

## **Petit Apartheid in the U.S.-Mexico Borderlands: An Analysis of Community Organization Data Documenting Work force Abuses of the Undocumented**

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### ***Abstract***

In this paper, the data gathered in 2004 and 2005 by the Coalición de Derechos Humanos (Derechos), a Tucson Arizona community-based human rights organization is summarized and analyzed within the framework of “Petit Apartheid.” The organization provides a much-needed service by assisting members of the Mexican-origin community, many of which are undocumented workers, file grievances against their employers. This is an important first step in making visible the routine unfair treatment of a virtually invisible workforce. The framework for analysis is useful because it centers on microaggressions: the “everyday instances of harm” that law enforcement agents inflict on members of racialized groups. I argue that the routine harsh and harmful treatment to which undocumented workers are systematically subjected is similarly a product of social attitudes that methodologically deprive them of employment stability and social progress and is therefore apartheid-like. Narratives from the Derechos archives flesh out the social spaces conducive to microaggression, and at a broader level, make visible the contradictions between employment practices and immigration law. Although too often ignored in state and national immigration debates, the voices emerging from these narratives illustrate how differences and inequality are informally enforced by way of employer-employee exchanges.

### **Introduction**

In this paper, a portion of the data gathered in 2004 and 2005 by the Coalición de Derechos Humanos<sup>1</sup> (Derechos), a Tucson Arizona community-based human rights organization is summarized and analyzed within the framework of “Petit Apartheid.” Since 1994, Derechos has been dedicated to promoting respect for immigrant and migrant rights. Most notably, it has worked actively to bring public attention to the increased militarization of the U.S.-Mexico border since 1993, carried out by border enforcement, such as Operations Gate Keeper, Safeguard, and Hold the Line, and the resultant increase in migrant deaths and human rights violations since these policies were implemented (Cornelius 1998, 2001; Huspek, Martinez and Jimenz 1998). As immigrant and migrant rights advocates, Derechos also assists members of the local Mexican-origin community to file a wide range of grievances with a variety of agencies.

In 2004 and 2005, Derechos staff members documented 77 complaints regarding a wide range of issues ranging from consumer fraud to harassment by immigration enforcement

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<sup>1</sup> More information about their mission and activities can be found on their website, [www.derechoshumanosaz.net](http://www.derechoshumanosaz.net).

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authorities. Individuals come to Derechos to initiate complaints because they trust the organization and feel safe from law enforcement interference. Most, if not all, victims who come into its office on South 6<sup>th</sup> Avenue in Tucson Arizona are undocumented.<sup>2</sup> Derechos' staff members offer assistance in Spanish, help victims fill out complaint forms and negotiate the myriad of agencies in efforts to resolve their complaints.

In 2004 and 2005, the two largest categories of complaints documented by Derechos were those that were related to job dismissal and wages (Table 1). Our appreciation of the importance of this work is enhanced by the current national focus on immigration policy reform. The advocacy and community education work of Derechos represents the wider struggle taken up by similar organizations across the U.S. to call attention to the human and economic rights of immigrant workers who, because of their undocumented status, occupy contentious social spaces within the U.S. Their increased numbers and quasi-permanent presence confounds the established spatial order that has conventionally defined nationhood and has compelled scholars to rethink the role national borders play in the increasingly globalized world of our times.

**Table 1: 2004-2005 Complaints by Type**

	Frequency	Percent
Unfair Dismissal	18	23.4
Discriminatory treatment	4	5.2
Problem with wages	22	28.6
Problem with benefit claim	1	1.3
Safety or injury issue	2	2.6
Harrassment or verbal abuse	12	15.6
Consumer complaint	15	19.5
Other	3	3.9
<b>Total</b>	<b>77</b>	<b>100.0</b>

<sup>2</sup> Undocumented immigrants, a sub-set of the total U.S. immigrant population, are those who have entered the U.S. without legal authorization.

Without a doubt, immigration is integral to emergent global “ethnoscapes” (Appadurai 1991) and “contact zones” referred to by Pratt (1992, 4) as “social spaces where disparate cultures meet, clash, and grapple with each other, often in highly asymmetrical relations of dominion and subordination.” In the U.S., immigration policy debates have historically centered on notions of boundaries and measures by which certain groups are excluded. However, in recent decades, U.S. immigration policy and national psyche, predicated on the idea that it can turn off and turn on immigration, has been forced to contend with unprecedented population movements from Latin America and the nation’s need for immigrant labor. Consequently, the U.S.’s long-standing tolerance for undocumented workers has produced ambiguous spaces occupied by those who are simultaneously excluded and included. Locating these spaces reveal geographies made less stable due to demographic shifts and characterized more in terms of social exchange, even if the nature of the exchange is unequal (Pratt 1992). Conceivably, such spaces are shared simultaneously by those who wish to enforce inequality based on social divisions such as gender, class, race, sexuality, or nationality, and those who *contest* these efforts (Gupta and Ferguson 2001). To great degree, the outline of those spaces has been carved out of recent rulings and legal interpretations. The featured cases below highlight contradictions and demonstrate how law is indeterminate, highly discretionary, and the product of dominant social attitudes that are often used to justify an imagined social order in which undocumented persons are conditionally embedded.

### **Undocumented Laborers: Recent Rulings and Legislation**

Discussions centering on the rights of undocumented workers have been brought to the forefront of current legal and political debates in the U.S. at both the federal and state levels of governance. Fueling these debates are post 9/11 public sentiments that reflect a growing fear of

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immigrants who live in the U.S. (Hines 2002) and common misperceptions that immigrants (especially undocumented immigrants) do not share the same rights as their U.S. citizen or permanent resident counterparts. However, employing immigrants, including those that are undocumented, subjects employers to the same legal responsibilities as employing those with legal authorization to work. For example, employers are subject to paying back wages and overtime claims when they fail to pay their employees for work performed, regardless of their employees' immigration status. Employers may also be held liable by their immigrant employees for discrimination based on race, sex or national origin (Beerman 2006). The legal responsibility of employers to pay back wages and overtime claims has been the subject of recent law suits brought against Walmart by undocumented workers. On October 23, 2003, federal officers from the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE); formerly known as the Immigration and Naturalization Service (INS), entered 61 Wal-Mart stores in 21 states nationwide and arrested more than 250 undocumented immigrants. This plan of action was dubbed "Operation Rollback" as a pun on Wal-Mart's advertising campaign touting its "rollback of prices." Wal-Mart argued that it was not responsible because the workers were employed by independent contractors.<sup>3</sup> Consistent with the practices of the legal investigating and prosecuting arm of ICE, the apprehended undocumented immigrants were recruited to help ICE in the enforcement of federal immigration laws and on November 10, some of the arrested immigrant janitorial workers filed a federal racketeering class action lawsuit against Wal-Mart in a New Jersey federal court. The workers alleged that Wal-Mart violated the federal Racketeering Influenced and Corrupt Organizations (RICO) statutes. All of the plaintiffs were undocumented

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<sup>3</sup> Paradoxically, on May 28, 2006, the Arizona Daily Star reported that according to the Inspector General for the U.S. Forest Service, private firms are also contracted by the State and Federal government to employ firefighters based in the Pacific Northwest and that as many as half of the approximately 5,000 of these workers are immigrants and many are working in the U.S. illegally.

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immigrants who worked for a contract cleaning service hired by Wal-Mart. All of these workers claim they were paid weekly compensation of \$350-\$500 in cash, worked at least 60 hours per week, and were obligated to work seven days a week. They also claimed they received no overtime compensation, workers' compensation, nor did they have taxes or Social Security (FICA) withheld from their earnings (Entelisano 2003). The case against Wal-Mart is clearly premised on the notion that undocumented workers have rights to fair employment practices.

Until now, Arizona employment statutes have not formally excluded undocumented immigrants from engaging in the legal process for bringing charges against unfair treatment by their employers. The Wage and Hour Division of the Department of Labor under the Arizona State Attorney General's office, for example, makes no distinction between a worker's legal status and has an established process to help victims of wage theft to recover their earnings. Claims brought to the Derechos office are forwarded to the Wage and Hour Division of the Department of Labor for further processing. More to the point, in Arizona, legal mechanisms exist to protect all workers, including undocumented employees, from the unscrupulous acts of their employers. However, legal mechanisms for protecting all workers are currently being challenged with the introduction of legislation targeting the long-standing rights of undocumented workers. For example, Arizona House Bill HB-2599 requires that public money for job training or workforce development be distributed to persons who are citizens or legally in the U.S. Arizona HB-2595 requires that a child care home provider who wishes to be listed with the Department of Economic Security child-care resource and referral system to be a citizen or legal resident of the U.S. Most notable within the series of anti-immigrant propositions before the Arizona State Legislature (Appendix 2) is HB 2588. HB 2588 amends section 23-901 of the Arizona Revised Statutes (ARS), relating to workers' compensation. In this amendment, the

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definition of "employee", "workman", "worker" and "operative" is amended to exclude "... any person who is not a citizen or national of the United States and who is unlawfully present or unlawfully residing in the United States." Currently, ARS 23-901 does not qualify "employee", "workman", "worker" and "operative" by authorization to work.

Any tendency to limit the legal rights of undocumented workers by employers was reinforced in 2002 by a U.S. Supreme Court decision in *Hoffman Plastic Compounds v. National Labor Relations Board (NLRB)*. In the *Hoffman* case, a worker without the legal authorization as defined by the 1986 Immigration Reform and Control Act (IRCA) was denied back pay after he was fired by the company for union organizing. Attorneys for the NLRB argued that the undocumented worker was illegally fired because under federal labor law an employer can be held liable for firing an employee who engages in union-organizing activities. In such cases the employers would be liable for any back pay for work not performed due to his termination. However, in *Hoffman*, the U.S. Supreme Court decided that the employee could not collect back pay for work not performed because he was an undocumented worker. The majority opinion argued that awarding back pay to those in the country illegally ran counter to the law set by IRCA that the NLRB had no authority to enforce or administer. They further argued that the award would have condoned prior violations of immigration laws and would have condoned and encouraged future violations. The dissenting opinion argued the exact opposite: that the back pay award would penalize employers for hiring undocumented workers (A violation under IRCA) and in this way deter unlawful activity that immigration laws sought to prevent.

The effect this ruling will have on the implementation of state and local laws affecting employee rights is yet unclear. What is clear, however, is how employment laws and the common practices of employing undocumented workers continue to collide. Two years after the

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*Hoffman* decision, in *Celi v. 42nd Street Development Project, Inc* (2004), A New York state court judge upheld a claim filed in behalf of an undocumented worker, Rodolfo Celi. Celi had been seriously injured while performing demolition when he fell through an opening in the basement floor and crashed into the sub-basement. In response to charges that the company was negligent and had violated labor law, company attorneys argued that under *Hoffman*, Mr. Celi's undocumented status prevented him from seeking lost earnings because payment of such wages violated federal immigration law. However, in *Celi*, State Justice David I. Schmidt argued that the *Hoffman* decision did not mandate a change in New York law so as to require the dismissal of the plaintiff's claim to *lost* earnings. Celi's claim for award, then, \$26,000 in past lost earnings and \$900,000 in future lost earnings was upheld. Two other decisions upheld the rights of undocumented workers to recover lost wages as a result of work-related injuries and similarly sidestepped the *Hoffman* decision. In *Sanango v. 200 East 16th Street Housing Corporation* and *Balbuena v. IDR Realty*, the New York state appellate court decisions ruled that the employers *were* held liable for workplace injuries even though the workers were undocumented. The workers who were suing to recover wages lost as a result of workplace injuries were precluded by *Hoffman* from calculating their damages based on U.S. earnings but they *were* permitted to seek damages including awards based on future earnings *based on the prevailing wage in their home countries*. The outcome of what appears to be incongruent applications of employment and immigration law is obvious and deserves serious consideration from policy makers. The decision of *Hoffman* suggests that workers who are later identified as "illegal" will predisposes them to lost wages and dismissals in retaliation for labor organizing, which will further predispose others, undocumented or not, to unsafe working conditions.

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Although the outcome of the proposed Comprehensive Immigration Reform Act of 2006 is still very much uncertain, by all indications a overwhelmingly large percentage of undocumented immigrants and their families will be burdened by its implementation. The Center for Human rights and Constitutional Law predicts that approximately eight to nine million out of the nearly 12 million undocumented immigrants in the U.S. will not qualify under the Senate's version of the proposed legalization program. Approximately 90% of the total undocumented population is thought to be actively engaged in the workforce (Thunderbird, The American Graduate School of International Management 2003) and those that do not qualify for a readjustment of their legal status will predictably be driven deeper underground by the Senate bill's interior enforcement provisions. The social consequences of increased policing of those not qualifying for legalization, combined with concerns over terrorism, may include the resurgence of nativist responses, racist doctrines, the transformation of the U.S. into a police state, and the rendering of newcomers and their cultures as increasingly problematic (Zolberg 2006, 451).

At the heart of the problem is that the U.S.'s failure to recognize the unwieldy force of globalization as the root cause of human migration and take responsibility for the some of the factors that have led to the outflow of migrants from underdeveloped nations (Sassen 1998). Sassen points out that since the 1960s and 1970s, the U.S. begin to export capital and promote the development of export-manufacturing economies in Third World nations and this contributed to the creation of pools of emigrants in those countries and the formation of linkages between them and the U.S., and

...[p]aradoxically, the very measures commonly thought to deter immigration—foreign investment and the promotion of export-orientated growth in developing countries—see to have had precisely the opposite effect. The clearest proof of this is the fact that

several of the newly industrialized countries with the highest growth rates in the world are simultaneously becoming the most important suppliers of immigrants to the United States (Sassen 1998, 34).

In the U.S., the decline of relatively stable, full-time jobs, a consequence of the move towards more flexible accumulation<sup>4</sup> and flexible labor arrangements,<sup>5</sup> have expanded the number of low-wage, part-time jobs that immigrants fill. Counter to this reality is the change in immigration enforcement jurisdiction from the U.S. Department of Justice to the Department of Homeland Security (DHS) in 2003, an agency largely created to contend with terrorism and securing the U.S from terrorist attack. The shift of immigration enforcement responsibilities to the DHS signals a new paradigm within which immigrants are considered: one that conflates the problem of immigration and its regulation with that of national security and terrorism. This paradigm shift contradicts the increase in the movement of both capital and people which as worked for decades to partially erode borders separating population and nations. The challenge is then to focus on the emergent intersections where contradictions are negotiated: spaces shared by labor and industry, citizens and immigrants, documented and undocumented.

### **Petit Apartheid**

Petit apartheid is a useful concept for thinking about practices that take place in shared spaces that produce and enforce differences and inequality. Petit apartheid is described as a system of covert racial discrimination that continues to exist in spite of the laws that make formal racial discrimination illegal (Georges-Abeyie 2001). At the core of petit apartheid are informal discretionary actions by law enforcement agents, who might harbor mores, biases and norms that

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<sup>4</sup> Flexible accumulation is the ability to rapidly adjust production and product lines to markets.

<sup>5</sup> Flexible labor: the freedom a firm has to regulate the level of wages it pays by adjusting the number of hours employees work or the size of the work force.

condone or encourage the harsh treatment of minorities: everyday slights and insults, roughness, the lack of civility and other punitive acts (George-Abeyie 2001, x). These actions work to produce more criminal acts attributed to these groups while suppressing the rate of criminal acts committed by non-minorities. In other words, where the law allows the policing or enforcing agent any discretion, the tendency is to treat minorities more severely because they are seen as less deserving. This in itself increases the number of minorities who are criminalized. Because more members of minority groups are seen as less deserving, the chance of being denied “fair dealings before the law” is maximized and in this way more “criminals” are ultimately produced (Milovanovic and Russell 2001, xvi). Furthermore, in suspecting that they will not be given fair treatment, minorities are less likely to file complaints against their aggressors. The result is an undercounting of crimes committed against them. Thus, the violations committed against them remain outside the legal system because they go unreported. In summary: when the rights of minorities are violated, the violations are more likely to remain outside the legal system because

- a) they occur informally: where policing agents have the opportunity have to exercise any discretion, and
- b) they go unreported by the victims who suspect they will be treated unfairly.

What results is the “non-system handling” of racially biased and criminal behaviors committed by law enforcement agents and institutions, and this translates into petit apartheid realities.

Georges-Abeyie’s (2001) concept of petit apartheid was primarily based on the mistreatment of blacks in the U.S. judicial system who as citizens, have the right to fair and equal treatment under the law. However, Milovanovic and Russell (2001) point out the need for more grounded theory in a host of other locations where discretionary actions by enforcement

agents also remain outside the formal legal process. Such locations are informal, and referred to as “behind the scenes,” the “back stages,” and “back regions” where most racially-biased decisions are made. It is in these locations where minorities are predictably victims of “microaggressions,” the often subtle, automatic, and unrecorded “put-downs” and belittling by offenders (Davis 1989, 1565; Russell 2001).

Because the back region does not constitute a formal state...there is little official documentation of how and why decisions are made, and whether race was a factor. In effect, there is little accountability for actions taken in the back region. Thus racially-motivated decisions made in the back state are easily presented as racially-neutral ones in the front region. It is also noted that not all back stages are out of view—some are simply not subject to official record-keeping or systematic scrutiny (Russell 2001, 6).

My argument is that employers are much like their law enforcement counterparts because they are empowered by ample discretionary latitude with regard to the enforcement of fair labor practices. The increasingly informalized economy constitutes the “back region” of the formal economy—that which is regulated income-generating activity. In this back region, employers are not subject to scrutiny, therefore to official record-keeping. Because undocumented workers form a great part of the informal of the economy, the micro-aggressions they suffer also remain outside of formal purview. Therefore, similar to law enforcement agents, employers have a high level of unchecked discretion and are thus able to exercise it in the hiring of undocumented workers. Employers also exercise considerable discretion in how they treat their workers. They

exercise discretion in how they respond to employees who complain, making choices about the fairness of that response, including the manner in which they discipline employees.

Immigrant status complicates but does not replace the notion of race structuring the overtly asymmetrical relationship between undocumented workers and employers. By itself, immigrant status, a formal designation, ignores the broader social processes that prescribe punitive outcomes for racial minorities. However, it is useful for examining the relationship between informal and formal behaviors, such as those that frame policing and immigration enforcement and for considering the historical *and* contemporary contexts of petit apartheid (Russell 2001, 7). Immigration laws, and consequently their enforcement, have historically worked to produce new categories of racial difference (Ngai 2004). Racial categories have been used in the “fashioning” of U.S. society, historically working to encourage immigration from northern Europe, and to discourage immigration from Asian and African nations (Zolberg 2006). Ultimately, the rules by which immigrants are integrated into U.S. society have been highly subjective, influenced by perceptions of national identity and race that are present when the rules are made; and, while ideologies of race have moved away from a black-white dichotomy, they continue to depend on perceived differences, and often combine various physical indicators (e.g. skin color) with others such as culture, ethnicity, and national origin. For example, by the 1920s, “Mexican” was considered a racial category and during the Great Depression when 400,000 Mexicans<sup>6</sup> were repatriated to Mexico. Stemming in part from the historical tendency to use race as the core of U.S. immigration policy is Ngai’s work (2004) that argues how law and immigration policies reflect broader societal attitudes about race and how it “normalizes and naturalizes social relations that help to ‘structure the most routine practices of social life’” (Ngai

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<sup>6</sup> Half the estimated 400,000 who were “repatriated” to Mexico were U.S. citizens.

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2004, 12). For decades now, Mexican workers have been the dominant group migrating to the U.S yet immigration policy has progressively restricted their legal immigration channels. According to a recent report, the United States offers 5,000 permanent visas worldwide each year for unskilled laborers and last year, only two of them went to Mexicans (Preston 2006). In the same year, about 500,000 unskilled Mexican workers crossed the border illegally, most of them finding jobs working in the shadows. Several provisions of the proposed Comprehensive Immigration Reform threaten to enact legislation that would allow Mexican immigrants to be disproportionately targeted and can be regarded as one of the most important vehicles by which racism will be further institutionalized and normalized. For example, the reform would facilitate contracts between the Department of Homeland Security (DHS) and local police departments to encourage local police to enforce immigration laws. This provision would require that information on immigrants who are confirmed to be out of status be put in the National Crime Information Center database, a database is used by local police to find wanted criminals. The proposed reform would criminalize U.S. citizens and legal permanent residents criminalized for helping family members or friends who are undocumented. Applications for legal status would also be denied if the applicant was suspected of being a gang member even if no criminal act was committed or there was actual evidence of gang activity or involvement. In regard to this last provision, an important connection can be made to anti-gang legislation that was later struck down by the U.S. Supreme Court in 1999 in *Chicago v Morales*. Under Chicago's Gang Congregation Ordinance, police officers could stop any person congregating with others in any public place. Not surprisingly, the majority of those charged under the ordinance were black and Hispanic (Russell 2001).

It is in this social and legalistic environment that routine microaggressions inflicted upon immigrant workers can be understood. I contend that like blacks in our court systems, undocumented employees are subjected to the ‘incessant and cumulative’ assaults to self esteem (Davis 1989, 1565). Because undocumented employees are less likely to receive a fair hearing, or not know they have the right to complain, disciplinary actions or other unfair treatment by their employers will predictably remain outside of the purview of any legal process and will contribute to the non-system handling of complaints and a distorted undercounting of employer violations. Like their black counterparts, the management of these assaults is a preoccupying and disruptive activity, systematically diminishing their capacity to improve their economic standing, and in effect, producing social and economic inequality—an apartheid-like condition. In the next section, narratives from the Derechos archives will demonstrate a range of micro-aggressions to which countless workers are routinely subjected.

### **The Derechos Humanos Data and Case Studies in Microaggression**

In 2004 and 2005, Derechos documented 77 complaints. The majority of these complaints (n = 40) fell into two categories: “unfair dismissal” and “problems with wages.” Out of this number, 12 were filed by women and 28 were filed by men. The process of filing a complaint usually consists of a visit to the Derechos office where victims are asked to fill out forms. The initial form collects pertinent personal information. Additional forms help the staff member collect the information that is useful in filing a complaint, e.g. the name of the employer, employer’s contact information, copies of any substantiating documents, and if necessary, a record of hours worked and wages due. Respondents are also asked to provide a narrative of the incident, which can be oral or written. Table 2 shows that the majority of the complaints (42%) come from workers in construction jobs.

**Table 2: 2004-2005 Employment-Related Complaints by Occupation**

	Frequency	Percent
Janitorial or Domestic	6	15.0
Grounds-Keeper or landscape	5	12.5
Food service	7	17.5
Construction	17	42.0
Retail	1	2.5
Elderly home care	3	7.5
Not Specified	1	2.5
<b>Total</b>	<b>40</b>	<b>100.0</b>

Much of the data emerging from the Derechos archives is consistent with that found by Valenzuela and his colleagues (Valenzuela et al. 2006). Most notable is the predominance of the informal hiring of undocumented workers by the construction industries. Another parallel is a normalized high incidence of wage theft and insults and abuses by employers that employees suffer. Wage theft was the most common violation of employee rights reported among the 2,660 day laborers surveyed in the Valenzuela et al. study, with half of all day laborers surveyed reporting at least one instance of wage theft within the two months of being surveyed. Another 28 percent of those surveyed reported having been insulted or threatened by their employers. Because most of the day laborers are undocumented, employers are emboldened to subject them to these abuses, including physical abuse. Employers often deter workers from reporting these abuses by threatening to turn them over to immigration enforcement authorities. The report also suggests that even when employers do not threaten them overtly, undocumented workers are mindful of their status and are reluctant to press charges against their employers using legal channels. Many day laborers believe that avenues for compelling their employers to abide by fair employment practices are closed to them. Because of this, the value of community education and advocacy is heightened (Valenzuela et al. 2006, 14), as is the role of documentation to better understand how abuse is carried out.

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Paralleling the survey by Valenzuela and others are the cases that emerge from the Derechos archives that show most of the incidents involving dismissals occurred after workers voiced objections about their treatment, their pay, or about a potential job hazard. Voicing objection is a straightforward way in which any worker at any job site might logically attempt to resolve problems as they arise. Yet, for these complaints they were dismissed or threatened with dismissal. By maintaining a fear of dismissal, employers silence workers and sustain a systematic undercounting of offenses, effecting non-system handling of complaints. For example, Mr. Garcia<sup>7</sup> complained to his employer that his check was habitually short and that it was often late. After he complained, his employer laid him off, claiming he was “causing problems.” In another case, Mr. Lopez complained to his supervisor that he had not been notified of the change in the procedure for turning in his time sheet, resulting in his not receiving his paycheck on payday. When he protested, he was terminated, allegedly for having a “bad attitude.” In these instances, charges of unfair dismissal and disputing unpaid wages were intrinsically related.

In other cases, employers may not necessarily dismiss but rather resort to inducing fear or other retaliatory actions, all of which work to silence workers and again, keep complaints from being formally registered and addressed. For example, Mr. Sanchez, who worked at a home for the elderly, stated that his employer frequently threatened to report employees to the Border Patrol if they complained about unsafe conditions at the home. In 2002<sup>8</sup> workers from the Cervantez Concrete Company<sup>9</sup> wrote a letter addressed to the owner of the company complaining that their foreman was constantly verbally abusing them, threatened to fire them,

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<sup>7</sup> All names are pseudonyms.

<sup>8</sup> Although the workers initiated their complaint in 2002 by way of the first letter they sent to the company, it was not until 2004 that they approached Derechos Humanos to help them reinitiate the complaint since the issues that they had brought up with the company on their own had been ignored.

<sup>9</sup> Company or Business names are pseudonyms.

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and constantly provoked them to fight. The workers never received a reply from Cervantez Concrete. They also wrote to the Mexican Consulate's office and the Department of Labor asking for assistance. The letter to the Mexican Consulate included in the Derechos archive was signed by 16 workers, four had noted "Mexico" after their names and year of birth. In their letter they wrote about their supervisor, Mr. Fernandez:

El Sr. Fernandez es una persona sin respeto, siempre esta usando un lenguaje agresivo y grosero. Siempre nos esta diciendo estúpidos, flojos, no sirven para nada, tontos. Él siempre nos esta amenazando con corrernos, y nos invita a pelear con él, pues él dice ser un karateca cinta negra.

[Mr. Fernandez is a disrespectful person, always using language that is aggressive and rude and he is always calling us stupid, lazy, good-for-nothing, dim-witted. He is always threatening to fire us and challenges us to fight him, well he says he is black-belt karate.]

Mr. Fernandez's response to the letter was to retaliate by breaking up crews, sending some workers to jobs that paid less and if anyone of them had attained a supervisory level, they were demoted or dismissed altogether, as the complaint attests:

En agosto 2002 nosotros mandamos una carta al el supervisor del Sr. Fernandez que es el Sr. Sanchez. El Sr. Fernandez se molestó por haberle mandado esta carta y decidió cambiar algunos de nosotros a otros proyectos con menos sueldo, y si alguno ya era supervisor o algo parecido, los empleo como obreros regulares y hubo a otros que simplemente nos despidió.

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[In August of 2002 we sent a letter to Mr. Códova's supervisor, Mr. Sanchez. Mr. Fernandez was annoyed by the letter and decided to transfer some of us to other projects that paid less and if one of us had been promoted to a better position, he was then demoted to regular labor, and some he simply fired.]

The constant treat of unfair dismissal, the incessant and cumulative assaults on their performance and dignity can take a toll physically, psychologically, and emotionally as confrontations can take weeks and even months to play out. In that period of time, multiple types of micro-aggressions can come into play as the case of Sara illustrates.

Sara was six months pregnant when she was abruptly dismissed from her job as a hotel service clerk. She stated that she thought that she was fired because of her pregnancy and failure to abide by a dress code that required hotel employees to tuck in their shirts. However, the topic of her performance was frequently brought up by Mr. Marquez, the hotel manager. He told her that customers would complain about her, and although he frequently referred to these complaints, she never saw them even when she asked him to produce them. She stated:

En el tiempo que estuve trabajando siempre estuve en constante problemas o teniendo aclaraciones con el Sr. Marquez sobre mi forma de atender a los clientes que según él no era la correcta en la cual yo al recibir alguno de ellos, los saludaba amablemente y les ofrecía los servicios e información que ellos solicitaban sobre el hotel. Y él cuando llegaba a estar presente me llamaba la atención diciendome la mayoría de las veces que tenía que ser mas sociable y acerle mas plática; aún sin embargo, yo nunca tuve problemas con ningún cliente sobre mi desempeño y él nunca me presentó queja alguna de un cliente hacia mi persona. Aunque muchas

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veces me comentó que él los recibía pero no me los presentó como prueba cuando yo le decía que me los enseñara.

[In the time that I was working I was always having problems or having to explain to Mr. Marquez about how I attended to the needs of clients which he said was not right, that I did not welcome or greet them correctly or offer them services and information that they wanted about the hotel in a polite manner. And when he was there, he would call attention to my manners, saying that I had to be more sociable and converse more, even though I never had a problem with a client about my work and he never presented any complaint anybody had about me. Although many times he commented that he received them, he never showed them to me as proof, even though I asked that he show them to me.]

It seems that Mr. Marquez' reference to the complaints from customers was an attempt to continually make Sara feel insecure about her performance, perhaps induce fear, and exact extra effort from Sara. His insistence that she be more sociable and amiable to clients suggests that he wanted to make the most of Sara's personal qualities that were in addition to and not salient to the job she was being paid to do as a hotel service clerk. It is also reasonable to assume that as Sara's pregnancy advanced, she might have been considered less suitable for the job, provoking additional criticisms and insecurities about her performance.

Some discord between Sara and her manager grew from a dispute about the number of days Sara had taken off from work. Sara usually worked on weekends but requested days off when necessary. She described the process as fairly informal. She telephoned Mr. Marquez with as much advance notice as possible and this procedure did not seem to present any problem. She stated: "*Sin en algún momento llegaba a faltar por algún otro motivo yo le avisaba al Sr.*

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*Marquez por teléfono y él me decía que no había ningún problema.*” [If at any time I could not be present or for any other reason, I let Mr. Marquez know by phone and he would say that there was no problem.] However, she sensed strongly that he became less tolerant after he found out she was pregnant leading her to conclude that she was fired for this reason:

Otro de los motivos por lo cuál yo creo me despidió fue que le comenté y hasta le presenté mi prueba clínica de embarazo porque no me creía y en ese momento lo tomo todo bien. Pero al paso de los días se empezó a portar muy extraño y a exigirme a cambiar de hotel, este es el Hotel Super 8, el cuál es de los mismos dueños, a lo que yo le comenté que tendría que pensarlo por la forma en que me lo dijo o mas bien me exigió que me fuera al otro hotel.

[Another of the motives for which I think he fired me was that I advised him that I was pregnant and even showed him my clinical result because he didn't believe me and at that the time he seemed to take it well. But after the days passed he began to act strangely and demand that I transfer to another hotel, the Super 8 Hotel, that is owned by the same people, at which time I told him that I needed to think about it because of the way in which he said it, or rather demanded that I go to the other hotel]

Notifying Mr. Marquez about her pregnancy appears to be a turning point in the employer-employee relationship. From this point on, Sara recalls that Mr. Marquez seemed to be more and more insistent that she go work at the other hotel. By now several months had lapsed and Sara made it a point to remind him of their agreement that she was entitled to a wage

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increase. His insistence that she leave and his failure to fulfill his promise for a wage increase came to a head on a Saturday in April of 2004, at which time Mr. Marquez blatantly told her that she “and the rest” to forget about the wage increase. To this she responded that if that were the case, then not to expect her to report to work at Hotel Super 8, and at this time she was giving him her two week notice.

Sara returned home that Saturday evening feeling faint and nauseated. It is not difficult to imagine her being physically and emotionally spent after months of stress and her final altercation with Mr. Marquez. Fearful that she would be too ill to report for work the next day, she called Mr. Marquez to inform him. In his usual fashion, he told her that there was no problem and for her to take the day off. However, when she reported to work on Monday, she noted that Mr. Marquez appeared to be irritated with her. Within an hour, he summoned her to the employee kitchen and informed her that she was terminated. When she asked him for a reason, he replied that because she refused to adhere to the dress code for hotel personnel and that she took too many weekends off. It was at this point that Sara began to cry: *“Ya no pude seguir hablando con él porque de tanta impotencia que sentí me solte llorando y el me siguió diciendo que podia regresar a recoger mi cheque y salio de la cafeteria sin decir mas.* [I could not continue speaking to him because of the impotence that I felt and I began crying and he kept saying that I could come back and pick up my check and he left the cafeteria without saying anything else.]

Various types of micro-aggressions thus surface with this case:

1. there are incessant *assaults* to Sara’s confidence in her ability to discern good service from bad,

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2. there is a *disquieting, and unnerving* examination of her personality, or personal attributes,
3. there are *threats* to produce complaints that would discredit her,
4. there are unrealistic demands to conform to a dress code that make her self conscious about her appearance and comfort,
5. there is an *insistence* that she leave to work elsewhere.

Less is known about the workforce abuses suffered by undocumented women workers. Women were only two percent of the total number of the day laborers surveyed in the study by Valenzuela and others (2006). However, there is strong indication that migration by women is increasing (Cerrutti and Massey 2001, Donato 1993, Kanaiaupuni 2000) and may constitute near 50% of the migration to the U.S. ( Zlotnik 2003). As a subset of the undocumented worker population, women are less likely to engage in legal remedies to address their problems, especially when discriminated against at work, and less likely than the other labor force members to call oppressive treatment an injury or discrimination (López 1998). Women are also more likely to be exploited in the labor market their male counterparts (Johnson 1998). Rivera-Batiz Rivera-Batiz' study (1999) shows that when all other measurable factors are controlled for, the wage differential between the earnings of legal and undocumented women workers was greater (57%) than the differential for men (51%) in the same categories. In other words, women more so than men, experienced greater increases in wage earnings for women after they were given legal authorization to work demonstrating that women stand more to gain from having legal status. The larger wage earning differential after legalization for women also suggests that women may be subject to more exploitation than their undocumented male counterparts. This is

especially evident if we consider the negative effects of pregnancy on earnings rights and the protection for working women under the Pregnancy Discrimination Amendment to Title VII, commonly called the Pregnancy Discrimination Act (PDA). This amendment prohibits sex discrimination on the basis of pregnancy. The reasons for firing Sara that Mr. Marquez gave (not abiding by the hotel dress code and frequent absences from work) do not directly refer to her pregnancy, but it might be argued that these reasons merely served as proxies for the real reason she fired: her pregnant condition. If Sara would have been authorized to work, her employer would have been forced legally to accommodate her absences. If Sara would have been authorized to work, the imposition of the dress code might have constituted as gender discrimination under the PDA. Without the protection that the PDA offers, the unfair treatment undocumented working women are subjected to is exaggerated.

**Discussion: Policy Implications of Documenting Work Force Abuses**

To a large extent, the routine violation of labor laws, the microaggressions carried out by abusive employers that work to enforce discrimination and inequality, continue to remain outside the purview of immigration policies and politics. The existence and undercounting of microaggressions attests to the discretionary power employers have to interpret immigration law to their benefit and the prevalence of racist attitudes that operate at both conscious and unconscious levels. Related to this is not recognizing discrimination in the often subtle forms that they exist that could be remedied by education or conscientization. Employers frequently deny that they exploit or unfairly discriminate undocumented workers. It is therefore important to explore systematically the probability that employers' decisions to terminate workers are based on legitimate reasons and not on discriminatory attitudes or latent desire to exploit their workers. For example, low pay and dismissals are often justified by referring to workers' lack of

skills, English proficiency, or inadequate experience. A study by Rivera-Batiz (1999) endeavored to examine the validity of this commonly accepted argument by measuring the impact of legalization on the earnings of previously undocumented Mexican immigrant workers. The first part of the study used a random sample from the nearly 1.6 million undocumented workers who were eligible to become legal residents after IRCA to measure changes in earnings that could be attributed to legalization. The second part of the study was a longitudinal study that surveyed a large sample (1,103 individuals) of previously undocumented workers who worked in 1987-1988 and worked after becoming legalized residents after IRCA in 1992. Not surprisingly, the results showed that there was a significant rise in earnings after legalization. However, when distinguishing characteristics that justified workers' lower pay were controlled for (e.g. years of schooling, English proficiency, recentness of immigration), 51.3% of the difference between the two groups could not be explained. (For women, the unexplained part of the difference was more, 57%, as previously stated). *This suggested strongly that other unknown and unmeasurable factors might be at work to produce less pay for undocumented workers, "the presence of some degree of discrimination against undocumented workers"* (Rivera-Batiz 1999, 106) (my emphasis). Conceivably, the unknown factors could be the attitudes and practices that comprise microaggressions that work to threaten, punish, or discredit undocumented workers, and the resultant lost wages and diminished productivity that they suffer.

Changes in attitudes could come from the knowledge about the role of social attitudes play in determining discriminatory practices and the power that such attitudes have in defining or redefining who or what is criminal (Coutin 2005). Employers are not only subject to social forces, but agents in their reproduction and in the reproduction of the attitudes that normalize the treatment of undocumented workers as criminals and less deserving. Over the course of history

we have seen the criminalization of previously accepted acts (wife-beating, drinking while driving, and racial segregation) as well as the decriminalization of previously objectionable ones (the sale of alcohol during prohibition, some forms of birth control including abortion). We can thus appreciate current debates that render the “criminal” label unstable, such as the debates over the medical use of marijuana, the ritual use of mind-altering drugs among Native American populations, or doctor-assisted suicide, where the distinction between the offenders and the offended is unclear. This “spatial ambiguity” is where legal and illegal acts converge—a space that offers the possibility to re-define law-breakers as deserving members of society and vice-versa (Coutin 2005). Undocumented workers negotiate this spatial ambiguity on a daily basis, and by doing so, contest the social tendency to conflate the “undocumented” and “criminal” categories. Coutin (2005) points out undocumented workers are not criminal in the true sense. In the logic of our penal system where criminals are physically separated from the law-abiding, they lead conventional lives, build communities, and raise families. Valenzuela et al (2006) show that day laborers are active members of their communities with half (52 percent) attending church regularly and one-fifth (22 percent) involved in sports clubs. Many workers (11 percent) have been living in the U.S. for more than 20 years, and 29 percent have lived in the U.S. between six and 20 years. Twenty-nine percent of the children of the day laborers surveyed had been born in the U.S. Chances are high that anyone living in the U.S. has had daily interaction and discourse with immigrants as employees, neighbors, or co-workers, appearing to defy immigration laws currently in place. It is through these shared spaces, where everyday practices and feelings and interests are expressed, will our social and legal understanding translate into a transformation of the prevailing anti-immigrant attitudes climate wherever it is found.

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It is also in the interest of both the U.S. and Mexico to understand and promote the understanding of how the economic disadvantages for Mexican undocumented immigrants translate into broader disadvantages. Without attempting to review the history of the contribution of Mexican Labor to the development of the U.S. and Mexico in just a few pages, it should be noted that despite average low wages, low education, and the denial of many of the social benefits entitled to other U.S. workers, an estimated seven million undocumented immigrant workers in the United States are now providing the U.S. economy with a subsidy of as much as \$7 billion a year (Porter 2005). In addition to consumer related taxes that undocumented immigrants pay while living in the U.S., undocumented workers pay contributions to Social Security and Medicare by way of wage deductions. Porter (2005) reports that these contributions added up to about 10 percent of last year's surplus, which is the difference between what the U.S. government currently receives in payroll taxes and what it pays out in benefits. This surplus is seen as a direct benefit of the Immigration Reform and Control Act of 1986 (IRCA). IRCA produced an increase in the sales of false documents to appease employers. The Social Security thus directly benefited from this law. Starting in the late 1980's, the Social Security Administration received a flood of W-2 earnings. However, because payroll records were inaccurate, the contributions made using false social security numbers were deposited in an "earnings suspense file" until the owners of those contributions could be identified. The earnings suspense file had grown to about \$189 billion by the 1990's, representing two and a half times the amount of the 1980's. In the current decade, the earnings suspense file is growing on average by more than \$50 billion a year, and in 2002 nine million wage statements with incorrect Social Security numbers, amounting to \$6.4 billion in Social Security taxes, ended up in the suspense file. There is good indication that these earnings correspond to the earnings of undocumented

immigrants (Porter 2005).<sup>10</sup> The economic contribution by immigrants to Mexico is no less dramatic. A study conducted by the Tomas Rivera Institute reported that that in 2003, remittances sent to Mexico by family members working in the U.S. totaled \$13.266 billion dollars. This amount equaled 79 percent of Mexico's oil exports, 71 percent of the *maquiladora* sector surplus, and approximately 2.2 percent of Mexico's gross domestic product (Cortina and de la Garza 2004).

In Arizona, Mexican immigrants are projected to contribute in 2007 6.63 billion dollars of purchasing power and 556.1 million dollars in sales and income taxes. Although immigrants generate costs to the state, their contribution to the Arizona economy for 2001 produced a fiscal surplus of approximately 106 million dollars that year (Thunderbird 2003). In this border state, however, the space shared with a part of the Mexican immigrant population, the undocumented, is being highly contested. Beginning in the fall election of 2004, amidst controversy and anti-immigrant discourses, voters approved Proposition 200, a law that made it a requirement for Arizonans to show proof of citizenship when registering to vote and to provide evidence of legal status when seeking public services. Stemming from this discourse, a wave of anti-immigrant initiatives were introduced in into the Arizona legislature in the spring of 2005 that aimed to further marginalize undocumented residents of that state. Of the 24 initiatives proposed by Arizona legislators (see Appendix 1), four were signed by Governor Janet Napolitano. Of these, it is worth noting that HB 2259 makes it an aggravating factor for sentencing under Arizona's felony statutes if at the time of the offense, the defendant was in violation of federal immigration laws, which would result in further criminalizing of undocumented immigrants. Also, HB 2292

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<sup>10</sup> The distribution of fictitious W-2's were found to fit the distribution of undocumented immigrants in terms of the geographic location of 100 employers filing the most earnings reports with false Social Security numbers from 1997 through 2001 and employment that they typically engage in: restaurants, construction, and farm operations.

prohibits a city, town or county from constructing and maintaining work centers if any part of the center is to facilitate the knowing employment of an alien who is not entitled to lawful residence in the U.S. This last piece of legislation is particularly unfortunate in light of the study of day labor centers by Valenzuela et al. (2006) that shows formal day labor centers intervene to effectively curb rampant workplace abuses of workers (Valenzuela et al. 2006, 23).

In the spring of 2006, about 37 immigration-related bills again have flooded the second regular session of the 47<sup>th</sup> Arizona State Legislature (Appendix 2). Although at this time the outcome of these bills is speculative, it is worth noting that most of these bills replicate established federal immigration and border enforcement responsibilities. However, even if these bills are not passed, they send a clear negative message to the Mexican immigrant population in Arizona, 22 percent of which is undocumented, in effect “resurrecting exclusion” by a variety of “policing activities” not unlike those seen after the implementation of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (Hagan and Rodriguez 1996).

### **Conclusion: Towards Theorizing Contentious Spaces**

This paper examines work force abuse cases documented in 2004 and 2005 by Derechos Humanos, a Tucson Arizona human rights group. The community service this community organization provides is regarded as an important first step in addressing the results of contradicting laws and attitudes that impact workers’ rights. The archives documenting worker’s complaints provide windows to social spaces that invite discriminatory and often illegal treatment of undocumented workers. Part of my goal with this study has been to begin to theorize the contentious spaces that undocumented workers occupy. Their increased numbers and their quasi-permanent presence in the US (as in other developed countries) have confounded the

established spatial order conventionally defined by nationhood, and citizenship. The social spaces average persons share with immigrants forces us to rethink the role national borders play in a world where cultural and ethnic boundaries are constantly shifting. The need to advocate in their behalf of undocumented workers points to spaces that have become increasingly problematic since 9/11, but have *always* been present, all though invisible in many ways. Voices from these spaces help map out critical geographies that are socially constituted and often the result of historically determined “asymmetrical relations of dominion and subordination—like colonialism or slavery, or their aftermaths as they are lived across the globe today”, where on-going relations are established that reflect coercion, inequality and conflict (Pratt 1992, 6-4). To be sure, we can see these often conflictive encounters played out in the Derechos narratives, but of late even more visibly in public spaces: in high profile legal cases and state and national legislature, and in immigrant rights rallies and marches in April and May of 2006 in which millions participated.

The framework for analysis, *Petit Apartheid*, is useful for understanding the plight of undocumented workers in the less-visible spaces shared with employers. My argument is that employers are much like their law enforcement counterparts because

- 1) Employers, like policing officials, are empowered by ample discretionary latitude with regard to the enforcement of fair labor practices.
- 2) Employers, like policing officials, exercise discretion in the hiring of workers, including those who are undocumented.

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- 3) Employers, like policing officials, exercise discretion in responding to employees who complain. That is to say: they can resolve employee complaints fairly and legally, or they can discipline employees, unfairly or illegally.

Likewise, Petit Apartheid, is also useful for understanding the plight of undocumented workers in terms of the coercive, unequal, and conflictive exchanges with their employers that resemble recognized patterns of racial discrimination given that

- 4) Immigration policies have historically created legal differences based on racial characteristics in order to determine who is included and excluded from access to resources or other legal protections.
- 5) Like other racialized groups, undocumented employees are more likely to be perceived by their employers less deserving of fair treatment
- 6) Like other racialized groups, undocumented employees are less likely to file grievances, and thus employer disciplinary actions systematically remain outside of the purview of any legal process, and finally
- 7) The systematic discrediting of undocumented immigrant workers through microaggressions, works to diminish their capacity, as in the case of other U.S. minorities, to improve their economic standing, and in effect, produce an apartheid-like condition.

The narratives from the Derechos archives illustrate the range of microaggressions to which millions of workers are routinely subjected. Our appreciation of the importance of Derechos' work is enhanced by the current U.S. focus in on immigration enforcement and immigration reform. The advocacy and community education work of Derechos thus represents a wider popular struggle taken up by similar organizations and their allies lately across the U.S. to

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call attention to the human and economic rights of immigrant workers who, because of their undocumented status, occupy contentious social spaces within the U.S. Such spaces are predicted to become increasingly more contentious with legislative measures that intensify internal immigration enforcement and militarization of the U.S.-Mexico border, contradicting the tendency towards increased global migration. The challenge is then to focus on the intersections that allow us to see the mechanisms and practices through which contradictions are negotiated: spaces shared by labor and industry, citizens and immigrants, subject and Other, documented and undocumented.

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### Appendix 1: Arizona House and Senate Immigration-Related Bills in 2005.

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#### BILLS SIGNED BY THE GOVERNOR

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##### HB 2259 Aggravating factors; Immigration law violation

Makes it an aggravating factor for sentencing under Arizona's felony statutes if at the time of the offense, the defendant was in violation of federal immigration laws.

*HB 2259 was signed by the Governor on April 18, 2005.*

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##### HB 2539: Human trafficking violations (Paton) and SB 1372 human trafficking violations

Define and prescribe penalties for unlawfully obtaining the labor or services of a person, sex trafficking, trafficking of persons for forced labor or services and smuggling of human beings.

*SB 1372 passed the Senate and was substituted for HB 2539 in the House and sent up to the Governor. The Governor signed the bill on March 14, 2005.*

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##### HB 2592: Aliens; work centers; prohibition

Prohibits a city, town or county from constructing and maintaining work centers if any part of the center is to facilitate the knowing employment of an alien who is not entitled to lawful residence in the United States.

*HB 2592 was signed by the Governor on May 20, 2005.*

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##### SB 1420 Uninsured drivers; penalties; vehicle impoundment

Allows a peace officer to impound or remove a vehicle if the officer determines that a person is driving the vehicle and the person has not been issued a driver's license or permit and the person does not produce evidence of having a driver's license issued by another jurisdiction. In order for the vehicle to be impounded or removed, all of the following have to apply:

- The person's driving privilege has been cancelled, suspended, revoked or the person has never been issued a license.
- The person does not have the required motor insurance.
- The person is driving a vehicle that is involved in an accident that results in property damage or physical injury of another person.

In addition, the bill increases the civil penalties for any violation of these provisions.

*The bill was signed by the Governor on April 18, 2005.*

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##### SB 1488 Persons lawfully detained; identification requirement

Prescribes a class 2 misdemeanor for a person who fails or refuses to state the person's full name on request of a peace officer who lawfully detained the person on suspicion that the person has, is or is about to commit a crime.

*The bill was signed by the Governor on April 25, 2005.*

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#### BILLS VETOED BY GOVERNOR Janet Napolitano

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##### HB 2030: Public programs; citizenship

This bill requires employees of the Department of Economic Security to verify an applicant's immigration status with the Department of Homeland Security's SAVE program before providing services. The following agencies will be affected:

- DES – adoption services and all welfare programs

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- DOE – the family literacy program and adult education
- Universities and Community Colleges – beginning January 1, 2006, students without legal status would not be eligible for in-state tuition rates, and would not be eligible for any tuition waivers, scholarships, or other state-funded tuition assistance benefits.
- AHCCCS

The bill was vetoed by the Governor on May 20, 2005.

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### **HB 2044 and SB 1118: Provisional ballots; requirements; identification**

This bill addresses changes needed to address issues created by the voter adoption of Proposition 200.

- Requires that the official precinct register include both the voter's residence address and mailing address.
- Clarifies that if the address on the voter's identification presented at the polls matches either the residence or mailing address shown on the official precinct register, the person will be allowed to vote a regular ballot.

*SB 1118 was vetoed by the Governor on 4/1/05.*

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### **SB 1306 Local enforcement; federal immigration laws**

Authorizes peace officers to investigate, apprehend, detain or remove aliens in the enforcement of immigration laws of the US, to the extent permitted by federal law. Includes transporting an alien across state lines to a detention center.

*The bill was vetoed by the Governor on May 20, 2005.*

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### **SB 1511 Secure and verifiable identification**

Prohibits law enforcement, a department, agency, commission, board or districts of this state that require identification for services from accepting or recognizing any identification document unless the document was issued by a political subdivision of this state, a federally recognized Indian tribe, a state or federal authority. It also requires the identification to be verifiable by a law enforcement or a homeland security agency.

*The bill was vetoed by the Governor on 5/6/05.*

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### **SB 1167 English as official language**

Establishes English as the official language of Arizona and requires official actions to be conducted in English. Allows a representative of the government to communicate unofficially through another language as long as official action is conducted in English. It also allows a person who resides or does business in this state to file a civil action for relief from any official action that violates these provisions that cause injury to the person or if the person contends that these provisions are not being implemented.

*The bill was vetoed by the Governor on 5/9/05.*

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## **BILLS THAT DID NOT MAKE IT THROUGH THE LEGISLATURE in 2005**

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### **HB 2263 Undocumented persons; postsecondary assistance; prohibition (Gray C.)**

Prohibits non-citizens or persons without lawful immigration status from receiving any form of financial assistance paid in whole or in part with state monies at any of the state's universities or community colleges.

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### **HB 2264 College tuition; undocumented immigrants (Gray C.)**

*This bill prohibits undocumented immigrants from being classified as in-state students and from being eligible for state or federal financial aid or assistance, unless they have a lawful immigration status or have been granted refugee status.*

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### HB 2384 Employment; illegal aliens; license revocation (Pearce)

HB 2384 requires the Attorney General to suspend or revoke the license, certification, permit or charter, issued by this state, for any person who has been sanctioned by a federal agency as an employer who violated any Federal statute for hiring or employing an illegal alien.

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### HB 2386 Federal immigration laws; local enforcement (Pearce)

Allows local/state law enforcement to enforce immigration laws by investigating, apprehending, detaining, or removing aliens in the U.S. including transporting aliens across state lines to detention centers.

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### HB 2388 Foreign convictions; former jeopardy eliminated (Pearce)

Provides that if a criminal offense is within the jurisdiction of Arizona and a foreign country, a conviction or acquittal for that offense in the foreign country does not prevent the prosecution or indictment of the offense here in Arizona.

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### HB 2389 Illegal aliens; detention; bail (Pearce)

Amends Arizona statute to allow the court to temporarily detain a person who has been arrested to permit for deportation or exclusion under federal law (the Bail Reform Act of 1984) if the person is not a citizen or is present in the U.S. as a lawful permanent resident and the court finds that the person may flee or pose a danger to another person or the community.

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### HB 2393 Driver licenses and fraudulent documents

Requires the Director of ADOT to establish employee training programs and procedures for analyzing documents submitted to ADOT by applicants for a license to verify an applicant's age, identity and authorized presence in the United States.

- Prohibits ADOT from issuing anything other than a temporary license if they suspect that an applicant has submitted fraudulent information.
- ADOT would be required to retain documents submitted by an applicant if the Department believes the documents to be fraudulent and note that in their computer records.

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### HB 2394 AHCCCS; verification of eligibility

HB 2394 mandates the Arizona Health Care Cost Containment System (AHCCCS) to use the Systematic Alien Verification for Entitlements program to verify applicant's immigration status and requires AHCCCS employees to submit a written report to federal immigration authorities if any violations of federal immigration laws are uncovered by the employee.

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### HB 2395 Welfare eligibility; immigration status; verification

The bill would require the Department of Economic Security (DES) to use the federal Systematic Alien Verification for Entitlements (SAVE) program to check the immigration status of persons applying for services in Title 46 of Arizona Revised Statutes. Programs in Title 46 include Temporary Assistance for Needy Families (TANF) Cash Benefits, General Assistance (GA), Child Care, Child Support, Short-Term Crisis Services, and Adult Protective Services.

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### HB 2612 Foreign inmates; violent crimes; release

HB 2612 requires the Arizona Department of Corrections (ADC) to notify the United States Department of Justice (DOJ) and the United States Immigration and Naturalization Service (INS) of the pending release of a foreign national convicted of a violent crime and provides for the continued housing of the inmate beyond the projected release date.

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### HB 2657 Human trafficking

Makes it a Class 2 felony for anyone to engage in human trafficking for the purposes of making the trafficked person engage in forced labor or services. Makes it a Class 4 felony to obtain the labor or services of another person by threatening to or actually injuring them holding them against their will or withholding governmental records, ID, etc.

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### HB 2708 Trafficking of humans

Makes it a Class 4 felony for anyone to traffic a human being for the purposes of [causing the other person to engage in prostitution, sexual exploitation, forced labor or services, slavery, peonage or involuntary servitude](#).

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### HCR 2030 English as official language

HCR 2030 is a referendum measure to repeal the existing Article XXVIII of the Arizona Constitution regarding English as the official language of Arizona. HCR 2030 creates a new Article providing that English is the official language, requiring government officials to preserve the role of English and requiring official functions of government to be conducted in English.

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### SB 1180 Charter schools; English language

Subjects charter schools to state provisions pertaining to English language education for children in public schools, which requires schools to teach in English by teaching the children in English.

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### SB 1219 Voter registration information; citizenship; privacy

Prohibits any information or documents submitted in support of a voter registration application from being accessible or reproduced by a person other than the voter or an authorized government official. It also establishes that a person's registration form shall meet the registration requirements in order to be presumed to be properly registered to vote.

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### SB 1357 Smuggling of persons

Makes it illegal for a person to intentionally smuggle or traffics human beings or enables the smuggling or trafficking of human beings for the purpose of obtaining a financial or other material benefit. The bill also prescribes a class 4 felony for committing a violation.

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### SB 1364 English Official Language Documents

Makes English the official language of Arizona and instructs that government officials, except as provided by federal law or the Constitution of Arizona, are not required to provide services or documents in a language other than English.

The bill passed the Senate but was subject to a strike everything amendment in the House Judiciary Committee. The strike everything amendment is of a different subject. *The bill as amended failed the Senate final passage vote. A motion to reconsider was adopted but never acted on.*

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## BILLS THAT WILL BE ON THE 2006 BALLOT

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### HCR 2028 Bail eligibility; exceptions; noncitizens

Asks the voters to amend Arizona's Constitution in the 2006 General Election to allow the court to temporarily detain a person to permit for deportation or exclusion under federal law (the Bail Reform Act of 1984) if the person was arrested and is not a citizen or is present in the United the States a lawful permanent resident, and the court finds the person may flee or pose a danger to another person or the community.

*This bill passed the House with a 36-23-1 vote and was subject to a strike-everything amendment in the Senate Judiciary Committee. The strike everything amendment prohibits persons from posting bail if charged with a serious felony offense and if the person entered and has remained in the U.S. illegally. The bill passed the House and Senate and was transferred to the Secretary of State on May 12, 2005*

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\*\*\*Updated May 23, 2005.

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### Appendix 2: Arizona House and Senate Immigration-Related Bills 2006.

#### BILLS PROPOSED, BUT VETOED BY GOVERNOR JANET NAPOLITANO IN 2006

##### SB 1157 "Trespassing by illegal aliens"

Establishes the crime of trespassing by illegal aliens and the procedures that an arresting authority must follow.

Vetoed 04/17/06

##### HB 2577 "Immigration law; employment; enforcement"

Requires employers to discharge employees if it is discovered they provided an invalid social security number. [The vetoed version included amendments based on various individual bills proposed in 2006: for the expansion of immigration enforcement duties to local police (HB 2582, HB 2071), to restrict adult education services to citizens or those lawfully present in the U.S. (HB 2593), to require school boards to keep records of pupils who are not citizens or legal residents of the United States (HB 2838), to require community colleges and universities to provide reports on the number pupils who are not U.S. citizens or without legal status who request or receiving financial assistance (HB 2597).

Vetoed 6/6/06

#### BILLS SIGNED INTO LAW in 2006

##### HB 2448 "AHCCCS; eligibility for services"

(Amends section [36-2903.03, Arizona Revised Statutes](#); relating to the Arizona health care cost containment system.)

[Before providing services pursuant to this chapter, an employee of the administration must verify the applicant's immigration status through the systematic alien verification for entitlements program as administered by the United States department of homeland security.](#)

[Signed into law by the Governor on 04/24/06](#)

##### HB 2594 "Homelessness trust fund; repeal; appropriation"

Establishes that individual and family services and income maintenance services must only be provided to citizens or legal residents of the United States.

[Signed into law by the Governor on 05/02/06](#)

#### BILLS THAT HAVE BEEN PROPOSED IN 2006

##### HB 1216

Prohibits an employer from knowingly hiring an illegal alien.

##### SB 1513 / 1216

Requires the Attorney General to assess civil penalties and bring a civil action against any employer who knowingly and intentionally hires employees in Arizona who are not authorized to work in the United States. Establishes a crime for forgery of employment eligibility documents used to obtain employment in Arizona.

##### HJR 2001

Requests the United States Congress and the United States Department of Homeland Security to supplement Immigration and Customs Enforcement with state auxiliary reserve units under the Coast Guard.

##### HB 2003

Gives six million dollars to four border counties for the construction of a road to facilitate law-enforcement patrols.

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### HCR 2036

Creates a new Article for the Arizona State Constitution providing that English is the official language, requiring government officials to preserve, protect and enhance the role of English and requiring official functions of government to be conducted in English.

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### HCR 2037

Upon voter approval, instructs the Department of Emergency and Military Affairs (DEMA) to build a wall along Arizona's southern border.

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### HCR 2044

A referendum measure that requires employers to discharge employees if it is discovered the employee provided an invalid Social Security Number and stipulates that an employer who verifies the immigration status of their employees through the Systematic Alien Verification for Entitlements program is not subject to any civil sanction or criminal penalty imposed for employing an illegal alien.

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### HB 2069

Prevents anyone who has not been granted refugee status or who is without lawful immigration status from qualifying for in-state tuition.

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### HB 2071

A peace officer who lawfully detains a person based on the reasonable suspicion that the person has committed, is committing or is about to commit a crime has a duty to question that person regarding the person's immigration status.

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### HB 2072

Section 12-820.02, Arizona Revised Statutes, is amended to read: "Unless a public employee acting within the scope of the public employee's employment intended to cause injury or was grossly negligent, neither a public entity nor a public employee is liable for: (11) *The enforcement of immigration laws, the detention or arrest of any person for immigration law violations or the questioning of any person about the person's immigration status.*"

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### HB 2073, Strike everything amendment

Adds to the definition of *prohibited possessor* one who is in violation of 8 United States Code (USC) §1325, which pertains to the unlawful bringing of aliens into the US. 8 USC §1324 states that it is unlawful for a person to hire, to recruit or refer for a fee, an alien who is known to be an unauthorized alien for employment in the US., and establishes penalties for an alien who:

1. Enters or attempts to enter the US at any time or place other than as designated by immigration officers;
2. Eludes examination or inspection by immigration officers; or
3. Attempts to enter/obtain entry into the US by false representation.

The Strike everything amendment to HB 2073 also Prohibits a landlord from knowingly entering into a rental agreement with a person who is not lawfully present in the United States.

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### HB 2587

Arizona Revised Statutes is amended by adding section 44-1209, to read: It is unlawful for a loan to be made to a person in this state if the application for the loan permits the use of a federal individual taxpayer identification number (ITIN) as a method of identifying the loan recipient. (An ITIN is a taxpayer identification number that is required if a person is a nonresident alien filing a US tax return and is not eligible for a Social Security Number (SSN) or if a person is a US resident filing a US tax return and not eligible for a SSN. An ITIN does not entitle the recipient to Social Security benefit or Earned Income Tax Credit nor does it create an inference regarding the individual's immigration. ) After execution of an otherwise lawful and binding loan agreement, a lender may lawfully request the borrower's individual taxpayer identification number if the borrower is not eligible to receive a social security number under federal law.

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### HB 2579

Calls for the state to pay for the deployment of the National Guard in Southern Arizona for security functions.

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### HB 2580

Provides additional circumstances under which a person may be excluded from bail and requires law enforcement agencies to determine a person's country of citizenship once the person has been brought to the agency for incarceration. Once citizenship is determined, [HB 2580](#) requires the agency to notify the person's country of citizenship of the person's detention if the person is not a United States citizen.

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### HB 2586

An agency or a political subdivision of this state shall not issue any license to any applicant who is an illegal alien.

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### HB 2298

Amends Section 1. Title 41, chapter 12, article 2 of the Arizona Revised Statutes by adding section 41-1721, to read: Department of public safety border area reserves; membership; duties:

A. The director shall provide for a volunteer organization to be known as the department of public safety border area reserves.

B. The organization shall consist of United States citizens who have been residents of this state for at least one year.

[Members of the reserves may carry a firearm as allowed by law but may not discharge the firearm against another person except in self-defense. Members of the reserves are immune from civil liability for any act or omission resulting in any damage or injury if the member was acting in good faith, unless the damage or injury was caused by willful and wanton or grossly negligent conduct by the member...](#)

E. The border area reserves shall:

1. Assist in search and rescue missions in isolated areas of the border region of this state.
  2. Protect the civil rights of undocumented persons and assist undocumented persons in obtaining shelter and relief from the physical elements.
  3. Patrol and provide surveillance of the southern border area of this state.
  4. Protect public and private properties from illegal trespassing and abuse.
  5. Notify the appropriate federal, state or local law enforcement agencies of any illegal activity encountered.
  6. Observe with special attention persons who enter the United States at non-United States ports of entry.
- F. The border area reserves may assist the department and the Arizona joint terrorism task force to preempt or prevent terrorist activity.

[G. The border area reserves shall operate in areas of this state that are north of this state's southern boundary and south of interstate highways 8 and 10 starting at the Colorado river east to the intersection of interstate highway 10 and east along interstate highway 10 to the eastern boundary of this state.](#)

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### HB 2588

Amends section 23-901, Arizona Revised Statutes, relating to workers' compensation. The definition of "Employee", "workman", "worker" and "operative" is amended to exclude "aliens...legally or illegally permitted to work for hire... any person who is not a citizen or national of the United States and who is unlawfully present or unlawfully residing in the United States

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### HB 2595

Requires that a child care home provider registering with the Department of Economic security who wishes to be listed with the child-care resource and referral system to be a citizen or legal resident of the U.S.

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### HB 2596

Requires the Department of Education, school districts and other institutions and agencies to provide adult education services only to those who are citizens or lawfully present in the U.S.

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### HB 2597

Stipulates that a person who is not a citizen or legal resident of the United States or who is without lawful immigration status is not entitled to classification as an in-state student or entitled to classification as a county resident.

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### HB 2598

Requires that any person who is enrolled at any university under the Arizona Board of Regents or at any community college under the jurisdiction of a community college district is not entitled to receive financial assistance if that person is not a citizen of the United States or is without lawful immigration status.

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### HB 2599

Requires that public money for job training or workforce development must only be distributed to persons who are citizens or legally in the U.S.

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### HB 2837

Prohibits entities that have a stated or implied sanctuary policy involving any form of aid to illegal immigrants from receiving shared revenues collected from the TPT and the Urban Shared Revenue Fund.

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### HB 2838

Requires school district governing boards (governing boards) to maintain a record of pupils who are not citizens or legal residents of the United States or who are not lawfully present in the United States.

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### SCR 1001: Proposed strike-everything amendment

Amends the Arizona Constitution that justifies threatening or using force against others in prescribed instances and establishes a presumption for when a person is acting reasonably when using justifiable force and prohibits an illegal alien from having standing to file action in a court of Arizona except to recover actual damages.

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### SCR 1030

A constitutional measure that prohibits public entities that require identification for providing services from accepting identification documents unless they are issued by a political subdivision of this state, a federally recognized Indian tribe or a state or federal authority and the documents are verifiable by law enforcement or a homeland security agency. This measure specifically prohibits public entities from accepting identification issued by embassies of other countries, e.g. the Mexican *matricula consular*.

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### SCR 1031

Prohibits adults who are not citizens or legal residents of the United States from taking classes offered by the Arizona Department of Education (ADE) Division of Adult Education (Division) or receiving child care assistance from the Arizona Department of Economic Security (DES) and requires specified information on applicants for certain programs to be reported by specified state agencies biannually to the Joint Legislative Budget Committee (JLBC).

#### AMENDMENTS TO SCR 1031:

Each community college and university shall report on December 31 and June 30 of each year to the joint legislative budget committee the total number of students who were entitled to classification as an in-state student and to financial aid and the total number of students who were not entitled to classification as an in-state student and financial under this section because the student was not a citizen or legal resident of the United States. SCR 1031 also limits in-state student classification to persons meeting specified requirements.

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### SB 1158

Appropriates \$75 million from the state General Fund in FY 2006-2007 to the Arizona Criminal Justice Commission (ACJC) for the award of grants to enforce illegal immigration laws and deter illegal immigration.

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### HB 2582

Authorizes peace officers to investigate, apprehend, detain or remove aliens in the United States in the enforcement of immigration laws. The bill establishes the Border Security Council to provide grants to political subdivisions for costs associated with immigration enforcement creates the Border Security Fund and makes appropriations to the Fund along with the Department of Public Safety for immigration enforcement.

Exempts a public employee from liability for:

1. The enforcement of immigration laws.
2. The detention or arrest of any person for immigration law violations or the questioning of any person about the person's immigration status.

Establishes a Border Security Council that will consist of a total of 11 members who will serve staggered terms of three years and make grants to political subdivision for border security and be made of the following people:

- a) The director of DPS or a person designated by the director.
- b) One member of the House of Representatives appointed by the Speaker of the House.
- c) One member of the Senate appointed by the President of the Senate.
- d) One member of the public appointed by the Speaker of the House and one member of the public appointed by the President of the Senate.
- e) One municipal law enforcement member who is appointed by the Arizona Association of Chiefs of Police from a southern Arizona border city.
- f) Two county law enforcement members who are appointed by the Arizona County Sheriffs Association, one of whom will be from a county with a population of more than 1,500,000 thousand people.
- g) One city prosecutor appointed by the Arizona Prosecuting Attorneys Advisory Council.
- h) Two county attorneys appointed by the Arizona Prosecuting Attorneys Advisory Council one of whom will be from a county with a population of more than 1,500,000 people

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### SB 1057

Prohibits an illegal alien is prohibits from having standing to file action in a court of Arizona except to recover actual damages.

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### SB 1215

Requires every employer in Arizona to verify a prospective employee's employment eligibility before hiring the employee and appropriates \$500,000 from the state General Fund in FY 2006-2007 to the newly established Verified Employee Enforcement Fund for enforcement of the verification requirement by the Attorney General.

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SB 1273 Calls for spending 20 million to lease a radar system for border protection

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### SB 1513

Arizona Revised Statutes, is amended to read: A person commits forgery if, with intent to defraud, the person: (4) Falsely makes or alters a written instrument that purports to be a document that fulfills the requirements for establishing identity or eligibility to work in the United States pursuant to the federal immigration reform and control act of 1986 and that is used to obtain employment in this state by a person who is not authorized to work in the United States. The amendment also establishes penalties for employers in this state who knowingly and intentionally hires an employee who is not authorized to work in the United States.

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