Rendered Invisible: African American Low-Wage Workers and the Workplace Exploitation Paradigm

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The narrative of low-wage worker exploitation has increasingly narrowed in focus to reflect the experiences of undocumented immigrant workers whose immigration status makes them particularly vulnerable to wage theft and other denials of their substantive workplace rights. Indeed, much of the scholarship in this area rests solidly at the intersection of immigrant justice and employment law. This article disrupts this paradigm by arguing that this limited narrative has rendered African American low-wage workers invisible. It also draws from the voices of low-wage worker advocates who have borrowed from current activism to announce that #BlackWorkersMatter. Given the role of paradigms in defining which issues merit our attention, analysis, and assessment, this article argues for a shift in the scholarly conversation to consider not only the historical reasons for the distancing of African Americans from worker advocacy, but also the current dynamics that have facilitated this phenomenon. This article
draws from critical race theorists' black/white binary analysis to consider whether there exists an immigrant/non-immigrant binary paradigm in the analyses of low-wage worker exploitation. Finally, it considers the particular vulnerabilities and disadvantages this paradigm creates for African American workers.

INTRODUCTION

Every person in this country benefits from the labor of our low-wage workforce. From the workers who pick the fruits and vegetables we eat, to the workers who slaughtered the chicken we ate for dinner last night, to the worker who cut the grass at our local park, to the cashier who checked us out as we purchased goods at our local CVS. In nearly every aspect of our lives, there are low-wage workers both out front and behind the scenes, making certain our days progress as expected.

Despite the reality that low-wage workers in this country are predominantly white, images and narratives of African Americans historically dominated the images and narratives of low-wage work, particularly where that work involved the labor of farm workers (sharecroppers) and domestic workers. In recent years, however, the focus on low-wage workers has shifted toward Latino workers: often recent immigrants and sometimes undocumented. This shift in our attention, however, is not based upon a mass departure of African Americans from the low-wage workforce. While the number of African Americans engaged in low-wage work has decreased as a result of immigration patterns, African Americans continue to occupy a significant number of low-wage jobs. Nevertheless, the standard narrative of low-wage work has shifted to one that is inextricably linked to the exploitation of immigrants. Given the particular vulnerability of our immigrant population and the resulting high levels of wage theft and other workplace exploitation in the immigrant community, targeted efforts to address the intersections of these issues is both important and necessary. In the midst of this change, however, the experiences of African American workers have received very limited attention in the media, and even less attention in the academy. Indeed, the more common narrative of the African American work experience has become one of unemployment, rather than low-wage employment. As a

1. See infra Part I.D.
result, African American workers are relatively absent from our national dialogue on low-wage workers' rights.

This Article brings the experiences of African American low-wage workers to the forefront, with a particular focus on wage theft among African American workers. Part I explores the complexities of the low-wage workforce, including the competing definitions of low-wage work and poverty. It also considers the demographic of African American workers' and the job sectors that typically employ them. Part II explores current scholarship on low-wage workers and identifies the potential gaps in that analysis that lead to the absence of African American workers' experiences in the most prevalent narratives. Part III provides historical framing for the disappearance of African American low-wage workers from the narrative. Starting with the exclusion of most African American workers from coverage by the Fair Labor Standards Act and other New Deal legislation, it briefly traces the inclusion of economic rights in the early civil rights agendas and the eventual decision to focus on social and political rights. Part IV discusses changes in the advocacy strategy for and by the low-wage workforce, particularly with the increasing importance of workers' centers that are typically focused on immigrant populations and aligned with the broader immigrant justice agenda. Part V argues that the criminalization of poverty has further distanced African American workers from our dialogue on workplace exploitation. Part VI draws from the black binary critique of critical race theory to argue that the low-wage worker movement exists in a Latino-White binary that does not consider the experiences of African American workers.

Finally, Part VII considers the impact of African American workers' absence from the low-wage worker paradigm on the experiences of those workers. It explores wage theft amongst African American low-wage workers and the ways in which black workers' absence from the workplace exploitation paradigm makes them increasingly susceptible to this economic abuse, yet unlikely to file claims against their employers. Finally, this Article considers whether the creation of a vulnerable undocumented immigrant paradigm for wage theft weakens African American workers' ability to bring successful wage theft claims.
I. DEFINING THE LOW-WAGE WORKFORCE

The nomenclature “low-wage work” is often associated with jobs that pay the minimum wage. The minimum wage, however, is only a starting point for understanding low-wage work, poverty, and the working poor. A more nuanced understanding of this term sheds light on the breadth of work experiences that would situate a worker within this space.

A. Low-Wage Work and Poverty

Government agency reports concerning poverty provide a starting point for determining what pay constitutes low-wage work. The 2010 U.S. Census reported that about 46.5 million people (15% of the population) lived below the poverty level. Of that number, 10.6 million people were among the working poor, another term often used synonymously with low-wage workers.

According to the Bureau of Labor Statistics, the “working poor” are those who worked or looked for work at least 27 weeks in a year, but whose incomes fell below the federally-defined poverty line. Definitions of the “poverty line,” however, may vary. The U.S. Cen-
sus, for example, issues poverty thresholds that vary depending on the number of adults and children living in the house. For example, according to the 2012 census, a family of four, including two children, with household earnings of $24,421 or less lives in poverty. The United States Department of Health and Human Services’ (“HHS”) poverty guidelines, used for determining eligibility for federal programs, are slightly lower. Under those guidelines, a family of four that earns $24,250 or less lives in poverty under the HHS guidelines. To further complicate matters, some programs that rely upon poverty guidelines to determine eligibility consider gross income while others consider net income.

The federally-defined poverty line, however, likely underestimates the number of persons living impoverished lives. Indeed, some have questioned the validity of the Census Bureau’s use of a formula designed in 1964 by the Social Security Administration that relies on the outdated assumption that the average family spends one third of their income on food. They argue that changing costs of housing and other necessities make the formula obsolete and incompatible

9. See id. The poverty thresholds are used largely for statistical purposes, such as estimating the number of Americans in poverty. See also Office of The Assistant Sec’y for Planning & Evaluation, U.S. DEP’T OF HEALTH & HUMAN SERV., 2015 POVERTY GUIDELINES (2015), http://aspe.hhs.gov/poverty/15poverty.cfm.
10. See Office of The Assistant Sec’y for Planning & Evaluation, supra note 9.
11. Id.
13. DAVID K. SHIPLER, THE WORKING POOR: INVISIBLE IN AMERICA 9 (2005). Shipler further explains that this reliance on a method based upon 60-year-old spending patterns results in the underestimation of the numbers of persons living in poverty. Id. Indeed, more accurate formulas, being tested by the Census Bureau and the National Academy of Sciences, would rely on actual costs of food, clothing, shelter, utilities, and the like. Under those calculations income would include benefits not currently counted, such as food stamps, subsidized housing, fuel assistance, and school lunches; living costs would include expenditures now ignored, such as child care, doctor’s bills, health insurance premiums, and Social Security payroll taxes.

Id. at 9-10.
with families' current economic realities. Perhaps in recognition of this concern, some scholars and advocates have defined low-wage work as that which pays 200% of the minimum wage. Still others have defined low-wage workers more expansively as those who work for hourly wages of less than $12/hour; that is midway between the $7.25 minimum wage and the $15 median wage.

As this discussion demonstrates, the definition of low-wage work can be somewhat amorphous. For my purposes, I conceive low-wage work as not only that which pays wages that meet the federal definition of poverty, but also wages that are insufficient to permit the worker to escape the trappings of poverty, such as poor housing, failing schools, lack of affordable childcare, and substandard medical care. While the sources discussed herein do not necessarily apply the same definition of low-wage wages, they all fit within this broad conception of low-wage pay.

B. Low-Wage Jobs

Another important data point for understanding low-wage workers is the types of jobs in which they are employed. The Economic Policy Initiative defines low-wage jobs as those paying at or below the wage at which a person working as a full-time worker would have to earn to live above the federally-defined poverty line. Others have defined low-wage work as jobs in which at least one-quarter of the workers make less than $10/hour.

Low-wage jobs are largely found in five job sectors: “(1) sales and related occupations; (2) food preparation and serving related occupations; (3) construction trades occupations; (4) production Occupations; and (5) service occupations.”

14. See id. at 9; see also WILLIAM P. QUIGLEY, ENDING POVERTY AS WE KNOW IT: GUARANTEING A RIGHT TO A JOB AT A LIVING WAGE 38-39 (2003) (arguing the official poverty line is unrealistic and providing examples of how much income is required for a family of four to meet its basic needs).


16. See id. at 147. Furthermore, Professor William Quigley has proposed the calculation for the poverty line be based upon a determination of the amount of money a person or family needs to become self-sufficient. QUIGLEY, supra note 14, at 43-51.


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tions; (3) building and grounds cleaning and maintenance occupations; (4) personal care and service occupations; and (5) farming, fishing, and forestry occupation.”

Low wages are particularly prevalent in food serving and preparation and related jobs, with nearly three quarters of workers earning a wage at or below the poverty line.

Limiting the definition to these jobs creates too narrow an understanding of the types of jobs that typify low-wage work. Professor Michael Selmi, for example, has criticized narrow definitions that equate low-wage work with poverty-level hourly wages. He argues for a broader definition that would include workers who earn above-poverty level wages, yet still live in poverty. Such a definition would include not only those who have come to be defined as the working poor, but also those whose incomes rise above state and government definitions of poverty, but whose lives are characterized by the conditions of poverty. Others similarly argue that low-wage work is defined not only by the wages earned and the industry in which one works, but on other vulnerabilities in a worker’s life. For example, one commentator characterized low-wage jobs as those that consist of a “lack of job security and the resultant rate of high turnover, few or no benefits, a lack of paid sick days, and quite often irregular or part-time scheduling.”

C. Low-Wage Workers: Beyond the Teenager

For some, the image of a low-wage worker is a teenager working for extra money in high school or college. This caricature, however, is misleading. More than half of workers earning $9 or less are 25

19. See id. For a more detailed accounting of the occupations and their percentages of low-wage workers, see Thiess, supra note 17, at 9.
20. Thiess, supra note 17, at 6.
22. Id. at 150-51.
23. Id.
years or older, while the proportion of teenagers has decreased from 28% to 17%. The low-wage workforce is also increasingly college-educated. The raw numbers of workers making poverty or near poverty-level wages provides additional data animating the expanse of this problem beyond the teen-aged caricature: according to a recent report by the Economic Policy Institute, 41.7 million workers earn less than $12 per hour. As such, the low-wage workforce includes persons raising families on substandard wages.

D. African American Low-Wage Worker Demographics

A review of African American low-wage worker demographics provides a more nuanced view of their workplace experiences, although this data has received comparatively little attention from the media, scholars, advocates, and policy groups. In recent years, advocates and scholars’ work reflects a national preoccupation with high rates of unemployment among African Americans. This focus was not without some justification. Between 1979 and 2011, the average rate of African American unemployment was 12.2%. During the same time period, the overall unemployment rate peaked at 10% and the white unemployment rate peaked at 8%. The African American unemployment epidemic reflected a lack of job opportunities, particular for unskilled low-wage labor in urban areas. The phenomenon was likely further exacerbated by discrimination in hiring in the low-wage labor market. Given these harsh realities, concern for the African American unemployment is reasonable.

A more cynical view of the focus on African American unemployment rather than on their workplace experiences, however, con-
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siders the alignment of the focus on unemployment with conservative narratives about the undeserving poor. High levels of unemployment may be twisted into support for the contention that poor African Americans find themselves in poverty as a result of a their own poor decisions or even a flawed cultural value system.\textsuperscript{33} Such narratives have been highly racialized since the Great Migration of African Americans from the farms of the rural south to urban centers in the north and the subsequent rise in unemployment when urban jobs dried up.\textsuperscript{34} This singular focus on unemployment, however, renders invisible the experiences of low-wage African American workers and makes difficult obtaining detailed information about them.\textsuperscript{35}

Information pieced together from various reports, prepared by government agencies, non-profit organizations, and academics, allows one to assemble a narrative of low-wage African American workers’ experiences. First, the poverty rate of African American workers is generally high. According to a 2013 report, 10.5% of African American male workers and 15.6% of African American female workers are in poverty.\textsuperscript{36} A 2012 report by the U.S. Bureau of Labor Statistics similarly found that 13.6% of African Americans in the labor force are considered to be the working poor.\textsuperscript{37} These numbers seem to increase significantly if one broadens the definition of “working poor.” According to the Economic Policy Institute, 5.9 million African Amer-

\begin{flushright}
\textsuperscript{33} For example, in a 2014 radio interview, Congressman Paul Ryan opined on the source of poverty in inner cities, stating:

We have got this tailspin of culture, in our inner cities in particular, of men not working and just generations of men not even thinking about working or learning the value of the culture of work, and there is a real culture problem here that just has to be dealt with. Wesley Lowery, \textit{Paul Ryan, Poverty, Dog Whistles, and Electoral Politics}, \textsc{Wash. Post} (Mar. 18, 2014), \url{https://www.washingtonpost.com/news/the-fix/wp/2014/03/18/paul-ryan-poverty-dog-whistles-and-racism/}.

\textsuperscript{34} See \textsc{Newman, supra} note 4, at 39–40; see also John A. Powell, \textit{Post-Racialism or Targeted Universalism}, 86 \textsc{Denv. U. L. Rev.} 785, 792 (2008) (discussing white resentment of programs that benefit non-Whites, based upon “a sense that whites that are playing by the rules are having things taken away from them and given to undeserving non-whites who do not play by the same rules”).

\textsuperscript{35} Various scholars point out that the working poor, as a general demographic, regardless of race, have received little attention and analysis. According to Katherine Newman: “they do not impinge upon the national conscience, they do not provoke political outrage as welfare recipients do; they are not represented by organized labor, and few public figures (save perhaps Jesse Jackson and Hugh Price) take the time to dramatize their problems; they are too tired to take to the streets to demand a larger part of the national pie.” See \textsc{Newman, supra} note 4, at xiii–xiv.

\textsuperscript{36} These numbers are in sharp contrast to the 5.6% of white male and 6.7% of white female workers living in poverty. See \textsc{Allegretto \& Pitts, supra} note 3, fig.8, at 8.

\textsuperscript{37} U.S. \textsc{Bureau of Labor Statistics, supra} note 7, at 4. The same report indicated that 6.2% of Whites, 4.9% of Asians, and 13.8% of Latinos are part of the working-poor. \textit{Id.}
\end{flushright}
icans (38% of all African American workers) make less than $12 per hour and 8.2 million African Americans (roughly 53% of all African American workers) make less than $15 per hour.\textsuperscript{38}

Second, while nearly equal percentages of African Americans and whites are employed as low-wage workers between the ages of 16 and 19,\textsuperscript{39} the numbers diverge significantly as the workers age. By the time workers are 25 to 35 years old, 42.1% of African American workers are in low-wage jobs, while only 27.7% of white workers are similarly employed.\textsuperscript{40} For workers over 35 years old, the percentage of African Americans in low-wage jobs drops to 29.2%, while the percentage of whites in similar jobs drops to 18.6%\textsuperscript{41}.

In addition, a recent report revealed important demographic and geographic details about African American workers. Between 2012 and 2016, 47.6% of African American low-wage workers were older than 35, 30.1% were between the ages of 25 and 35, and 22.3% were between the ages of 16 and 24.\textsuperscript{42} The report also shed light on the geographic variation in the prevalence of low-wage work among African Americans. It revealed that 58.6% of African American low-wage workers reside in the South, 17.2% in the Mid-West, 16.7% in the Northeast, and 7.5% in the West.\textsuperscript{43}

Furthermore, data concerning industries that employ African American low-wage workers reflects the racialization of low-wage workplaces.\textsuperscript{44} Out of the ten industries with the highest level of low-wage work, African Americans are most prevalent in the restaurant industry (75.7%) and the least prevalent in the Outpatient Health Care Services (40%).\textsuperscript{45} The prevalence of African Americans in the restaurant industry is further complicated by reports that the restau-


\textsuperscript{39} 89.3% of African American workers between the ages of 16 and 19 are low-wage and 90.9% of white workers are low-wage. Steven Pitts, Low-Wage Work in the Black Community in the Age of Inequality, in #BLACKWORKERSMATTER 29, 31 (2015), http://www.discountfoundation.org/sites/all/files/black_workers_matter.pdf [hereinafter Pitts, Low-Wage Work].

\textsuperscript{40} Id.

\textsuperscript{41} Id.

\textsuperscript{42} See id. at 33.

\textsuperscript{43} Id.


\textsuperscript{45} Pitts, Low-Wage Work, supra note 39, at 32.

2016]
rant industry has a system of de facto segregation in which African Americans are relegated to the lowest paid jobs in that industry.46

The intersectional experiences of African American women are also evident in their relative rates of participation in low-wage jobs. A higher percentage of African American women than men are low-wage workers: 58% of African American low-wage workers are female, while 41.9% are male.47

A recent report analyzing the experiences of African Americans in the retail industry illuminates how exploitation in low-wage jobs is racialized. The NAACP and D9mos found that while the demographic of African Americans employed in the retail industry is relatively similar to the retail workforce overall, African Americans are, nonetheless, more likely to earn poverty wages in that industry.48 Seventeen percent of African American retail workers live below the poverty line, compared to seven percent of White and thirteen percent of Latino retail workers.49 In addition, African Americans working in retail are more likely to be the sole breadwinners in their household.50 In other words, even within the same industry, low-wage workers fare worse than white workers. This difference in workplace experiences merits consideration by scholars that interrogate and theorize the exploitation of low-wage workers.

II. LOW-WAGE AFRICAN AMERICAN WORKERS’ ABSENCE FROM THE SCHOLARLY CONVERSATION

Much like advocates, scholars exploring the dynamics of low-wage worker exploitation have increasingly focused their analyses on

47. Thomas-Breifeld, supra note 46.
49. Id. at 14.
50. Id. at 12.
the intersection of workplace rights and immigrant justice. The profound vulnerability created by the collision of unstable immigration status and low-wage work creates heightened levels of wage theft and other violations of wage and hour statutes. That this dynamic has drawn significant attention from scholars and advocates is not surprising. Furthermore, many immigration and immigrant justice scholars have expanded their work to include an assessment of the challenges facing immigrant low-wage workers, particularly given the enactment of more stringent restrictions placed on employers to discourage the hiring of undocumented workers. A handful of scholars have also explored more broadly the exploitation of low-wage workers and have afforded little attention to the intersectional identities that might further complicate their experiences. Finally, in the only scholarly article that explicitly assesses workplace exploitation of African American workers, they are juxtaposed to Latino workers.

A review of scholarship concerning low-wage worker exploitation reveals a particularly narrow landscape that focuses heavily on the intersection of workplace law and immigrant justice. Much of the scholarship on low-wage worker exploitation can be organized into the following categories: (1) immigrant workers and the failure of labor and employment law to adequately protect them from workplace exploitation; (2) immigration relief for exploited workers; (3) the impact of agency coordination on exploited immigrant workers; and (4) cultural narratives and the exploitation of immigrant workers.

A. Low-Wage Workers and the Limitations of Labor and Employment Law

Scholars have explored and critiqued the failure of labor and employment law to protect undocumented low-wage workers. Professor


52. As Kim Bobo explains:

Because our nation has no rational immigration system providing a path to citizenship and no stronger worker protections for immigrants, many immigrants find themselves in vulnerable situations. They are desperate to work to support themselves and their families; at the same time they face enormous backlash from communities that are scapegoating the nation’s economic woes on immigrants (hardly a new approach in U.S. history), and they are terrified of being deported. This creates a context that makes it easy for employers to exploit undocumented workers.

Leticia Saucedo's early work identified, described, and problematized the experiences of the "Brown Collar" worker; that is, "a recent Latino immigrant (arriving in the United States within the past five years) who works in an occupation in which Latinos are concentrated or overrepresented." In *The Browning of the American Workplace*, Professor Saucedo examines the increasing segregation of recently immigrated Latinos into restructured low-wage industries in which "workers tak[e] on more work for the same or less pay than their predecessors." Saucedo explains that Brown Collar workplaces are typically undesirable and dangerous, and offer little opportunity for mobility. She further asserts that current Title VII legal frameworks are incapable of recognizing the discriminatory creation and sustainment of segregated Brown Collar workplaces, particularly where such workplaces lack a comparator for the purposes of establishing a prima facie case of discrimination. Professor Saucedo relies upon sociologist Lisa Catanzanite's longitudinal date analyses that demonstrate a positive correlation between wage depression, job segregation, and worsening workplace conditions, and argues that courts consider such data "as evidence of a causal link between the employer's recruitment practices, wage penalties, or worsening conditions, and the employer's intent."

Professor Saucedo expands her analysis of the Brown Collar workplace by critiquing the typical narratives that assume job segregation is based upon "network hiring, job structuring, targeting subservience, and avoiding native born workers," and offers a counternarrative that "employers take advantage of the social conditions that make Brown Collar workers subservient by setting workplace conditions and pay rates." In *The Employer Preference for the Subservient Worker and The Making of the Brown Collar Workplace*, Professor Saucedo problematizes the narrative that immigrant workers take jobs no one else wants by contending that employers are restructuring jobs to exploit a more vulnerable workforce and thus, creating jobs that are fundamentally different than those held by pred-

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54. *Id.* at 306–07.
55. See *id.* at 307, 315.
56. *Id.* at 322–24.
57. *Id.* at 310–11.
58. *Id.* at 318.
cessor employees. She then argues that Title VII, which prohibits job segregation that limits employees' opportunities, remains insufficient to address the discriminatory relegation of immigrant workers to Brown Collar jobs and advocates a change in the formal antidiscrimination doctrine to accommodate the Brown Collar worker context. This alternative framework, Professor Saucedo argues, would employ anti-subordination principles and Catanzanite's sociological theories that cognize practices aimed at targeting and exploiting vulnerable immigrant workers.

In her third article on the Brown Collar workplace, Professor Saucedo argues for the application of the mirror image to the "inexorable zero" standard articulated in *International Brotherhood of Teamsters v. United States*, that permits courts to infer discrimination where a protected group is entirely absent from a job or workplace. In *Addressing Segregation in the Brown Collar Workplace: Toward a Solution for the Inexorable 100%*, she proposes that courts be permitted to infer discrimination where a protected group comprises all of the workers in a job or workplace. Specifically, she proposes a burden-shifting framework (similar to that already employed in Title VII cases) that permits immigrant workers to establish a prima facie case where they constitute 100% of the workplace and additional anecdotal and statistical evidence. The employer could then respond by demonstrating a "legitimate explanation" response to those conditions. Professor Saucedo suggests that this framework would therefore broaden the remedial scheme available to brown collar workers to potentially include immigration remedies that would encourage workers to complain about exploitative workplaces.

In wrapping up her scholarship in this area, Professor Saucedo applies theories of discrimination to the Brown Collar workplace to further argue for the expansion of antidiscrimination law to encompass the exploitation of immigrant workers. In *Three Theories of Discrimination in the Brown Collar Workplace*, she applies structuralist,
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performance identity, and masculinities theories to the dynamics in
the Brown Collar workplace to conceptualize the discriminatory na-
ture of those jobs.68 Drawing from interviews of Las Vegas residential
construction workers conducted over a two-year period, Professor
Saucedo concludes that the gendered narratives surrounding work-
place conditions and workers' tendency to reify and solidify them are
critical to our understanding of brown collar workplace exploitation
and the discriminatory practices that create and sustain it.69 Moreover,
she argues that employers can reframe or disrupt these narratives
and foster anti-discriminatory decision-making by emphasizing and re-
warding different values and work performance.70

Similarly, Professor Ruben Garcia has written extensively at the
intersection of immigration and labor law and criticized the subordi-
nation of labor law protections to immigration enforcement. Professor
Garcia's analyses of the impact of Hoffman Plastic Compounds v.
N.L.R.B. on immigrant low-wage workers' ability to actively partici-
pate in workplace organizing are key examples of this work.71 In
Ghost Workers in an Interconnected World: Going Beyond the Dichot-
omies of Domestic Immigration and Labor Laws, Professor Garcia
considers the impact Hoffman had on immigrant worker organizing
and immigration reform.72 He questions the conflicting signals sent by
the Supreme Court to immigrant workers: they are employees under
the National Labor Relations Act, but they do not have the same
rights as citizens to remedy violations of their right to organize.73 Pro-
fessor Garcia revisits Hoffman in Ten Years After Hoffman Plastic
Compounds, Inc. v. N.L.R.B.: The Power of a Labor Law Symbol,
where he considers where advocates have succeeded in limiting the
case's application to employment statutes, but also calls for more em-
pirical work to determine the case's impact of immigrant worker
organizing.74

68. Leticia M. Saucedo, Three Theories of Discrimination in the Brown Collar Workplace, 1
U CHI. LEGAL F. 345, 346 (2009) [hereinafter Saucedo, Three Theories].
69. Id. at 348.
70. Id. at 376–77. Professor Saucedo draws heavily from the work of organizational theo-
rists Robin J. Ely and Deborah Myerson, who theorized how "organizations can change their
process to emphasize how alternative identities are important to the life of an organization" Id.
at 375; see also Robin J. Ely & Deborah Meyerson, Unmasking Manly Men: The Organizational
Reconstruction of Men's Identity, 3 ACADEMIC MGMT. PROC. 1 (2006).
71. Saucedo, Three Theories, supra note 68, at 348.
72. Ruben J. Garcia, Ghost Workers in an Interconnected World: Going Beyond the Dichot-
73. Id. at 737.
74. Id.
Jayesh Rathod broadens the discussion of immigrant low-wage work through his multi-article project that uncovers and explores the intersection of immigrant labor and the Occupation Safety and Health regime.\(^75\) In *Immigrant Labor and the Occupational Safety and Health Regime*, Professor Rathod unearths critical trends in immigrant workers' injuries and fatalities in the workplace and considers challenges and limitations to their protection by the federal Occupational Safety and Health Administration.\(^76\) Professor Rathod, in his follow-up piece, encourages scholars, lawmakers, and advocates to consider a more nuanced understanding of the "chilling effect"\(^77\) of immigration status on immigrant workers' behavior.\(^78\) Professor Rathod employs a theoretical shift that challenges the assumption that the only determining factor influencing immigrant worker decision-making is immigration status and proffers that various other intersecting factors impact immigrants' willingness and ability to pursue their workplace rights.\(^79\)

B. Immigration Relief to Protect Low-Wage Workers

A review of the scholarship also reveals Professor Saucedo's second body of work that interrogates the availability of immigration relief to exploited immigrant workers and proposes the U-visa as a mechanism to both provide immigrant workers leverage against the rights denied them in *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*.\(^80\)

\(^75\) Id.


\(^77\) The "chilling effect" here refers to the belief that "workers will be reluctant to complain about substandard labor conditions, lest they draw any government attention to the fact of their unauthorized employment or undocumented status." Jayesh M. Rathod, *Beyond the "Chilling Effect": Immigrant Worker Behavior and the Regulation of Occupational Safety and Health*, 14 Emp. Rts. & Emp. Pol'y J. 267, 272 (2010) [hereinafter Rathod, *Beyond the Chilling Effect*].

\(^78\) Id.

\(^79\) Id.

\(^80\) In 2002, the Supreme Court's decision in *Hoffman Plastic Compounds, Inc.* limited the remedies, including back pay, available to undocumented workers under the National Labor Relations Board. See Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137, 150–51 (2002). Subsequently, however, courts have limited its applicability to other types of employment claims. For example, courts have maintained that back pay remains a valid remedy where undocumented workers seek to recover pay for hours worked pursuant to the FLSA. See Keith Cunningham-Parmeter, *Redefining the Rights of Undocumented Workers*, 58 Am. U. L. Rev. 1361, 1370 (2009) ("Nearly every court to rule on the issue has refused to extend the back pay limitation in NLRA cases to minimum wage and overtime protections."); see, e.g., Madeira v. Affordable Hous. Found., Inc., 469 F.3d 219, 254 (2d Cir. 2006); Galdames v. N. & D. Inv. Corp., 2008 WL 4372889, at *7 (S.D. Fla. Sept. 24, 2006); Cortez v. Medina's Landscaping, 2002 WL 31175471, at *1 (N.D. Ill. Sept. 30, 2002).
and mitigate the unintended consequences for workers of the Immigration and Nationality Act's employment sanctions provisions. In *A New U: Organizing Workers and Protecting Immigrant Workers*, she explores the impact of *Hoffman*, the increase in ICE Raids focused on immigrant dominant industries, immigrant and regulatory bases, and proposed local enforcement of immigration laws on immigrant community fears and the silencing of exploited workers. Professor Saucedo argues that the U-visa, which already contemplates the inclusion of workplace crimes, be more regularly sought by and awarded to the victims of workplace exploitation and related crimes. She contends that the availability of immigration relief counteracts the chilling effect of *Hoffman* and other legal developments that have heightened immigrant communities fears, as well as provides a path toward civic participation through citizenship that could yield a more robust immigrant civil rights movement. Professor Saucedo also explores employment cases that involved U-visa enumerated crimes — such as trafficking, involuntary servitude, sex crimes, and obstruction of justice — for which U-visa relief would have been appropriate, to bolster her argument for its use as part of the make-whole remedial scheme in employment law. Moreover, she makes an argument for “operation-alizing the U visa” through its use as a “rights-conferring device” that inures to immigrant workers. Finally, Professor Saucedo acknowledges the deficiencies in the U-visa provisions and proposes restructuring the relief to provide class-wide rather than individual relief, to provide a private right of action that would “empower crime victims to seek remedies” not provided by the criminal justice system, employment law, or tort law.

Professor Saucedo furthers this scholarly inquiry in *Immigration Enforcement Versus Employment Law Enforcement: The Case for In-

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84. Id. at 893–905.
85. Id. at 921–35.
86. Id. at 936.
87. Id. at 951.
tegrated Protections in the Workplace. Here, Professor Saucedo con-
siders the unintended consequences of the employer sanctions
provisions of the Immigration and Nationality Act ("INA") and pro-
poses ways the U-visa provision can mitigate them.88 She proffers
that the amendments to the INA have resulted in heightened immi-
gration enforcement at workplaces, without the consistent imposition
of fines against employers contemplated by the statute, resulting in
the increased vulnerability and exploitation of workers.89 She then
considers the applicability of the U-visa provision to workplace
crimes, focusing on indications in the legislative history that Congress
intended the provision to be a "a tool for law enforcement," "humani-
tarian relief those who are helpful to law enforcement," and "protec-
tion for workers who suffer crimes in the workplace."90 Finally,
Professor Saucedo proposes adjustments to the U-visa scheme that
would better provide exploited workers access to the remedy, and
therefore, better able to protect themselves from workplace
exploitation.91

C. The Impact of Interagency Coordination on Immigrant Workers

Stephen Lee’s scholarly contribution to the examination of low-
wage worker exploitation also sits solidly at the intersection of immi-
grant and employment law. Specifically, his work critiques the in-
crease in interagency immigration coordination and its impact on
workers. In Monitoring Immigration Enforcement, Professor Lee
tackles the disruption of agency coordination between Immigration
and Customs Enforcement ("ICE") and the DOL and proposes the
expansion of the DOL’s mandate to include the monitoring of immi-
gration enforcement.92 Concerned with the labor consequences of im-
migration enforcement and the priority that ICE’s mandate has taken

88. See Saucedo, Immigration Enforcement, supra note 82, at 303.
89. Id. at 306–10.
90. Id. at 313.
91. Id. at 317–23. Specifically, Professor Saucedo advocates for: (1) the creation of a paral-
lel to the T visa status protection that protects them from prosecution for claims related to their
workplace exploitation; (2) the amendment of the Social Security Act to exclude the false use of
social security numbers for work from criminal sanctions; (3) the increase of the 10,000 per year
cap on the number of U visas available each year; (4) the explicit inclusion of work-related
 crimes in the U visa scheme; (5) the expansion of workplace related crimes to include wage and
hour violations, discrimination, and collective bargaining violations; and (6) the definition of
certain workplace-related crimes as per se evidence of mental and physical abuse in the regula-
tions and/or the redefinition of "victim" in the provision. Id.
[hereinafter Lee, Monitoring Immigration].
over the DOL's mandate and the limits of the U-visa as a remedy that would bolster worker's ability to bring claims against their employers, Professor Lee argues for the creation of a monitoring framework by which the DOL would monitor immigration enforcement decisions to "ensure that immigration officials account for the labor consequences of their enforcement decision."93 Drawing insights from administrative law scholars, he considers how interagency cooperation — beyond Memoranda of Understanding that have often had limited efficacy — could decrease the likelihood that ICE employment enforcement activities under IRCA would suppress labor rights.94

In Workplace Enforcement Workarounds, Professor Lee exposes the impact of the Secured Communities Program ("S-Comm") on the exploited immigrant workers and argues that S-Comm creates a workaround whereby workers arrested for asserting their employment rights are subject to deportation, even when the prosecutor drops the charges.95 Put simply, Professor Lee contends that the Executive's workplace enforcement policy is undermined by the requirement that local law enforcement share immigration-related information with ICE on persons they arrest. He proffers that given the proliferation of the S-Comm program, employers are circumventing modern workplace enforcement policy. That is, "[t]he police enable employers to achieve the prohibited outcome (suppressing labor dissent) by acting as a workaround — an alternative path by which employers can achieve the otherwise prohibited outcome."96 Thus, while current Executive actions, including a Memorandum of Understanding between the ICE and DOL prohibiting the former from pursuing the removal of workers where a DOL investigation exists, employers are simply reporting workers seeking to enforce their substantive rights to the police who arrest the workers and report them to ICE.97 In order to address this phenomenon, Professor Lee proposes that the Executive amend the MOA to prohibit the police from responding to tips where the circumstances signal the existence of an ongoing work dispute or prohibit the police from conducting their immigration-related duties where labor-related investigations were underway.98 He also pro-

93. Id. at 1094.
94. Id. at 1120–30.
96. Id. at 561.
97. Id.
98. Id. at 572.
poses a back-end correction where the Executive could require ICE to exercise prosecutorial discretion to cease removal proceedings for persons involved in a workplace dispute.\footnote{99. \textit{Id.}}

In \textit{Policing Wage Theft in the Day Labor Market}, Professor Lee’s scholarship shifts its focus to the undocumented immigrant day laborer population and local efforts to criminalize wage theft.\footnote{100. Stephen Lee, \textit{Policing Wage Theft in the Day Labor Market}, 4 U.C. IRVINE L. REV. 655, 655–58 (2014) [hereinafter Lee, \textit{Policing Wage Theft}].} Professor Lee identifies the tension between involving the criminal justice system in the protection of workers’ rights and that same system’s responsibility to report unauthorized workers.\footnote{101. Id.}

D. Cultural Narratives and the Immigrant Worker Experience

Professor Saucedo’s third body of work addresses the role of cultural narratives in the workplace exploitation of Latino immigrant workers. In \textit{Masculinity Narratives and Latino Immigrant Workers: A Case Study of the Las Vegas Residential Construction Trades}, Professor Saucedo identifies the changes in the construction industry that have coincided with the “Browning” of the workplace — including independent contractor arrangements that deny immigrant workers certain wage and hour protections, the movement toward piece rate wages that deny workers overtime compensation, and the deterioration of workplace safety conditions — and considers the impact of masculinity narratives imposed upon and adopted by Latino immigrant workers.\footnote{102. Leticia M. Saucedo & Maria Cristina Morales, \textit{Masculinities Narratives and Latino Immigrant Workers: A Case Study of the Las Vegas Residential Construction Trades}, 33 HARV. J.L. & GENDER 625, 629–34 (2010) [hereinafter Saucedo & Morales, \textit{Masculinities Narratives}].} Relying upon masculinity theory, Professor Saucedo argues that Latino immigrant workers in the construction industry manifest the broader “Blue-Collar” hypermasculinity narrative, the entrepreneurial masculinity narrative, as well as what she terms “Brown-Collar” worker masculinities.\footnote{103. Id. at 637–41.} According to Professor Saucedo, her interviews of Latino construction workers unearthed four narratives: (1) the narrative that Brown-Collar work is labor no one else will do; (2) the hypermasculine narrative centered on the craft, skill, and toughness required in their jobs; (3) the entrepreneurial “businessmen-in-the-making” narrative; and the (4) the breadwinner and brave border-crossing to secure employment narra-
Professor Saucedo proffers that each of these narratives explains or gives value to the deteriorating realities of the construction work and helps explain why workers do not complain about their work conditions.105

In *Voices Without Law: The Border Crossing Stories and Workplace Attitudes of Immigrants*, Professor Saucedo and Professor Maria Cristina Morales track the replication of immigrant workers' border crossing narratives in worker's discussions of their workplace experiences.106 Drawing from Saucedo's prior work on masculinity narratives, Professors Saucedo and Morales consider four narratives: Endurance, Persistence, Family Provider, and Family Order. They contend that each of these narratives pervade not just worker's understandings of their border-crossing experiences, but also appear central to how they describe and process their challenges in the workplace.107 Furthermore, they explore a corollary narrative – the worker as a non-rights bearer – within the workplace and its reliance on endurance and necessity that mimic the masculinity narratives.108 Finally, Professors Saucedo and Morales consider the implications of these narratives for immigration and employment policy.

Professor Saucedo closes the loop on the role of masculinity narratives in shaping immigrant workers' workplace experiences in *Anglo Views of Mexican Labor: Shaping the Law of Temporary Work through Masculinity Narratives*.109 Here, she explores the racialization of immigrant workers through masculinity narratives and the reinforcement of these narratives in labor, employment and immigration laws.110

E. Comparing Latino and African American Workers

Professors Jennifer Gordon and R.A. Lendhardt's work juxtaposing the low-wage workplace experiences of Latino and African American workers is an outlier in the literature. In *Rethinking Work and Citizenship*, Gordon and Lendhardt consider the conflict between La-

104. *Id.* at 642–50.
105. *Id.*
107. *Id.*
108. *Id.*
110. *Id.*
tino immigrant and African American workers through the lens of citizenship or belonging and its role in shaping their respective workplace experiences.\textsuperscript{111} Under their theory, “work is a pathway to belonging, but its direction turns very much on who is traveling it at a given moment in time.”\textsuperscript{112} Gordon and Lenhardt proffer that African American workers do not view low-wage work as a pathway to respect and full citizenship, particularly given that low-wage jobs are increasingly undesirable,\textsuperscript{113} while Latino immigrant workers consider employment a pathway to acceptance in the United States and a source of financial stability that improves their standing or position in their home countries.\textsuperscript{114} They argue that these differing perspectives on works’ value and relationship to full citizenship yield very different workplace experiences and expectations that should inform our understanding of the racial dynamics of low-wage work.\textsuperscript{115}

The scholarship discussed herein is not exhaustive.\textsuperscript{116} Indeed, a review of all of the scholarly work on low-wage worker exploitation is neither feasible nor useful for my purposes here. This review, however, provides a sense of the gap in the literature that fails to provide substantial consideration to the nuanced experiences of low-wage African American workers and their vulnerability to workplace exploitation. Scholars have produced rich and important analyses of the intersectional experiences of immigrant Latino workers. Even Gordon and Lenhardt’s work, which provides important consideration and analysis of the ways in which African American workers’ historical and current circumstances animate their understanding of work and its relationship to citizenship, presents a comparative lens that considers African Americans’ experiences in contrast with and comparison to immigrant Latino’s experiences.\textsuperscript{117} Accordingly, to the ex-

\textsuperscript{112} Id. at 1199.
\textsuperscript{113} Gordon and Lenhardt further explain, “[e]specially for Blacks who have not been able to escape the low-wage context, work has not delivered on its citizenship promises. The low-wage workplace is still characterized by segregation, hazardous work conditions, and few opportunities for advancement.” Id. at 1209–10.
\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{117} See, e.g., Gordon & Lendhardt, \textit{supra} note 111, at 1220–29.
tent the African American low wage workers' experiences are engaged in the literature, they are juxtaposed with the Latino immigrant experience.118

This article, therefore, begins to fill a gap in the literature by adding African American workers back into the narrative of low-wage worker exploitation. To further this end, the following section considers the historical and structural dynamics that have contributed to or exacerbated the invisibility of African American workers from both scholarship and advocacy.

III. HISTORICAL FRAMING – LOW-WAGE WORKERS AND THE CIVIL RIGHTS AGENDA

What I have thus-far characterized as the relative invisibility of African American low-wage workers from the low-wage worker narrative is most effectively understood within a historical framing that helps explain this phenomena.119 African American low-wage workers' experiences cannot be divorced from the vestiges of slavery and segregation within the workforce. As Kim Bobo reminds us: "[s]laves were given the messy jobs, the behind-the-scenes jobs, the hidden jobs, the backbreaking jobs. Despite some changes in who occupies various jobs, these segregated roles still exist."120 While the following discussion stops short of tracing the roots of low-wage work in slavery, that earliest reality of wage-less work haunts our understanding of low-wage workers today.

The historical exclusion of African Americans from the low-wage worker paradigm can be traced back to the New Deal.121 When the Fair Labor Standards Act ("FLSA") was enacted in 1938, agricultural and domestic workers — largely African Americans at the time —
were specifically excluded from its protections. Indeed, as Professor Juan Perea explained, the legislative history of FLSA provides a revealing lens into the explicit racial underpinnings of the exclusion of agricultural and domestic workers from the statute. For example, Representative J. Mark Wilcox of Florida expressed southern whites’ concerns about the breadth of coverage originally proposed in the FLSA:

Then there is another matter of great importance in the South, and that is the problem of our Negro labor. There has always been a difference in the wage scale of white and colored labor. So long as Florida people are to handle the matter, this delicate and perplexing problem can be adjusted; but the Federal government knows no color line and of necessity it cannot make any distinction between the races. We may rest assured, therefore, that...it will prescribe the same wage for the Negro that it prescribes for the white man...[T]hose of us who know the true situation know that it just will not work in the South. You cannot put the Negro and the white man on the same basis and get away with it. Not only would such a situation result in grave social and racial conflicts but it would also result in throwing the Negro out of employment and in making him a public charge. There just is not any sense in intensifying this racial problem in the South, and this bill cannot help but produce such a result... In other words, the South could and would not countenance the provision of legal rights to African American low-wage workers that would grant them the same opportunities for economic advancement as white workers. The federal statute, of course, could not explicitly deny coverage to African American workers. Rather, in order to

122. Id. at 104. Indeed, the exclusion of African American workers also extended to the Social Security Act. Professor John A. Powell explained that universal programs intended to benefit all Americans were based on non-universal assumptions that purposefully excluded African Americans. Accordingly, “... because of exclusions of agricultural and domestic workers, exclusions built-in to appease Southern resistance to the [Social Security] Act, 65% of African Americans were denied its protections.” Powell, supra note 34, at 789–90 (citing IRA KATZ NELSON, WHEN AFFIRMATIVE ACTION WAS WHITE (2005)).
placate concerns like those articulated by Representative Wilcox, the statute Congress adopted carved out exceptions for jobs largely held by African Americans. Later iterations of the statute similarly excluded jobs traditionally held by African Americans, such as home healthcare workers. Indeed, home healthcare workers only recently received statutory rights under the wage and hour laws.

In the midst of the exclusion of African American low-wage workers implicit exclusion from the FLSA and other New Deal statutes, the Civil Rights Division of the Department of Justice, and to a lesser extent, the NAACP's legal division, were engaged in litigation that prioritized the economic interests of African American workers. Professor Risa Goluboff's work on the pursuit of economic justice through civil rights advocacy is particularly instructive here.

The invisibility of African American low-wage workers is a by-product of the civil rights movement's historical shift in focus from workers' rights to a political and education rights. In the 1940s and 1950s, economic rights were a critical component of efforts to secure civil rights. As World War II came to an end, however, the legal advocates engaged in civil rights litigation largely prioritized political rights and anti-segregation efforts over workplace justice.

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126. See generally The Fair Labor Standards Act of 1938, 29 U.S.C. § 202 (1938). The National Labor Relations Act of 1935 that protected workers' right to organize in unions, likewise excluded agricultural and domestic workers. As Professor Risa Goluboff explains: "[o]n the one hand the NLRA did not guarantee labor rights workers equally. Like many of the New Deals economic protections, it excluded agricultural and domestic workers. Many of the workers were African American, so their concession marked a concession to southern white congressmen. The image of the workers entitled to such right was largely that of a white man supporting his wife and children. The work in which such rights would be protected was, by legislative fiat, industrial work." See GOLUBOFF, THE LOST PROMISE, supra note 119, at 29.

127. See 29 C.F.R. § 552.2 (2015) ("In 1974, Congress extended the protections of the Fair Labor Standards Act (FLSA or the Act) to 'domestic service' employees, but it exempted from the Act's minimum wage and overtime provisions domestic service employees who provide 'companionship services' to elderly people or people with illnesses, injuries or disabilities who require assistance in caring for themselves . . . .").

128. See id. § 552.3.


130. See generally Goluboff, The Thirteenth Amendment, supra note 125; Goluboff, Let Economic Equality Take Care of Itself, supra note 129; GOLUBOFF, THE LOST PROMISE, supra note 119.

131. See GOLUBOFF, THE LOST PROMISE, supra note 119, at 42.

132. Id.
Professor Goluboff recounts the Civil Rights Section’s pursuit of claims based upon the Thirteenth Amendment’s prohibition of peonage and involuntary servitude during the 1930s and 1940s. As Professor Goluboff aptly recognizes, “[t]he agricultural and domestic workers excluded from the New Deal legislation were precisely the workers the Department of Justice attempted to protect through the Thirteenth Amendment.”

The move away from a debt-based peonage to involuntary servitude was a critical step toward protecting African American workers and “Congress, the NAACP, social scientists, and African American complaints . . . increasingly began to emphasize the social and economic conditions of work in understandings of involuntary servitude.” Indeed, agricultural workers began to understand their rights to involve not only freedom from violent coercion in the workplace, but also their access to amenities they were routinely denied.

Professor Goluboff also posits that the legal unit of the NAACP, the organization that led the legal advocacy for the civil rights movement, made a concerted decision to move away from pursuing economic rights in favor of education and political rights after World War II. For example, she points to the organization’s representation in the early 1940’s of shipyard workers who were terminated for refusing to pay dues to a discriminatory union as evidence of its early commitment to advancing workers’ rights and contends that a subsequent shift away from such cases occurred in the subsequent Brown v. Board of Education era. Advances in economic justice were typically seen as incidental to the organization’s legal and political campaign to challenge Jim Crow.

Professor Goluboff asserts that African American workers’ rights that were displaced from the civil rights doctrine led to the pursuit of “desegregation isolated from material inequality,” and led to lawyers’

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133. Professor Goluboff’s analysis traces the movement’s Supreme Court jurisprudence during this time from a reliance on contractual rights to the development of our current understanding of civil rights. Goluboff, The Thirteenth Amendment, supra note 125, at 1648–54 (2001).
134. Id. at 1678.
135. Id. at 1659–60.
136. Id. at 1659.
138. Id. at 1394–95.
139. Id. at 1411. According to Professor Goluboff, even litigation on behalf of African American teachers who received lower wages than white teachers was considered part of the NAACP’s work on educational opportunity, not economic justice. Id. at 1412.
focus on racial hierarchy rather than economic oppression. She ultimately queries: "[h]ad the paradigm-shifting civil rights cases come in the context of labor, perhaps scholars would ask more about the economic progress of African Americans." The invisibility of African American low-wage workers, therefore, may be inextricably tied to a civil rights agenda that, over time, became much-less concerned with a focus on improving the economic realities of its impoverished communities and instead applied what might be considered a "trickle down" theory of civil rights advancement. The current challenges faced by low-wage workers evidence the limited efficacy of this approach.

IV. CHANGING DYNAMICS IN WORKER ADVOCACY: WORKER CENTERS

Historically, union organizing provided a voice and advocacy for low-wage workers. Recent years, however, have witnessed a significant decrease in the presence of unions in low-wage worker industries. The industrial revolution that drew African American workers to northern cities for job opportunities and the worker rights and protections unavailable in the agrarian South came to an end in approximately 1960. In subsequent years, the closure of those fac-

140. Id. at 1485-86.
141. Id. at 1484-85.
144. See Gordon & Lenhardt, supra note 111, at 1208 (“Between 1915 and 1960, the push of economic difficulties in the South and the pull of jobs in the North led approximately five million blacks to leave for cities such as New York, Chicago, and Detroit.”); STEVEN SRENTNY, AFTER CIVIL RIGHTS 26 (2014) (“Between 1967 and 1987, Philadelphia, Chicago, Detroit, and New
tories left many workers unemployed, underemployed, or employed in industries with little or no union participation.\textsuperscript{145} Today, the industries with the highest number of low-wage workers\textsuperscript{146} are also those with minimal unionization.\textsuperscript{147} Indeed, the restaurant industry, which has comparatively low levels of unionization, now employs 9\% of the U.S. workforce.\textsuperscript{148} The influx of immigrant low-wage workers, whose participation in unions has increased, yet remains low, has also changed the dynamics of worker organizing.\textsuperscript{149} Despite their relatively low numbers in union membership, immigrant workers, often aligned with immigrant justice advocates, have "been engaged in many of the leading unionization campaigns in recent years."\textsuperscript{150}

York City all lost between 51\% and 64\% of their manufacturing jobs."\textsuperscript{145}). See generally ISABEL WILKERSON, THE WARMTH OF OTHER SUNS (2010) (describing the migration of black citizens from the South to northern and western cities).


During the last quarter of the 20th century, almost all the factories and foundries were shuttered, and with them disappeared thousands of manufacturing jobs that had once lifted workers, even those without high school degrees into the middle class or to the cusp of it. In their place have come thousands of service-sector jobs: at the aquarium and Imax theatre built to lure tourists and at hotels, nursing homes, big-box stores, brew pubs, fast-food restaurants, beauty salons and hospitals.


\textsuperscript{146} See supra Part I.B.

\textsuperscript{147} See Fine, Entering a New Stage, supra note 143 (describing the service economy comprised of low-end construction, meatpacking, light industry and the garment industry as largely nonunion.). The reduction in union jobs is particularly troubling for women, African American, and Hispanic workers. Indeed, a 2003 Bureau of Labor Statistics survey "found that unionized women earn 33\% more than nonunion women on average, African American union members earn 35\% more, and unionized Hispanic workers earn 51\% more." STEVEN GREENHOUSE, THE BIG SQUEEZE: TOUGH TIMES FOR THE AMERICAN WORKER 242 (2008) (citing U.S. BUREAU OF LABOR STATISTICS, UNION MEMBERS IN 2003, (Jan. 21, 2004)) [hereinafter GREENHOUSE, BIG SQUEEZE].

\textsuperscript{148} STEVEN SKRENTNY, AFTER CIVIL RIGHTS: RACIAL REALISM IN THE NEW AMERICAN WORKPLACE 26 (2014).

\textsuperscript{149} In 2002, the Supreme Court limited the remedies, including back pay, available to undocumented immigrants for violations of the National Labor Relations Act, and therefore complicated efforts to effectively organize immigrant workers. See Hoffman Plastic Compounds v. NLRB, 535 U.S. 137 (2002).

\textsuperscript{150} STEPHEN PITTS, UC BERK. CTR. FOR LABOR RESEARCH & EDUC., ORGANIZE. . . TO IMPROVE THE QUALITY OF JOBS IN THE BLACK COMMUNITY: A REPORT ON JOBS AND ACTIVISM IN THE AFRICAN AMERICAN COMMUNITY 8 (2004), http://laborcenter.berkeley.edu/blackworkers/organize_blackworkers04.pdf [hereinafter PITTS, ORGANIZE].
In the wake of the changes, worker centers have become increasingly important spaces for worker advocacy, including, but not limited to pursuing lost wages from exploitative employers. Worker centers are “community based organizations that engage in a combination of service, advocacy, and organizing to provide support to low-wage workers.” These centers often provide a collaborative space for advocates, people of faith, unions, and social agencies to support workers who are not in unions. According to Kim Bobo, worker centers “have sprung forth rapidly, in large part due to the national epidemic of wage theft, the relative weakness of unions in society today, and the failure of the Department of Labor to protect workers.” Worker centers typically tackle workplace exploitation through a variety of tactics, including: (1) educating workers about their rights; (2) confronting employers who have stolen wages, (3) filing complaints with state and federal agencies and holding those agencies accountable for investigating and pursuing workers’ claims; (4) encouraging workers to organize unions; (5) challenging employment sectors that have rampant wage theft; (6) advocating for pro-worker legislation; (7) engaging allies to advocate with workers; and (8) creating worker cooperatives. Worker centers are often the space in which workers experiencing wage theft and other workplace exploitation first learn about their rights and receive encouragement and support in recovering lost wages. The organizing at the community level is critically important, whether a case proceeds to litigation or is resolved through letter-writing or other community advocacy. In the event an employer is unwilling to respond to a worker’s initial demand to recover wages, the worker center may engage in claims-making with the local courts or administrative agencies, or refer the case to counsel. For those claims that are low in monetary value and likely to proceed in small claims
Rendered Invisible
court, referring workers to pro bono counsel to represent them is particularly important.157

At present, worker centers largely serve immigrant communities. Indeed, “immigrant workers have been in the forefront of the creation of worker centers . . .”158 The connection between the immigrant narrative and the workplace exploitation narrative has been a source of strength for worker centers: “[b]y weaving low-wage immigrant workers’ stories into a collective narrative about work in America, and connecting these stories to statistics that demonstrate the shockingly widespread nature of workplace violations, worker centers have successfully cast workers’ struggles in moral terms.”159 These moral terms have fostered successful efforts to obtain the foundation funding upon which workers’ centers depend.160

The largest number of worker centers work with day laborers and are affiliated with the National Day Labor Organizing Network.161 Given that the day laborer workforce is nearly entirely comprised of male Latino immigrants,162 its centers’ focuses are decidedly focused on that subset of the low-wage workforce.163

Few centers, however, serve primarily African American workers or even immigrants and African American workers.164 Worker advocates, however, in several metropolitan areas are working to develop a network of African American workers’ centers.165 These efforts, however, have developed slowly and have experienced various challenges, particularly concerning access to funding.166 Given that worker centers, unlike unions, typically do not charge their members significant membership dues or fees, they rely upon the support of founda-

157. See Jessica K. Steinberg, Demand Side Reform in the Poor People’s Court, 47 CONN. L. REV. 3 (2015) (discussing the difficulty of representation for low-income individuals in small claims and other courts).
158. Pitts, Organize, supra note 150, at 8.
159. Fine, Organizing Communities, supra note 151.
160. Id.
161. See Bobo, supra note 52, at 93.
163. Fine, Organizing Communities, supra note 151.
164. Id.
166. Thomas-Breitfeld, supra note 46, at 7, 9 (“[V]ery little funding is directed specifically at race-conscious efforts to organize black workers.”).
Labor policy specialist Steven Pitts has, in fact, raised concerns about the “very visible allocation of resources” by unions and foundations to immigrant worker centers, to the relative exclusion of African American communities.

In an effort to make an appeal to foundations, some advocates involved in organizing African American workers have distanced themselves from a racial or African American narrative due to concerns that such a focus makes some foundations uncomfortable. Instead they use the terms “people of color” and “low-wage” to avoid political backlash for engaging in identity politics. Advocates also expressed concern that the same rules may not apply to other racial minorities engaging in worker organization as “organizing focused on other constituencies — such as Asian and Latino communities — doesn’t face the same challenge to water down its messaging about the particular barriers faced by those specific identity groups.”

As a result of the dynamics described above, the emergence of worker centers as critical spaces for advocacy has contributed to the invisibility of African American low-wage workers. The prevalence of work that links immigrant justice advocacy with worker advocacy has contributed to a limited narrative of workplace exploitation. Worker center funders’ discomfort with a racialized narrative of workplace exploitation has created significant challenges to advocates efforts to organize African American workers.

V. AFRICAN AMERICAN WORKERS RENDERED INVISIBLE BY NARRATIVES ARISING FROM THE DEGRADATION OF THE WAR ON POVERTY AND THE CRIMINALIZATION OF POVERTY

African American workers are largely disconnected from the worker exploitation advocacy that aligns workplace rights very closely with immigrant justice movements. Indeed, the exploited immigrant

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167. According to Professor Janice Fine, “Although there are exceptions to the rule, the vast majority of worker centers do not view membership dues as a central component of their budgets or as a major strategy for achieving greater financial self-sufficiency.” JANICE FINE, WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM 221 (2006) [hereinafter FINE, WORKER CENTERS]; Fine, Organizing Communities, supra note 151, at 17 (noting that Fine acknowledges that immigrant centers receive a majority of their funding from foundations).
168. PITTS, ORGANIZE, supra note 150, at 8.
170. Id. at 16.
171. Id.
low-wage worker narrative often relies more heavily on an immigrant justice framing than the low-wage worker framing; that is, the source of the worker’s exploitation is the lack of immigration status, not poverty.

Moreover, Professor Saucedo’s work on the Brown Collar workforce and the immigrant Latino worker narrative reveals that the immigrant worker narratives center around a proclivity for hard work without complaining, a willingness to do jobs citizens are unwilling to do, and what she characterizes as the embodiment of “the traits of risk, ambition, and ultimate reward, which are inherent in entrepreneurs.”

African American low-wage workers, however, are more likely to be tied to critical narratives concerning poverty. In recent years, a change in our country’s narrative and rhetoric concerning poverty has manifested. Specifically, the poor have been increasingly characterized as the undeserving who are unwilling to work and aspects of their lives have been simultaneously rendered criminal.

The “undeserving poor” narrative contends “that poverty is caused not by low wages or lack of jobs and education but by the bad attitudes and faulty lifestyles of the poor.” As one commentator noted:

Picking up on this theory, pundits and politicians have bemoaned the character failings and bad habits of the poor for at least the past 50 years. In their view, the poor are shiftless, irresponsible, and prone to addiction. They have too many children and fail to get married. So if they suffer from grievous material deprivation, if they run out of money between paychecks, if they do not always have food on their tables – then they have no one to blame but themselves.

This narrative, nearly always associated with the African American poor, has been difficult to eliminate from popular culture and has been detrimental to efforts to focus attention on the experiences of African American low-wage workers.

Simultaneously, images of poverty have become increasingly racialized. While the majority of persons living in poverty are

172. See Saucedo & Morales, Masculinities Narratives, supra note 102, at 635.
175. Id.
white,\textsuperscript{176} the image of poverty is decidedly black.\textsuperscript{177} Poverty has become disassociated from images of rural America — despite the reality that most impoverished persons live in rural communities — and distinctly tied to the media-driven images of black joblessness in urban city centers.\textsuperscript{178} This racialization of the poverty narrative has driven the characterization of those in poverty as undeserving.

Media representations of welfare and public opinion concerning the recipients of welfare also reflect deeply racialized understandings of poverty. Professor Martin Gilens’ research revealed that African Americans are depicted in more than half of mainstream magazine depictions of poverty.\textsuperscript{179} Moreover, stories critical of welfare and poverty were more likely to depict African Americans while stories describing the faultless aspect of poverty typically depict whites.\textsuperscript{180} Indeed, Professor Gilens explained:

\begin{quote}
[P]oor whites have been more likely to appear as illustrations of the deserving poor — the elderly, the working poor, and those struggling against adverse economic conditions — while poor blacks have appeared more often in unsympathetic stories on welfare abuse or the underclass.\textsuperscript{181}
\end{quote}

The racial alignment of deserving and undeserving poor has reverberations in the development of our policies and, as argued infra in Part VI, the exclusion of African Americans from the low-wage worker exploitation paradigm.

Professor Kaaryn Gustafson’s work on the criminalization of poverty reveals additional layers to this phenomenon. In her book, Cheating Welfare, Professor Gustafson “outlines the discursive and political shifts that produced a welfare system that equates poverty with criminality . . .”\textsuperscript{182} She tracks our country’s relationship with

\textsuperscript{176} According to a 2014 U.S. Census report, 40\% of persons living in poverty were White, 26\% were White, not Hispanic, 14\% were Black, 3\% were Asian, and 17\% were Hispanic (all races). \textit{See Carmen DeNavas-Walt & Bernadette D. Proctor, U.S. Census Bureau, Income and Poverty in the United States: 2014}, at 13 tbl.3 (2014) https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf.
\textsuperscript{177} \textit{See} Newman, supra note 4, at 39 (“poverty wears a black face . . .”).
\textsuperscript{178} \textit{Id.} at 40.
\textsuperscript{180} \textit{Id.} at 154.
\textsuperscript{181} \textit{Id.} Professor Lee A. Harris has argued that this phenomena may provide the causation for his findings that states with larger numbers of African American welfare families distribute less in cash assistance than others. \textit{See} Lee A. Harris, \textit{From Vermont to Mississippi: Race and Cash Welfare}, 38 \textit{Columbia. Hum. Rts. L. Rev.} 1, 1 (2006).
poverty from the War on Poverty in the Johnson administration, to the rise in concerns about welfare fraud and the Welfare Queen archetype in the 1970s and Reagan years, through welfare reform under Clinton. She argues that "[c]urrent welfare policies were designed to punish the poor; to stigmatize poverty, particularly poverty that leads to welfare receipt; and to create a system of deterrence to keep low-wage workers attached to the labor force." Professor Gustafson's analysis of welfare policies' manifestation of the criminalization provides yet another frame through which to understand the challenges facing low-wage African American workers.

While welfare reform in the 1990s, and the requirement that those receiving benefits transition in the workforce, has resulted in a shift away from the conception of poverty defined solely by the receipt of welfare to the present-day realities of the working poor, the prevalent narrative for poor African Americans does not as clearly reflect this shift. Instead African Americans continue to be stereotyped as unemployed, unwilling to work, and generally undeserving.

This article now applies a critical race analysis of low-wage African American worker invisibility and considers how the creation of a binary understanding of worker exploitation has contributed to their exclusion from the prevalent narrative.

VI. THE LIMITS OF THE BINARY

A. The Black-White Paradigm Critique

Critical race theorists have challenged the limitations created by the sometimes singular focus on racial dynamics between African Americans and whites in discussions of race in the United States. 

183. "The 'welfare queen' narrative that pervaded political discourse in the 1970s and 1980s 'was shorthand for a lazy woman of color, with numerous children she cannot support, who is cheating taxpayers by abusing the system to collect government assistance.'” Michelle Estrin Gilman, The Return of the Welfare Queen, 22 AM. U. J. GENDER SOC. POL‘Y & L. 247, 247 (2014). According to Professor Gilman, recent political campaigns evidence a resurgence in the political salience of the term, despite the 1990s welfare reform that many have argued made it obsolete. Id. at 247.

184. GUSTAFSON, supra note 182, at 34–36.

185. Id. at 51.

186. According to Professor Juliet M. Brodie, we have entered a “post-welfare” era in which “the working poor” has replaced “the welfare recipient” as the trope of American poverty. Juliet M. Brodie, Post-Welfare Lawyering: Clinical Legal Education and A New Poverty Law Agenda, 20 WASH. U. J.L. & POL’Y 201, 203 (2006).

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Professor Juan Perea, for example, has critiqued the black-white binary paradigm of racial discourse and argued that it "operates to exclude Latinos/as from full membership and participation in racial discourse," is self-perpetuating, and perpetuates negative stereotypes of Latinos/as.188 Paradigms set the parameters for discussions about race, determining what issues are considered relevant.189 They help us determine the relevant facts for solving a problem.190 Accordingly, "paradigms [drive] the fact-gathering and investigation."191 As Professor Perea explains: "[d]ata-gathering efforts and research are focused on understanding the facts and circumstances that the relevant paradigm teaches us are important."192 Moreover, as paradigms become more prevalent, they tend to "exclude or ignore alternative facts or theories that do not fit the expectations produced by the paradigm."193 Thus, he contends, within the black-white binary paradigm, the civil rights struggle and its history is understood as involving a conflict between blacks and whites concerning the civil rights of blacks.194 In other words, since racism and antidiscrimination law is understood in black and white, there is no space for those who are neither.195

 Critics of the black-white binary argue that it has led to the doctrinal subordination of the interests and experiences of other racial

189. See Perea, The Black/White Binary, supra note 188, at 1216.
190. Id.
191. Id.
192. Id.
193. Id. at 1217.
194. Id. at 1239 ("Within the paradigm, the only facts and histories that matter are those regarding Whites and Blacks. Therefore, virtually the only stories we ever learn about civil rights are stories about Blacks and Whites struggling over civil rights for Blacks.").
groups. For example, Professor Robert Chang has argued that focusing on the black-white paradigm misunderstands the United States' complicated racial dynamics. Specifically, he argues that the unawareness of Asian Americans' history and persecution in this country has prevented many from making connections between this history and the challenges Asian Americans face today. Similarly, Richard Delgado has questioned the efficacy of the black-white binary approach to analyses of race in the law in light of this country's changing demographics.

B. The Immigrant/Citizen Low-Wage Worker Paradigm

The prevalent worker exploitation narrative has created a particular binary understanding of workers' experiences. In the current construction of advocacy for low-wage workers, the connection of that struggle to the immigrant justice movement has created a Latino immigrant/white citizen binary paradigm for wage theft and workplace exploitation. That is, the exploitation is analyzed through a lens that much of the literature discussing workers' rights and wage theft centers on the experiences and narratives of Latino immigrants. It largely focuses on this community's particular vulnerabilities, including lack of knowledge about the United States' workplace laws and their application to immigrants, and the chilling effect that threats of deportation has on workers' willingness to advocate for their substantive rights. Indeed, as discussed infra, many scholars assessing the

197. See Chang, supra note 187, at 1265 ("Most discussions of race and the law focus on African Americans to the exclusion of non-African American racial minorities.").
198. Id. at 1251.
199. See Delgado, supra note 195.
200. See Bono, supra note 52, at 171-72. Some articles have raised the concerns of other immigrant groups, particularly Asian immigrants employed in sweatshops in New York City and California; see, e.g., Leslie D. Alexander, Fashioning A New Approach: The Role of International Human Rights Law in Enforcing Rights of Women Garment Workers in Los Angeles, 10 GEO. J. ON POVERTY L. & POL'Y 81, 82-84 (2003); Shirley Lung, Exploiting The Joint Employer Doctrine: Providing a Break for Sweatshop Garment Workers, 34 LOY. U. CHI. L.J. 291, 295 (2003); Julie A. Su, Making the Invisible Visible: The Garment Industry's Dirty Laundry, 1 J. GENDER RACE & JUST. 405, 405 (1998). However, the application of the "model minority" narrative to Asians may speak to the relative absence of significant consideration of low-wage Asian immigrant workers. According to Professor Robert S. Chang, the "model minority" narrative permits only a narrow understanding of Asian Americans as "hardworking, intelligent, and successful," and therefore ignores discrimination and other challenges faced by Asian Americans. Chang, supra note 187, at 1258.
experiences and challenges of low-wage workers have focused largely on dynamics within the immigrant communities, including issues that arise at the intersection of immigration and workplace justice. Overall, our understanding of worker exploitation has become centered on a comparison between the treatment of Latino immigrant workers and white citizen workers, with less attention paid to the racialized workplace exploitation of African American workers and other groups.

Furthermore, the emergence of worker centers as locations for advocacy has led to the prevalence of a Latino-white binary approach to the complicated issues of worker exploitation. As advocates recognize, the narrative advanced to obtain the funding necessary to support these centers is often centered in the immigrant experience. Advocates, however, have begun pushing against that stock story in an effort to create a space for the development (and funding) of black worker centers. They work to challenge the binary paradigmatic conceptualizations that too frequently render African American workers invisible.

C. Beyond the Binary: Critical Race Praxis in Workplace Advocacy

This article has identified the binary paradigm of low-wage worker exploitation that renders African American low-wage workers invisible and the historical and contextual circumstances that have contributed to this phenomenon. Critical race praxis demands that scholars bridge the gap between theoretical considerations, their normative implications, and the potential for their translation into "operational ideas and language for anti-subordination practice." In


203. See Thomas-Breitfeld, supra note 46, at 18.

204. See id. at 13; Pitts, Low-Wage Work, supra note 39, at 36.

205. Paulette M. Caldwell, The Content of Our Characterizations, 5 MICH. J. RACE & L. 53, 60-61 (1999) (contending that the Black-White paradigm is largely undertheorized and relying upon a critical race praxis analysis to fill the void); Adrien Katherine Wing, Civil Rights in the
other words, it requires that scholars endeavor to bridge the gap “between progressive race theory and political lawyering practice and the growing divide between law and racial justice.”206

Professor Paulette M. Caldwell’s application of critical race praxis principles to the critique of the black-white binary paradigm of racial justice is instructive here. According to Professor Caldwell, scholars often reconstruct the binary paradigm by simply creating new binary constructions of race that place whites on the top and another subordinated group at the bottom.207 Thus, the black-white binary is replaced with, for example, a Latino-white binary, Asian-white binary or immigrant-native citizen binary. Professor Paulette Caldwell explains that this dynamic creates “[a] competitive model [that] leads inevitably to a zero-sum framework which overshadows commonalities and emphasizes and reinscribes differences, hostilities, and ultimately, continued subordination.”208 They also do nothing to destabilize the racial hierarchy in which “whiteness” is always the comparator.209 Professor Caldwell calls for an analysis that disrupts our understandings of race and ethnicity and the black-white paradigm,210 and ultimately argues that a focus on the paradigm and other problems of disjuncture ignores the core challenge: “our society’s crippling blindness to the inevitable results of separating civil and political rights from social and economic ones.”211

Critical race praxis generally, and Professor Caldwell’s critique specifically, requires we consider how social justice advocates should respond to the relative invisibility of African American low-wage workers in scholarship and advocacy. In recent years, some scholars and activists have advocated for the creation of black worker centers to focus on the needs of African American low-wage workers and to


207. See Caldwell, supra note 205, at 65.
208. Id. at 63.
209. Id.
210. See generally id. at 62–92.
211. Id. at 109.
disrupt the prevalent immigrant worker narrative. The existence of separate worker centers, however, raises important questions: Do racial/ethnic specific centers simply re-create new binary analyses of workplace exploitation that fail to consider the potential benefits of cross-racial collaboration? Do they focus advocates too heavily on the racialized aspects of workplace exploitation and distract from the broader questions of economic justice for all workers and the structural inequality that results from the separation of civil and political rights from economic and social rights? Do social movements like BlackLivesMatter create new opportunities to successfully challenge the worker exploitation binary. Would worker centers forced to serve a more diverse group of workers, rather than centers targeting specific groups, better serve all workers’ needs? Additional research on black worker centers is necessary to adequately consider these important questions.

The remainder of this article identifies and discusses two important byproducts of African American low-wage worker invisibility: underreported wage theft and the normative implication of proving wage theft cases where the stock story of the exploited immigrant worker is unavailable.

VII. VULNERABILITIES EXPOSED BY AFRICAN AMERICAN LOW-WAGE WORKER INVISIBILITY

A. Wage Theft in the African American Community – Underreported and Misunderstood?

The complicated contexts described herein that have contributed to the increasing invisibility of African American low wage workers in the workplace exploitation paradigm have likely exacerbated poverty among the African American working poor. The relative absence of advocacy concerning wage theft within this community provides one clear example of the effects of this phenomenon.


213. The 2014 poverty rate for African Americans was 26.2%. See DENAVAS-WALT & PROCTOR, supra note 176, at 13.
Wage theft, or the failure to pay a worker properly for all hours worked, is rampant in the low-wage workforce.\(^{214}\) While the phenomena is perhaps most pervasive in vulnerable immigrant communities,\(^{215}\) studies reveal significant levels of wage theft among all low-wage workers, including African Americans.\(^{216}\) Indeed, a 2009 study of wage theft in Los Angeles, Chicago, and New York City by the UCLA Institute of Labor and Employment found that African Americans experienced wage theft three times more often that white workers.\(^{217}\) Despite this sobering reality, legal advocacy and scholarship concerning wage theft among African American workers is scarce.

The Workers Center for Racial Justice informally surveyed African American workers in Chicago and found that 60% had experienced wage theft but that none had filed a complaint or tried to recoup their wages.\(^{218}\) The center suggests that few sought a remedy for their exploitation either due to lack of awareness or a “belief that any job is better than no job.”\(^{219}\) Scholars and advocates, however, have not interrogated this hypothesis and explored what discourages African American low-wage workers from enforcing their substantive rights. The standard narrative of the undocumented immigrant low-wage worker assumes that fear of immigration-related retaliation chills their ability to seek lost wages from employers.\(^{220}\) While Afri-
can American workers do not fear deportation, the extent of wage theft in their communities and the lack of complaints filed in pursuit of those wages suggest that other factors also deter enforcement. For example, it is conceivable that African American workers with criminal records are particularly vulnerable to exploitation by employers aware of workers' limited employment opportunities. Additional research in this area would be useful to fully understand and respond to African American worker exploitation.

To the extent that a lack of knowledge about their right to lost wages or the mechanisms available to enforce that right exists in the African American low-wage community, then one must also consider the role played by the absence of worker centers within those communities. Worker centers often serve a critical education function as the central source of a community’s access to information about their employment rights.222 The absence of worker centers in (or serving) African American communities, therefore, may create a knowledge vacuum about employment rights that leads to a failure of African American low-wage workers to pursue wage theft claims.

B. Different Narratives and Implications for the Pursuit of African American Workers' Claims

In many parts of the country, the stock story of the exploited low-wage worker is tied very closely to immigrant workers and the vulnerability associated with their tenuous status in this country.223 This narrow stock story may have implications for the ability of non-Latino immigrants to bring successful claims for wage theft.
Very often, wage theft cases are based largely upon the testimony of the parties, with limited documentary evidence. As a result, credibility determinations are central to the fact-finder’s determination. Credibility may be based, at least in part, upon the fact-finder’s ability to place the worker’s story in a context with which he or she is familiar. In other words, a fact-finder is more likely to find a worker’s story credible when it fits into the common narrative of low-wage worker exploitation. Immigrant workers, therefore, may benefit from their ability to tell a story that exposes their increased vulnerability based upon immigration status and thus fits nicely into a stock story of worker exploitation. African American workers that bring claims, however, cannot access credibility by evoking this stock story. Rather, they may be forced to attempt to disrupt a more nefarious stock story: the public benefits-dependent, lazy worker with a questionable work ethic. In other words, the narrative of the undeserving poor and the myriad of implications associated with it, may attach to African American low-wage workers, and thus impact their ability to both establish credibility and tell a compelling story of worker exploitation. More research is necessary to determine the impact of this distinction on the ability of African American workers to bring successful wage theft claims.

CONCLUSION

Low-wage work is often typified by various forms of exploitation, from wage theft to discrimination that impacts all workers, regardless of race, ethnicity, gender, and immigration status. Nevertheless, the prevalent narrative or paradigm regarding such exploitation has become increasingly tied to a single story: that of the vulnerable immigrant worker. The journey to this narrow conceptualization of low-wage workplace exploitation did not happen overnight. Rather, it must be considered within the historical framing of the move away from economic justice in the civil rights movement, the criminalization

224. I litigated wage and hour collective actions for nearly six years in private practice and the clinic in which I have taught and supervised students for the past six years maintains an active docket of individual wage and hour cases. In my experience, low-wage workers rarely have relevant documents concerning their employment and employers also similarly fail to maintain records, despite a statutory responsibility to do so. See 29 C.F.R. § 516.


226. Of course, immigrant workers also face the parallel problem of convincing the fact-finder that their immigration status should have no bearing on their recovery of lost wages.

227. See Thomas-Breitfeld, supra note 46, at 18.
of poverty, and the rise of the worker center as the space for advocacy. Each of these dynamics has led to the emergence of a binary understanding of low-wage workers' experiences and exploitation that increasingly renders invisible African American workers.

The #BlackLivesMatter movement and its call for a reform of the criminal justice system that adequately addresses the racialized experiences of African Americans within that system has created new spaces for advocacy. It is within this space that advocates have argued that #BlackWorkersMatter. They matter, however, not simply as an altruistic goal for an inclusive society, but because their absence from the prevalent paradigms and narratives has impacted their ability to identify and bring claims of wage theft, and to tell stories of their exploitation that fact-finders will find credible. This article places African American workers back into the narrative by disrupting the binary, paradigmatic understanding of workplace exploitation.