all workers are protected from wage theft<sup>71</sup>, the current enforcement mechanisms available to day laborers have been ineffective, at a significant cost to day laborers and the state.<sup>72</sup> On the other hand, given the state's strong labor laws and broad powers of the Labor Commissioner, the New Jersey DOL is well-positioned to fulfill its mandate to protect the rights of vulnerable day laborers. Thus, the New Jersey Department of Labor should follow the lead of other state labor departments and adopt strategic enforcement efforts targeting employers who employ day laborers.<sup>73</sup>

To address the high level of employer abuse of day laborers in the Ironbound section of Newark, the IWR Clinic specifically recommends that the NJ DOL assign a bilingual agent to the Ironbound to identify employers of day laborers in Newark and perform on-site investigations of these employers to ensure that they are complying with wage and hour laws for all workers. With 25% of Newark residents living below the federal poverty level,<sup>74</sup> lax enforcement by the NJ DOL of employer violations harms all workers by driving down wages and workplace standards.<sup>75</sup>

Further, the NJ DOL should work with the Attorney General and the Essex County Prosecutor's Office to seek the full range of remedies and penalties when enforcing violations of wage theft laws.<sup>76</sup> New Jersey authorities should use penalties forcefully and impose the maximum against employers engaging in wage theft against day laborers, especially in cases of willful, repeated, or high-hazard violations.

## NOTES

- <sup>1</sup> Abel Valenzuela Jr., Edwin Meléndez, *Day Labor in New York: Findings from the NYDL Survey*, Center for the Study of Urban Poverty, UCLA, and Community Development Research Center, New School University, 1 (2003) (hereinafter “*NYDL Survey*”).
- <sup>2</sup> Abel Valenzuela Jr., et. al., *On the Corner: Day Labor in the United States*, University of California, Los Angeles Center for the Study of Urban Poverty, 1 (2006) (hereinafter “*National Day Labor Survey*”); *see also NYDL Survey, supra note 1, at 2.*
- <sup>3</sup> *National Day Labor Survey, supra note 2, at 4*; United States General Accounting Office (GAO), *Labor’s Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance*, GAO 02-925, 2 (September 2002) (hereinafter “*2002 GAO report*”).
- <sup>4</sup> *2002 GAO report, supra note 3, at 2*; *National Day Labor Survey, supra note 2, at 2-3.*
- <sup>5</sup> *National Day Labor Survey, supra note 2, at 4*; *2002 GAO report, supra note 3, at 2.*
- <sup>6</sup> *National Day Labor Survey, supra note 2, at 1.*
- <sup>7</sup> *Id.*
- <sup>8</sup> The Governor's Blue Ribbon Advisory Panel on Immigrant Policy, *Executive Summary of the Report to New Jersey Governor Jon Corzine*, 9 (March 2009) (hereinafter “*N.J. Blue Ribbon Report, Exec. Summary*”), [http://www.state.nj.us/publicadvocate/home/pdf/Executive%20Summary\\_final.pdf](http://www.state.nj.us/publicadvocate/home/pdf/Executive%20Summary_final.pdf).
- <sup>9</sup> *2002 GAO report, supra note 3, at 2-3*; *The Governor's Blue Ribbon Advisory Panel on Immigrant Policy, Report to New Jersey Governor Jon Corzine*, 68-69 (March 2009) (hereinafter “*N.J. Blue Ribbon Report*”), [http://www.state.nj.us/publicadvocate/home/pdf/ipp\\_report\\_march.pdf](http://www.state.nj.us/publicadvocate/home/pdf/ipp_report_march.pdf). LaQuanda Brown and Kaitlyn Muller, *Local Day Labor Worker Centers* (Rutgers University-Camden) (hereinafter “*Brown*”).
- <sup>10</sup> *2002 GAO report, supra note 3, at 14.*
- <sup>11</sup> *National Day Labor Survey, supra note 2, at 15.*
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*
- <sup>14</sup> A term regularly employed by day laborers as a gathering place for work. *See NYDL Survey, supra note 1, at 2.*
- <sup>15</sup> New Labor is a community organization that uses alternative model of worker organization to improve working conditions and provide a voice for low-wage, young, immigrant workers in central New Jersey. *See* <http://www.newlabor.net> (last visited June 5, 2010). The Clinic attended several of these weekly meetings at St. Stephan’s between February and April 2010. Each meeting was attended by an average of 25-30 day laborers and, similar to the Human Rights meetings, had an open, town-hall-type atmosphere. The Clinic’s observational notes from these meetings are on file at the Center for Social Justice, Newark N.J.
- <sup>16</sup> The IWR Clinic attended one of these Human Rights meetings on Feb. 16, 2010, which was attended by about 30 day laborers, along with East Ward councilman Augusto Amador, members of the community, the Newark police department, and the a representative from the Mayor’s Office. The Clinic’s observation notes from this meeting are on file at the Center for Social Justice. General background regarding these meetings was provided in an interview the CSJ Clinic conducted with Augusto Amador conducted on April 20, 2010 (hereinafter “*Amador interview*”).
- <sup>17</sup> *National Day Labor Survey, supra note 2.* New Jersey officials and experts have also cited to Valenzuela’s study as the definitive study of day laborers in the United States. *See, e.g., N.J. Blue Ribbon Report, supra note 9, at 68-69; Brown, supra note 9.*
- <sup>18</sup> Ochsner, M. Marshall, E. Kimmel, L. Martino, C. Cunningham, R. Hoffner, K.. *Immigrant Latino Day Laborers in New Jersey: Baseline Data from a Participatory Research Project*, *New Solutions* 18:57-76, 62-63 (2008) (finding that most of the 140 day laborers in five counties in New Jersey were primarily from Mexico and had limited English proficiency) (hereinafter “*Immigrant Latino Day Laborers in New Jersey*”). *See also* Kusum Ketkar and Barrie Peterson, *Immigrant Workers in New Jersey: A Preliminary Assessment of Available Statistics, Issues and Policy Options*, Seton Hall Institute of Work, 59-60 (describing wage theft violations in day laborer communities in Elizabeth, Oakland, Palisades Park), *available at* <http://www.njlaborers.org/members/study.pdf>.
- <sup>19</sup> *Immigrant Latino Day Laborers in New Jersey, supra note 18, at 64.*
- <sup>20</sup> *Id.* at 66. *See also* New Jersey Public Health Services Branch, “Hispanic Day Laborer Electrocuted When an Aluminum Extension Ladder Contacted an Overhead Power Line,” New Jersey Facility Assessment & Control Evaluation Project Investigation Report, FACE 06-NJ-076 (describing the death of a 21-year-old day laborer in August 2006 killed by electrocution while replacing roofing shingles), *available at* <http://www.state.nj.us/health/surv/documents/06nj076.pdf>. In 2004, news reports uncovered serious concerns regarding the safety of the van fleets that shuttle low-income day laborers to and from work. Nearly 97 % of the 209



---

commuter vans pulled over for safety spot checks were in violation of state registration and licensing regulations or simply deemed unsafe to drive. James Sverapa IV, *Governor Pens Additional Assembly Commuter Van Safety Measure into Law*, POLITICKER-NJ, Jan. 29, 2007, available at [http://vip.politickernj.com/assembly-members-john-s-wisniewski-vincent-prieto-linda-stender?quicktabs\\_mostx=read](http://vip.politickernj.com/assembly-members-john-s-wisniewski-vincent-prieto-linda-stender?quicktabs_mostx=read). In 2005, two day laborers were killed when one was injured in a box truck accident on Route 287 in Netcong, New Jersey, Press Release, “3 New Jersey Day Laborers Awarded \$2 Million in Truck Accident Arbitration Case,” Jan. 5, 2009, <http://www.keefebartels.com/CM/PressRoom/NewJerseyTruckAccidentDeathArbitrationAward.asp> (last visited June 5, 2010).

<sup>21</sup> See, e.g., Carol Cleaveland, “*We Are Not Criminals*”: *Social Work Advocacy and Unauthorized Migrants*, *Social Work*, Volume 55, Number 1, January 2010.

<sup>22</sup> *N.J. Blue Ribbon Report*, *supra* note 9, at 68.

<sup>23</sup> The New Jersey Department of Labor and Workforce Development’s Division of Wage and Hour Compliance cited 6,205 employers for various types of violations, including, but not limited to, violations by employers of day laborers. *N.J. Blue Ribbon Report, Exec. Summary*, *supra* note 8, at 9.

<sup>24</sup> *Id.* at 9. See also *Zavala v. Wal-Mart Stores, Inc.*, 393 F.Supp.2d 295, 325 (D.N.J. 2005) (holding that “[p]laintiffs should not be precluded, as a matter of law, from obtaining relief under the FLSA for work already performed, merely by virtue of their undocumented status.”); *Serrano v. Underground Utils. Corp.*, 407 N.J.Super. 253, 268, 970 A.2d 1054 (App.Div.2009) (presuming in discovery dispute that plaintiffs’ potential status as an undocumented worker does not protection under the New Jersey Prevailing Wage Act); *Fernandez-Lopez v. Jose Cervino, Inc.*, 288 N.J. Super. 14, 17-18, 671 A.2d 1051 (App.Div.1996) (holding that undocumented immigration did not bar from obtaining workers’ compensation benefits); *Mendoza v. Monmouth Recycling Corp.*, 288 N.J. Super. 240, 248 (N.J. Super. Ct. App. Div. 1996) (holding that “the right to workers’ compensation is as much an incident of the employment as the right to receive salary, and has been earned once the labor has been performed”). In enforcing the New Jersey Wage and Hour Law, the New Jersey Department of Labor refuses to “investigate or inquire into the legal status of any worker[,] applies New Jersey’s labor laws without regard to a worker’s legal status,[and]; does not share information with ‘immigration.’” N.J. Dep’t of Labor and Workforce Dev., Wage and Hour Disclaimer, available at [http://lwd.dol.state.nj.us/labor/wagehour/content/wage\\_and\\_hour\\_disclaimer.html](http://lwd.dol.state.nj.us/labor/wagehour/content/wage_and_hour_disclaimer.html)

<sup>25</sup> *National Day Labor Survey*, *supra* note 2, at 20.

<sup>26</sup> *2002 GAO report*, *supra* note 3, at 25. A 2009 U.S. GAO investigation further found the labor department’s wage and hour division doing a poor job of helping the most vulnerable workers, including day laborers, in the United States. U.S. Government Accountability Office, *Wage and Hour Division’s Complaint Intake and Investigative Processes Leave Low-Wage Workers Vulnerable to Wage Theft*, GAO-09-458T, March 25, 2009 (hereinafter “*2009 GAO report*”).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Brown*, *supra* note 9, at 5.

<sup>30</sup> See, e.g., Paul Cox, *Passaic Cops Crack Down on Day Laborers*, THE STAR LEDGER, Dec. 31, 2008 (hereinafter “*Passaic Cops Crack Down on Day Laborers*”), available at [http://www.nj.com/news/index.ssf/2008/12/passaic\\_cops\\_crack\\_down\\_on\\_day.html](http://www.nj.com/news/index.ssf/2008/12/passaic_cops_crack_down_on_day.html). (last visited June 30, 2010).

<sup>31</sup> *National Day Labor Survey*, *supra* note 2, at 22-25; *Brown*, *supra* note 9, at 10, 18-19.

<sup>32</sup> *Brown*, *supra* note 9, at 3-4.

<sup>33</sup> *Id.*

<sup>34</sup> Rob T. Guerette, *Disorder at Day Laborer Sites*. U.S Dept. of Justice, Office of Community Oriented Policing Services, Problem Oriented Guides for Police, Problem-Specific Guides Series, No. 44, October 2006.

<sup>35</sup> The IWR Clinic recorded these observations from three morning site visits in February and March 2010. The site visit observation notes are on file at the Center for Social Justice, Newark N.J. (hereinafter “*Clinic Interviews*”).

<sup>36</sup> *Clinic Interviews*, *supra* note 35.

<sup>37</sup> Over the course of several evenings, the IWR Clinic observed that 8-12 workers attended regular ESL classes organized by New Labor at St Stephan’s Church (observation notes on file with IWR Clinic).

<sup>38</sup> “Wage theft occurs when workers are not paid all their wages, workers are denied overtime when they should be paid it, or workers aren’t paid at all for work they’ve performed. Wage theft is when an employer violates the law and deprives a worker of legally mandated wages.” Kim Bobo, *Wage Theft in America: Why Millions of Americans Are Not Getting Paid - and What We Can Do About It*, 7 (The New Press 2009).

<sup>39</sup> *2002 GAO report*, *supra* note 3.

---

<sup>40</sup> *National Day Labor Study*, *supra* note 2, at 15. The only study that identified a similar level of day laborers reporting nonpayment of wages was in Baltimore, where a 2004 study found that 85% of the day laborers it surveyed reported one instance of nonpayment. *See Baltimore's Day Laborer Report: Their Stolen Sweat*, CASA of Maryland and the Homeless Persons Representation Project, December 2004.

<sup>41</sup> Interview with Rochelle Kaplan, April 14, 2010, at the New Jersey Department of Labor and Workforce Development Regional Office, 124 Halsey Street in Newark, NJ (interview notes on file with the IWR Clinic).

<sup>42</sup> *Id.*

<sup>43</sup> *Clinic Interviews*, *supra* note 35.

<sup>44</sup> *National Day Labor Survey*, *supra* note 2, at 15.

<sup>45</sup> IWR Clinic telephone Interview with Marien Casillas Pabillon, Director of New Labor, April 29, 2010. (interview notes on file with the IWR Clinic).

<sup>46</sup> IWR Clinic telephone Interview with Damaris Rostran, New Labor, February 24, 2010. (interview notes on file with the IWR Clinic).

<sup>47</sup> *Clinic Interviews*, *supra* note 35.

<sup>48</sup> *See, e.g., Passaic Cops Crack Down on Day Laborers*, *supra* note 29; “The Rights of Immigrants in New Jersey, American Civil Liberties Union of New Jersey (October 2008) (describing reports of harassment of day laborers in Orange, Palisades Park, Morristown, Passaic, Summit and Freehold); Amy Gottlieb and Parastou Hassouri, *Bringing Immigrants out of the Shadows*, THE STAR-LEDGER, Jan. 28, 2004 (describing how day laborers in Freehold were expelled from hiring site and threatened with arrest and deportation).

<sup>49</sup> Pursuant to a 2009 directive issued by then-Attorney General Anne Milgram, local law enforcement officers can only ask an individual their immigration status if they are arrested for a serious crime or a only after that person has been arrested for a serious violation. Attorney General Law Enforcement Directive, No. 2007-3 (8/22/2007), available at <http://www.nj.gov/oag/newsreleases07/ag-le-directive-2007-3.pdf>. *See also* Christopher Dela Cruz, *Attorney General Milgram Warns N.J. Law Enforcement About Role in Immigration Program*, The Star-Ledger, Sept. 2, 2009.

<sup>50</sup> *Clinic Interviews*, *supra* note 35.

<sup>51</sup> 29 U.S.C. § 201 et seq.; N.J.S.A. § 34:11-56a et seq.

<sup>52</sup> *Id.*

<sup>53</sup> N.J.S.A. §§ 34:11-4.1-4.11. New Jersey Courts also consider an employer’s failure to pay an employee a promised wage, whether oral or written, to be an actionable breach of contract. *Winslow v. Corporate Express, Inc.*, 364 N.J. Super. 128, 834 A.2d 1037 (N.J. Sup. 2003).

<sup>54</sup> N.J.S.A. §§ 34:11-4.6; 4.2.

<sup>55</sup> 29 U.S.C. § 215(a)(3) (prohibiting employer retaliation against workers who assert, or cooperate with other workers attempting to assert their rights under FLSA); 52 U.S.C. § 200e-3(a) (Title VII); 29 U.S.C. § 158(a)(3).

<sup>56</sup> 29 U.S.C. § 216(b) (employers violating anti-retaliation provision of FLSA “shall be liable for such legal or equitable relief as may be appropriate”). *See also United States v. Koziminski*, 487 U.S. 931 (1988); *Kimes v. United States*, 939 F.3d 776, 778 (9th Cir. 1991) cert. denied 503 U.S. 936 (1992) (affirming involuntary servitude conviction in part based on evidence of threats of deportation).

<sup>57</sup> A first time offender of FLSA can be fined up to \$10,000. In addition to authorizing private actions for unpaid wage claims, FLSA provides for double damages where employers willfully violate minimum wage and overtime laws, while New Jersey law provides employees the right to interest on unpaid wage claims. N.J.S.A. § 34:11-4.7; N.J. A.D.C. §§ 12:55-1.7, 12:56-1.4. A subsequent violation can lead to a sentence of six months in prison and/or a fine up to \$10,000. 29 U.S.C. § 216. In addition, a willful and repeated offender can be fined civil penalties of up to \$1,100 per violation, recovery of back pay, an equal amount in liquidated damages, and attorney fees. *Id.*; N.J.S.A. §§ 34:11-4.5, 47; N.J. A.D.C. §§ 12:55-1.6, 1.7.

<sup>58</sup> A subsequent violation of New Jersey wage and hour laws results in a fine between \$500 and \$1000, term of imprisonment up to 100 days, or both. N.J.S.A. § 34:11-4.6. New Jersey can also impose administrative penalties to violators of the wage and hour laws. A first time offender is penalized \$50 and a subsequent offender can be penalized up to \$500. N.J. A.D.C. § 12:56-1.3. Moreover, the state of New Jersey can impose administrative fees on any employer found guilty of violating New Jersey Wage and Hour Laws. A first time offender will be penalized 10% of the total amount of overdue back wages. N.J. A.D.C. § 12:56-1.4. A subsequent violation requires an 18% administrative fee and a third or subsequent violation imposes a 25% administrative fee. *Id.* Employers that improperly classify construction workers as independent contractors and fail to pay such workers’ wages, benefits, taxes and other required contributions can result in a \$2,500 fine for the first violation and up to \$5,000 for each subsequent violation, and an employer who commits such violations can be charged with a “disorderly persons”

---

criminal offense, carrying a penalty of up to \$1,000 and imprisonment of up to 90 days for each offense. N.J.S.A § 34:20-5.

<sup>59</sup> See An Act concerning the suspension or revocation of certain licenses for certain repeated violations of laws regarding wages, benefits and taxes, and supplementing Title 34 of the Revised Statutes, Pub. L. No. 2009 c.194 (to be codified at N.J. STAT. §§ 34:1A-1.11-13, effective July 13, 2010).

<sup>60</sup> 29 C.F.R. § 1926.95(d)(1).

<sup>61</sup> *Id.*

<sup>62</sup> Moreover, the treatment of immigrant workers in the Ironbound also raises serious concerns about basic human rights. See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5 (guaranteeing all individuals “the rights to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, [and] to just and favorable remuneration” for all work performed); Universal Declaration of Human Rights, Arts. 23(1), (3) (guaranteeing all individuals the right to “just and favorable conditions of work” and the right to “just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity”).

<sup>63</sup> See, e.g., Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities* (2009).

<sup>64</sup> IWR Clinic Interview with Councilman Augusto, April 20, 2010 (interview notes on file with the CSJ Clinic).

<sup>65</sup> *Community Ordered Policing*, *supra* note 33, at 17.

<sup>66</sup> *Brown*, *supra* note 19, at 3.

<sup>67</sup> *Id.*

<sup>68</sup> *N.J. Blue Ribbon Report, Exec. Summary*, *supra* note 8, at 27.

<sup>69</sup> Daniel González, *Phoenix treats cheating laborers as a criminal act*, *The Arizona Republic*, Feb. 11, 2006 (describing wage theft ordinances in Phoenix and Austin),

<http://www.azcentral.com/arizonarepublic/news/articles/0211wagetheft0211.html>

<sup>70</sup> Lindsay Beyerstein, *Florida’s Miami-Dade County Passes Landmark Anti-Wage Theft Ordinance*, “In These Times,” February 22, 2010 (describing wage theft ordinance passed in Miami-Dade County to protect day laborers); Tareen, *As Wage Theft Rises, States and Cities Crack Down*, ABC-News (describing wage theft ordinance in San Francisco and proposals in New Orleans and Los Angeles); Daniel González, *Phoenix treats cheating laborers as a criminal act*, *The Arizona Republic*, Feb. 11, 2006 (describing wage theft ordinances in Phoenix and Austin).

<sup>71</sup> N.J.A.C. § 34:11-4.9

<sup>72</sup> The federal government has not fared much better in protecting day laborers; in an October 2009 report, the U.S. Government Accounting Office found that the federal Department of Labor’s wage and hour division has done a poor job of helping day laborers and low-wage workers in the United States by failing to adequately investigate violations. U.S. Government Accountability Office, *Wage and Hour Division’s Complaint Intake and Investigative Processes Leave Low-Wage Workers Vulnerable to Wage Theft*, GAO-09-458T, p 1. (March 25, 2009).

<sup>73</sup> Sophia Tareen and Laura Wides-Munoz, *As Wage Theft Rises, States and Cities Crack Down*, ABC NEWS, December 17, 2009 (describing efforts by New York, Washington, Oregon and Massachusetts state labor departments to work with community-based groups and unions to identify employers violating labor laws and proactively enforce wage theft violations among day laborers).

<sup>74</sup> Newark city, New Jersey - Fact Sheet - American FactFinder, available at

[http://factfinder.census.gov/servlet/ACSSAFFfacts?\\_event=&geo\\_id=16000US3451000&\\_geoContext=01000US|04000US34|16000US3451000&\\_street=&\\_county=newark&\\_cityTown=newark&\\_state=04000US34&\\_zip=&\\_lang=en&\\_sse=on&ActiveGeoDiv=&\\_useEV=&pctxt=fph&pgsl=160&\\_submenuId=factsheet\\_1&ds\\_name=DEC\\_2000\\_SAFF&\\_ci\\_nbr=null&q\\_r\\_name=null&reg=null:null&\\_keyword=&\\_industry=](http://factfinder.census.gov/servlet/ACSSAFFfacts?_event=&geo_id=16000US3451000&_geoContext=01000US|04000US34|16000US3451000&_street=&_county=newark&_cityTown=newark&_state=04000US34&_zip=&_lang=en&_sse=on&ActiveGeoDiv=&_useEV=&pctxt=fph&pgsl=160&_submenuId=factsheet_1&ds_name=DEC_2000_SAFF&_ci_nbr=null&q_r_name=null&reg=null:null&_keyword=&_industry=) (last visited June 10, 2010).

<sup>75</sup> New York City Temporary Commission on Day Laborer Centers, *Final Report*, at 5 (April 16, 2009), available at [http://www.nyc.gov/html/imm/downloads/pdf/report\\_day\\_laborer\\_job\\_centers.pdf](http://www.nyc.gov/html/imm/downloads/pdf/report_day_laborer_job_centers.pdf). Annette Bernhardt, Diana Polson and James DeFilippis, *Working Without Laws: Exploitation of the Oppressed in New York City*, National Employment Law Project, 7 (January 2010). (“Everyone has a stake in addressing the problem of workplace violations. When impacted workers and their families struggle in poverty and constant economic insecurity, the strength and resiliency of local communities suffer. When unscrupulous employers violate the law, responsible employers are forced into unfair competition, setting off a race to the bottom that threatens to bring down standards throughout the labor market. And when significant numbers of workers are underpaid, tax revenues are lost.”).

<sup>76</sup> N.J.S.A. § 34:11-4.10; N.J. A.D.C. §§ 12:55-1.4-1.6.

**The Seton Hall Center for Social Justice extends its thanks to the  
New Jersey State Bar Foundation  
which provides support for the Immigrant Workers' Rights Clinic.**

