

# Note

## *Quizás Se Puede: Evaluating Union Success in Incorporating Immigrant Workers*

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### ABSTRACT

*While unionization has experienced growth over the past couple of years, immigrant incorporation has been widely regarded as the long-term future of the labor movement. Economic shutdown during COVID-19 has revealed that low-wage work is “essential” to our country. Yet, the immigrants who often occupy these industries are left widely unprotected in the face of poor working conditions. There remains an opportunity to mobilize immigrant workers and to increase solidarity within organized labor. Still, unions have been faltering in their efforts to fold immigrants into the rank-and-file. This Note analyzes over one hundred union contract provisions and argues that union contract provisions provide a unique opportunity for unions to recruit immigrant workers by providing material benefits that other organizing models cannot. This Note contends that unions, as organizations with a direct hand in the workplace, can operate as intermediaries between workers and employers or immigration enforcement to discuss immigration-related concerns while protecting workers from potential deportation or discrimination.*

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## INTRODUCTION

This is an exciting moment for the labor movement. Across the nation, workers are organizing at some of the largest corporations and union favorability is at an all-time high.<sup>1</sup> Labor organizations are attempting to capture this renewed energy to cement worker solidarity for decades to come, but they are moving forward without a critical column within the movement: immigrant workers. While unionization experienced recent growth, immigrant workers are the movement's future.<sup>2</sup> The economic shutdown during the COVID-19 pandemic revealed that low-wage work is "essential" to our country, yet the immigrants who occupy these jobs are left widely unprotected.<sup>3</sup> However, there are opportunities to mobilize immigrant workers and increase solidarity within organized labor, and unions' collective bargaining agreements are showing a path forward.

Several issues within organized labor perpetuate the exclusion of immigrant workers. The nation's strongest unions are nearly a century old, and their leadership does not reflect the current diversity of the working class.<sup>4</sup> Unions are traditionally hostile to workers of color, as their members often perceive these groups as "job-takers."<sup>5</sup> Furthermore, language barriers and the criminalization of immigrants force many of these workers "into the shadows," indicating that stronger outreach is needed to encourage them to speak out on abusive work environments.<sup>6</sup>

Nonetheless, some unions are organizing among immigrant workforces and including immigrant concerns in their campaigns.<sup>7</sup> This Note will examine and evaluate these efforts to extend solidarity to immigrant workers by examining union contracts and their effect on material conditions for immigrant populations. It will argue that union contract provisions provide a unique opportunity for unions to recruit immigrant workers by providing material benefits that other organizing models cannot. As organizations

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<sup>1</sup> Megan Brenan, *Approval of Labor Unions at Highest Point Since 1965*, GALLUP, Sept. 2, 2021, <https://news.gallup.com/poll/354455/approval-labor-unions-highest-point-1965.aspx> [<https://perma.cc/5Y38-Y37Y>].

<sup>2</sup> Sherley E. Cruz, *Essentially Unprotected*, 96 TUL. L. REV. 637, 656-660 (2022); Julie Rivichin, *Building Power Among Low-Wage Immigrant Workers: Some Legal Considerations for Organizing Structures and Strategies*, 28 N.Y.U. REV. L. & SOC. CHANGE 397, 430 (2004).

<sup>3</sup> Julia Preston & Ariel Goodman, *Essential but Excluded*, THE MARSHALL PROJECT, (Dec. 15, 2021) <https://www.themarshallproject.org/2021/12/15/essential-but-excluded> [<https://perma.cc/HZ5K-2H6G>].

<sup>4</sup> See, e.g., AFL-CIO, "Overcoming Barriers to People of Color In Union Leadership: Report to the AFL-CIO Executive Council" (Oct. 2005), [https://www.iaff.org/wp-content/uploads/2019/07/20206\\_HumanRelations\\_OvercomingBarriers.pdf](https://www.iaff.org/wp-content/uploads/2019/07/20206_HumanRelations_OvercomingBarriers.pdf) [<https://perma.cc/B593-NLCM>].

<sup>5</sup> Marion Crain, *Whitewashed Labor Law, Skinwalking Unions*, 23 BERKELEY J. EMP. & LAB. L. 211, 218-223 (2002).

<sup>6</sup> Rose Villazor, *The Undocumented Closet*, 92 N.C.L. REV. 1, 31-42 (2013).

<sup>7</sup> Jayesh Rathod, *Riding the Wave: Uplifting Labor Organizations Through Immigration Reform*, 4 U.C. IRVINE L. REV. 625, 627 (2014).

with a direct hand in the workplace, unions can operate as intermediaries between workers and employers to negotiate immigration-related concerns, thereby protecting workers from deportation or discrimination.

First, this Note outlines the history of labor's relationship with immigrant workers and provides an overview of the current state of labor organizing in the U.S. Specifically, this Note details the current criticism of the union model and compares it to organizing alternatives that have grown in response to unions' exclusion of immigrant workers. This Note then conducts a thorough review of union contracts and considers the extent to which union leadership has included immigration concerns in their collective bargaining agreements ("CBAs"). Finally, this Note compares contract provisions that tackle concrete concerns of their workers, such as No-Match letters, with provisions that merely make generalized statements of support. The Note concludes by examining these provisions in the context of the overarching trends of the labor movement before making a final evaluation of union inclusivity of immigrants' concerns.

## IMMIGRATION AND THE FUTURE OF LABOR

### A. *Immigrant Worker Precarity*

Immigrant workers face unique organizing challenges due to the increased vulnerability many face from their immigration status.<sup>8</sup> Employers often weaponize workers' immigration status to suppress union activity by threatening deportation of workers who join or support organizing efforts.<sup>9</sup> Meanwhile, the state has weaponized the workplace as a site of immigration surveillance by enforcing immigration verification upon hiring, as well as using workplace audits and raids to locate and deport undocumented workers.<sup>10</sup> These efforts to unveil a worker's immigration status often push this population "into the shadows" and create barriers to reporting workplace violations.<sup>11</sup> Employers are thereby empowered to disregard legal protections and exploit their undocumented workers, sensing little consequence to their actions.<sup>12</sup> As a result, immigrant workers often face greater risks at work due to unsafe working environments

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<sup>8</sup> *Id.*

<sup>9</sup> Shannon Gleeson & Kati Griffith, *Employers as Subjects of the Immigration State: How the State Fosters Employment Insecurity for Temporary Immigrant Workers*, 46 L. & SOC. INQUIRY 92, 96 (2021).

<sup>10</sup> *Id.* at 95.

<sup>11</sup> SHANNON GLEESON, *PREARIOUS CLAIMS: THE PROMISE AND FAILURE OF WORKPLACE PROTECTIONS IN THE UNITED STATES* 98 (2016).

<sup>12</sup> Jayesh Rathod, *Danger and Dignity: Immigrant Day Laborers and Occupational Risk*, 46 SETON HALL L. REV. 813, 830 (2016).

and experience higher rates of wage theft—the unlawful withholding of rightfully earned wages.<sup>13</sup>

These issues are magnified by the lack of administrative enforcement of workplace protection laws for immigrant workers.<sup>14</sup> While agencies have achieved some success in pursuing justice on behalf of undocumented workers,<sup>15</sup> the bureaucratic structure is generally ill-equipped to respond to the needs of these marginalized workers. Government agencies require undocumented workers, who are often apprehensive to approach the government for fear of deportation, to come forward despite the risk of employer retaliation and discuss their problems with bureaucrats. In this process, undocumented workers face cultural, linguistic, and other barriers to bureaucrats understanding them.<sup>16</sup> Without complaints from workers, workplace agencies are restricted from investigating suspect employers.

The disempowerment of immigrant workers in the context of workplace rights enforcement echoes the many policies meant to exclude undocumented persons from social services, preventing them from becoming full members of American society.<sup>17</sup> Furthermore, the delegation of immigration enforcement to state and local actors, along with employers, has left undocumented immigrants vulnerable to deportation at any time. As a result, they are *de facto* excluded from not only government agency protection but from using schools, hospitals, or courts.<sup>18</sup> This exclusion, in contrast with the (albeit limited) rights undocumented immigrants are entitled to by law, forms what Linda Bosniak has labeled the “dual identity” of undocumented workers.<sup>19</sup>

The paradox of this dual identity has left undocumented workers without protection inside and outside of the workplace,<sup>20</sup> stuck in an inferior labor

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<sup>13</sup> *Id.*

<sup>14</sup> Angela Morrison, *Why Protect Unauthorized Workers? Imperfect Proxies, Unaccountable Employers, and Antidiscrimination Law's Failures*, 72 BAYLOR L. REV. 117, 124-125 (2020) (“Nonetheless, employers successfully lobbied to weaken some of IRCA’s [Immigration Reform and Control Act’s] sanctions and the federal government, for the most part, has focused its enforcement on employees, rather than employers... One of the results has been uneven enforcement of IRCA’s provisions against employers... Criminal prosecutions of employers are [rare]”).

<sup>15</sup> See, e.g., Mary Hoopes, *Regulating Marginalized Labor*, 73 HASTINGS L.J. 1041, 1046 (2022) (discussing the EEOC’s successful prosecution of Title VII claims on behalf of migrant farmworkers that were victims of workplace sexual abuse, and arguing that two features that enabled the agency to achieve this success was the decentralization of agents to pursue this project and the outreach conducted to allow community advocates to direct EEOC efforts).

<sup>16</sup> Gleeson, *supra* note 11, at 19.

<sup>17</sup> Lori Nessel, *Instilling Fear and Regulating Behavior: Immigration Law as Social Control*, 31 GEO. IMMIGR. L. J. 525, 540 (2017).

<sup>18</sup> *Id.* at 550-555.

<sup>19</sup> Linda Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker under United States Law*, 1988 WIS. L. REV. 955, 976 (1988).

<sup>20</sup> Nessel, *supra* note 17, at 550-555.

market<sup>21</sup> out of economic necessity.<sup>22</sup> The exploitation of undocumented people as low-wage workers could not exist without the racially charged narratives that normalize the abhorrent working conditions of people of color and immigrants.<sup>23</sup> As the COVID-19 health crisis has revealed, this treatment of “essential” workers is deadly.<sup>24</sup>

### B. *History of Labor Unions and Immigrant Workers*

Unions have a troubled history with immigrant workers. For the first half of the twentieth century, when American unionism was just emerging, most organized labor was anti-immigrant.<sup>25</sup> The largest unions, such as the American Federation of Labor (AFL), were predominantly comprised of white men who feared foreign labor as a potential source of strike-breakers for employers.<sup>26</sup> In part fueled by racist ideology, union leaders felt that immigrant workers would be unable to assimilate into majority culture and would therefore undermine solidarity among the working class.<sup>27</sup>

Unions’ anti-immigrant sentiment lingered into the latter half of the twentieth century as immigrant workers were blamed for taking jobs, depressing wages, and worsening working conditions.<sup>28</sup> As a result, unions were instrumental advocates for restrictionist immigration policies at a national level.<sup>29</sup> Eventually, unions realized that nonwhite workers needed to be folded into unions to prevent strike-breaking, and thus began de-segregating and actively including these workers in the interests of their white membership.<sup>30</sup> While unions have since modernized their stance on immigrant labor, and now support progressive immigration reform,<sup>31</sup> few unions have been successful in leading the path for organizing immigrant workers<sup>32</sup>

Scholars have proposed several theories as to why union incorporation of immigrant workers has historically been limited, especially given indications that many unions currently desire to organize these workers. Some have called upon the labor movement to abandon their class-first

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<sup>21</sup> Cruz, *supra* note 2, at 659.

<sup>22</sup> *Id.* at 665.

<sup>23</sup> *Id.* at 662-665.

<sup>24</sup> *Id.* at 644.

<sup>25</sup> José A. Bracamonte, *The National Labor Relations Act and Undocumented Workers: The Alienation of American Labor*, 21 SAN DIEGO L. REV. 29, 32-33 (1983).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 34.

<sup>28</sup> *Id.* at 30.

<sup>29</sup> Leticia M. Saucedo, *Everybody in the Tent: Lessons from the Grassroots about Labor Organizing, Immigrants, and Temporary Worker Policies*, 17 HARV. LATINO L. REV. 65, 84 (2014).

<sup>30</sup> Crain, *supra* note 5, at 221.

<sup>31</sup> Ruben J. Garcia, *New Voices at Work: Race and Gender Identity Caucuses in the U.S. Labor Movement*, 54 HASTINGS L.J. 79, 107 (2002).

<sup>32</sup> U.S. Congress Joint Economic Committee, *JEC Report on Immigrants and Unions* (2023)

rhetoric, which ignores how experiences of economic class may differ by race or gender. This rhetoric tends to alienate minority workers by reinforcing unions' public perception as white, male, and manufacturing-based.<sup>33</sup> Others argue that public narratives that pit unions and civil rights groups as adversaries, due to the labor movement's present and historical hostility to workers of color, prevent stronger allegiance.<sup>34</sup> Meanwhile, scholars have called for activists to reclaim public narratives to their advantage.<sup>35</sup>

The labor movement's unfortunate history on immigration issues significantly influences the lack of immigrant unionism today. While unions are attempting to diversify their membership, labor organizations may continue to struggle in this issue if they do not first challenge their organizing strategies and rhetoric. Political compromises made by large national unions, which often sacrifice immigrants' interests, may reinforce the pre-existing narrative about unions and immigration.<sup>36</sup> In fact, many of the groundbreaking labor organizers, such as Chris Smalls from the Amazon Labor Union, have credited their success to their ability to change the typical top-down methods used by established unions. These arguably outdated methods are ill-equipped in the face of modern employer surveillance that prevents outside organizers from accessing workers and the increased barriers immigrant workers may face from trusting the organizers.

### C. *Unionization in the U.S. and Emergence of Other Organizing Models*

The statute that governs unionization is the National Labor Relations Act (NLRA), which has been regarded by some scholars as outdated and poorly adjusted to the modern labor economy.<sup>37</sup> This is due to congressional failure to amend the statute and a series of hostile judicial decisions that have removed much of the NLRA's enforcement power.<sup>38</sup> One such example is *Hoffman Plastic Compounds v. NLRB*, a Supreme Court decision which ruled that those without work authorization, while still included under the NLRA's protection, are unable to monetarily recover from any workplace violations from their employers.<sup>39</sup>

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<sup>33</sup> Marion Crain & Ken Matheny, *Labor's Divided Ranks: Privilege and the United Front Ideology*, 84 CORNELL L. REV. 1542, 1544-45 (1999).

<sup>34</sup> Charlotte Garden & Nancy Leong, *So Closely Intertwined: Labor and Racial Solidarity*, 81 GEO. WASH. L. REV. 1135, 1142-45 (2013).

<sup>35</sup> Jennifer Lee, *Outsiders Looking In: Advancing the Immigrant Worker Movement through Strategic Mainstreaming*, 2014 UTAH L. REV. 1063, 1066-67 (2014).

<sup>36</sup> Saucedo, *supra* note 29, at 88.

<sup>37</sup> See generally Stephen Befort, *Labor and Employment Law at the Millennium: A Historical Review and Critical Assessment*, 43 B.C. L. REV. 351 (2002).

<sup>38</sup> *Id.* at 432.

<sup>39</sup> *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

In general, unionism has been steadily declining and suffers from a lack of public support.<sup>40</sup> Decisions like *Hoffman Plastics* and unions' historical hostility towards immigrant workers have contributed to keeping immigrant workers on the political margins of society.<sup>41</sup> However, immigrant workers now constitute a significant percentage of the low-wage industries that were once historically targeted by unions.<sup>42</sup> One of the many issues that the labor movement has had to confront is reversing their historical trends by becoming inclusive of immigrant workers.

New models of organizing, such as the worker center, have emerged to serve these populations, and in doing so have raised questions as to unions' continued relevancy.<sup>43</sup> Worker centers differ from unions in that they are primarily community-based nonprofit organizations, rather than outgrowths of large national organizations funded by member dues.<sup>44</sup> Many worker centers retain close ties to the communities they serve, allowing them to meet the needs of those communities more effectively.<sup>45</sup> Furthermore, worker centers are often able to reach across language and cultural barriers, as well as overcome workers' unease about disclosing immigration status and political organizing.<sup>46</sup> Many worker centers engage in political advocacy, particularly at local levels, to gain favorable policies for their community base.<sup>47</sup> These organizations deliver services, such as language classes and legal representation, and they focus heavily on internal democracy and leadership development within their membership base.<sup>48</sup> However, while worker centers have magnified access to workplace laws and their enforcement mechanisms, they do not negotiate directly with employers.<sup>49</sup>

Other potential models for securing workers' rights include independent unions and government-enforced codes of conduct. Despite their potential for success, these models have seen limited use.<sup>50</sup> Forming transnational

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<sup>40</sup> Befort, *supra* note 36.

<sup>41</sup> Ruben Garcia, *Ten Years After Hoffman Plastic Compounds, Inc. v. NLRB: The Power of a Labor Law Symbol*, 21 CORNELL J.L. & PUB. POL'Y 659, 674–75 (2012).

<sup>42</sup> Audrey Singer, *Immigrant Workers in the U.S. Labor Force*, BROOKINGS INST. (Mar. 15, 2012), [https://www.brookings.edu/wp-content/uploads/2016/06/0315\\_immigrant\\_workers\\_singer.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0315_immigrant_workers_singer.pdf) [<https://perma.cc/S3HB-GXY4>]; Elizabeth Grieco, *Immigrant Union Members: Numbers and Trends*, MIGRATION POLICY INSTITUTE (May 2004), <https://www.migrationpolicy.org/research/immigrant-union-members-numbers-and-trends>

<sup>43</sup> See Rivichin, *supra* note 2, at 425.

<sup>44</sup> Eli Naduris-Weissman, *The Worker Center Movement and Traditional Labor Law: A Contextual Analysis*, 30 BERKELEY J. EMP. & LAB. L. 232, 241 (2009).

<sup>45</sup> See Rivichin, *supra* note 2, at 400.

<sup>46</sup> Chesa Boudin & Rebecca Scholtz, *Strategic Options for Development of a Worker Center*, 13 HARV. LATINO L. REV. 91, 97 (2010).

<sup>47</sup> Naduris-Weissman, *supra* note 44, at 241.

<sup>48</sup> *Id.* at 241–42.

<sup>49</sup> *Id.*

<sup>50</sup> Boudin & Sholtz, *supra* note 46, at 96.

partnerships, particularly in areas surrounding the border, may provide for more complete organizing of a migratory workforce.<sup>51</sup> Still, cross-border labor organizing remains relatively underdeveloped.<sup>52</sup> Additionally, another promising organizing model is the union co-operative, in which companies are both unionized and communally-owned by workers.<sup>53</sup>

Worker centers and similar variations on the traditional union model have succeeded in organizing low-wage immigrant workplaces and are continuing to grow across the country.<sup>54</sup> Together, these models fill a gap that unions have left behind and challenge long-held notions about activism and labor organizing. Organizers have been able to successfully show that immigrant workers are an important group that is capable of rallying around causes that directly affect their rights, even if they may face heightened vulnerability for speaking out.

## REVIEW OF UNION CONTRACTS

### A. Methodology

To capture trends among unions, I reviewed all collective bargaining agreements published between January 1, 2020 and December 1, 2022 on Bloomberg Law's databases. CBAs were selected as a proxy for union organizing success because these contracts ultimately determine what gains unions can make for their workers. Furthermore, these contracts are effective ways to signal to immigrant workers their relevance and rights, allowing unions to overcome information barriers that prevent union organizing.<sup>55</sup> 2020 was selected as the starting point because it marked a transformative year in the labor movement, as the contributions of "essential" workers during the COVID-19 pandemic sparked conversations across the country on the importance of low-wage work to our economy and everyday life.<sup>56</sup> Over 100 union contracts were reviewed carefully for any immigration-related provisions. Once these CBAs were selected, the sixty-six resulting contracts were coded according to what types of protections they contained.

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<sup>51</sup> See, e.g., Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503, 504-508 (2007).

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

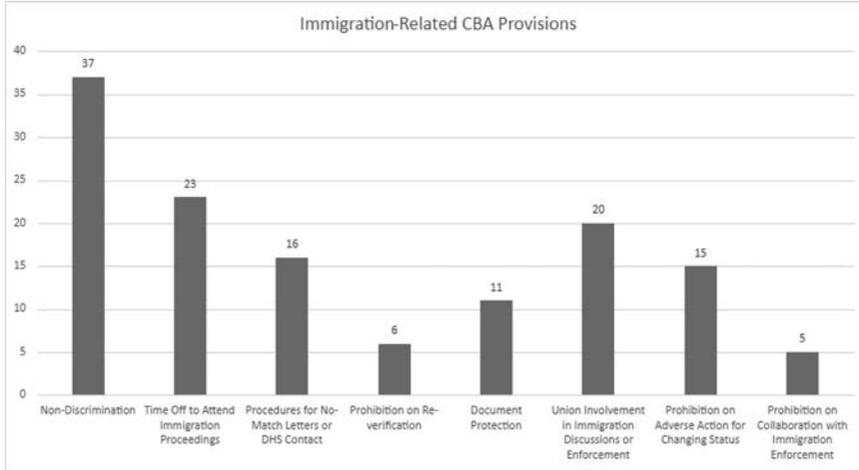
<sup>53</sup> Ariana R. Levinson, *Union Co-Ops and the Revival of Labor Law*, 19 CARDOZO J. CONFLICT RESOL. 453, 453 (2018).

<sup>54</sup> See generally Boudin & Sholtz, *supra* note 46, for a more detailed discussion of the benefits and drawbacks of alternative organizing models.

<sup>55</sup> Saucedo, *supra* note 29, at 82-83.

<sup>56</sup> Catherine Powell, *Color of Covid and Gender of Covid: Essential Workers, Not Disposable People*, 33 YALE J.L. & FEMINISM 1 (2022).

## B. Results



This review of union contracts reveals that a small but sizable minority of unions are successful in advocating for immigrant worker protections. During the period examined, 1,016 CBAs were available through Bloomberg Law’s database. However, only 113 of these contracts contained any mention of immigration or work authorization (11%). An even smaller percentage of CBAs (6.4%) contained substantive provisions related to immigration status. While these numbers leave room for improvement, they indicate that some unions are taking immigration issues seriously.

The most common provision within union contracts was an anti-discrimination provision (present in 56%), which forbade discrimination on account of immigration status.<sup>57</sup> However, since discrimination on account

<sup>57</sup> See Collective Bargaining Agreement between United Auto Workers (“UAW”) Local 2110, American Federation of Labor-Congress of Industrial Organizations (“AFL-CIO”) and Asian American Writers Workshop (Jan. 1, 2021), 2 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreements between the Service Employees International Union (“SEIU”) Local 503 and Avamere Health Services LLC (“Avamere”) (May 1, 2021), 13-16 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Columbia Postdoctoral Workers-UAW Local 4100 and Columbia University (July 1, 2020) 12-13, 18 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Writers Guild of America (“WGA”) East and Cutler Media LLC (Apr. 18, 2022), 3 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Communications Workers of America (“CWA”) Local 37074 and SEIU Local 105 (Feb. 1, 2020), 1 (on file with author); Collective Bargaining Agreement between Denver Newspaper Guild CWA Local 37074 and Denver Area Labor Federation (Jan. 1, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU 775 and Evergreen at Missoula, LLC, d/b/a EmpRes Missoula Health and Rehabilitation Center (June 30, 2021), 14-15 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between WGA East, AFL-CIO and Gimlet LLC (Mar. 2021), 8 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU 775 and Healthcare Services Group, Inc. Forest Ridge (Jan. 24, 2020), 11-12 (on file with the *Harvard*

*Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Washington Public Employees Association, United Food and Commercial Workers International Union (“UFCW”) Local 365 and Highline College (July 1, 2021), 3 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Washington-Baltimore News Guild and Jobs with Justice Education Fund (Jan. 1, 2021) 23, 26-27 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between UFCW Local 365 and Kitsap Regional Library (Jan. 1, 2021), 11 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU Local 1021 and La Raza Centro Legal (July 1, 2020), 3-4 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between National Union of Healthcare Workers (“NUHW”) and Lakewood Hospital (Aug. 21, 2021), 8 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU Local 26 and Block by Block Minneapolis Downtown Improvement District (Feb. 1, 2020), 21-22 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Montgomery County Education Association and Board of Education of Montgomery County (Feb. 23, 2021), 22-23 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Office and Professional Employees International Union, Local 8, AFL-CIO and Northwest Immigrant Rights Project (Jan. 1, 2021), 22, 26 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Maine Service Employees Association, SEIU Local 1989 and Preble Street (July 1, 2020), 29 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Professional and Technical Employees (WPEA Local 17) and the State of Washington (July 1, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Washington Public Employees Association (WPEA) and the State of Washington (July 1, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Washington Federation of State Employees and Board of Regents of the University of Washington (July 1, 2021), 5 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU 1199NW and University of Washington (July 1, 2021) (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between NUHW and Richmond Area Multi-Services, Inc. (Jan. 1, 2021), 2, 45-46 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Coalition of Bargaining Units (Spokane) and the State of Washington (July 1, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between WGA East, AFL-CIO and Thrillist Media Group (May 1, 2021), 3 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Denver Newspaper Guild and United for a New Economy (Mar. 1, 2021), 2 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU 775 and Vancouver Specialty and Rehabilitation Center (Apr. 19, 2021), 16 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Writers Guild of America East, AFL-CIO and Vice Media (Jan. 1, 2022), 22 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Washington Association of Fish and Wildlife Professionals and the State of Washington (July 1, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between International Brotherhood of Teamsters (“Teamsters”) Local 760 and the State of Washington (July 1, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Coalition of Bargaining Units (Walla Walla) and the State of Washington (July 1, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Washington State Nurses Association and Board of Regents of the University of Washington (July 1, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between American Federation of State, County, and Municipal Employees (“AFSCME”) Administrative Law Judges and the Washington State Office of Administrative Hearings (July 1, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between AFSCME Association of Washington Assistant Attorneys General (“AFSCME Association”) and the State of Washington (July 1, 2021), 23 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between NUHW and Lakewood Hospital (Aug. 21, 2021), 8-9 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Teamsters Local Union No. 117 and University of Washington (July 1, 2021), 3 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective

of immigration status is already unlawful,<sup>58</sup> these provisions tended to be mere virtue signaling rather than a substantive gain for immigrant workers. In over one third of the union contracts containing immigration provisions (38%), these provisions were the only type of protection specifically offered to immigrant workers.<sup>59</sup>

Many unions provided minor but thoughtful protections for immigrant workers who might encounter issues related to their status. For example, over one third of union contracts (35%)<sup>60</sup> guaranteed time off so that members

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Bargaining Agreement between Inlandboatmen's Union of the Pacific and Board of Regents of the University of Washington (July 13, 2021), 1 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*).

<sup>58</sup> 8 U.S.C. § 1324b.

<sup>59</sup> See Collective Bargaining Agreement, Asian American Writers Workshop, *supra* note 57; Collective Bargaining Agreement, Cutler Media LLC, *supra* note 57; Collective Bargaining Agreement, AFSCME Association, *supra* note 57; Collective Bargaining Agreement, Denver Area Labor Federation *supra* note 57; Collective Bargaining Agreement, Gimlet LLC, *supra* note 57; Collective Bargaining Agreement, Highline College, *supra* note 57; Collective Bargaining Agreement, Kitsap Regional Library, *supra* note 57; Collective Bargaining Agreement, Montgomery County Board of Education, *supra* note 57; Collective Bargaining Agreement, Professional and Technical Employees, *supra* note 57; Collective Bargaining Agreement, Washington Public Employees Association, *supra* note 57; Collective Bargaining Agreement, Washington Federation of State Employees, *supra* note 57; Collective Bargaining Agreement, SEIU 1199NW and University of Washington, *supra* note 57; Collective Bargaining Agreement, Coalition of Bargaining Units (Spokane), *supra* note 57; Collective Bargaining Agreement, Denver Newspaper Guild, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement, Fish and Wildlife Association, *supra* note 57; Collective Bargaining Agreement, Teamsters Local 760, *supra* note 57; Collective Bargaining Agreement, Coalition of Bargaining Units (Walla Walla), *supra* note 57; Collective Bargaining Agreement, Washington State Nurses Association, *supra* note 57; Collective Bargaining Agreement, AFSCME Administrative Law Judges, *supra* note 57; Collective Bargaining Agreement, AFSCME Association of Washington Assistant Attorneys General, *supra* note 57; Collective Bargaining Agreement, Teamsters Local 117, *supra* note 57; Collective Bargaining Agreement, Inlandboatmen's Union of the Pacific, *supra* note 57.

<sup>60</sup> See Collective Bargaining Agreement, Avamere, *supra* note 57; Collective Bargaining Agreement, Columbia Postdoctoral Workers, *supra* note 57; Collective Bargaining Agreement, EmpRes, *supra* note 57; Collective Bargaining Agreement, Healthcare Services Group, *supra* note 57; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57; Collective Bargaining Agreement, Lakewood Hospital, *supra* note 57; Collective Bargaining Agreement, Block by Block, *supra* note 57; Collective Bargaining Agreement, Thrillist Media Group, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement between SEIU 775 and Avalon Pullman (Jan. 1, 2020), 8 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between WGA East, AFL-CIO and the Committee to Protect Journalists (Dec. 8, 2020), 12 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU Local 49 and Creative Management Technologies (July 1, 2020), 11, 31 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU 32BJ and Delaware Contractors (Jan. 1, 2020), 21-23 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between NUHW and Compass Group USA at Fountain Valley Regional Hospital (Aug. 21, 2021), 8-9 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Harvard Graduate Students Union, UAW Local 5118 and Harvard University (Nov. 27, 2021), 29-31 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Unite Here Local 737 and Aimbridge Employee Service Corp., d/b/a Doubletree by Hilton Hotel (Jan. 25, 2021), 23-24 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective

may attend immigration proceedings, and a significant percentage of unions (17%)<sup>61</sup> ensured that documents provided for employment verification would be either returned to the worker or given heightened protection from third party release. Some CBAs (9%) went even further to ensure that employers could not ask workers to reverify their immigration status after successfully completing their I-9.<sup>62</sup> Though these provisions may not seem significant at first glance, these labor protections ensure that a worker will not be fired or penalized for having to comply with necessary immigration regulations and prevent employers from re-investigating the workers' status for bad-faith reasons.

Other common protections for immigrant workers provided job security and preserved their seniority within the union. Almost a quarter of the union contracts (23%) prohibited employers from taking adverse action against workers who lawfully amended their immigration status, and thereafter provided new information, such as a social security number, to their employer.<sup>63</sup>

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Bargaining Agreement between Unite Here Local 737 and Hilton Hotel Employer LLC, d/b/a Hilton Orlando Buena Vista Palace (June 1, 2020), 21 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between WGA East and Jewish Currents (Dec. 29, 2021), 29 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between UAW Local 2110 and New York University (Sept. 1, 2020) (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU 32BJ and Hartford Security Contractors (Jan. 1, 2021), 19-20 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Writers Guild of America East and Slate Magazine (Mar. 1, 2022), 5 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Unite Here International Orlando Unit and SSP America (Mar. 19, 2022), 12-14 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Student Workers of Columbia, UAW Local 2710 and Columbia University (Aug. 1, 2021), 27-28 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*).

<sup>61</sup> See Collective Bargaining Agreement, EmpRes, *supra* note 57; Collective Bargaining Agreement, Healthcare Services Group, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, Harvard University, *supra* note 60; Collective Bargaining Agreement, SSP America, *supra* note 60; Collective Bargaining Agreement, Northwest Immigrant Rights Project, *supra* note 57; Collective Bargaining Agreement, Preble Street, *supra* note 57; Collective Bargaining Agreement between UFCW Locals 324, 770, 1167, 1428 and Bodega Latina Corporation d/b/a El Super (Apr. 17, 2020), 2 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Industrial Workers of the World ("IWW") and Burgerville LLC (Dec. 16, 2021), 10-11 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between Denver Newspaper Guild, AFL-CIO and Colorado People's Alliance ("COPA") (June 15, 2021), 23 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*).

<sup>62</sup> See Collective Bargaining Agreement, Delaware Contractors, *supra* note 60; Collective Bargaining Agreement, Avamere, *supra* note 57; Collective Bargaining Agreement, Burgerville, *supra* note 61; Collective Bargaining Agreement, SSP America, *supra* note 60; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement, Healthcare Services Group, *supra* note 57.

<sup>63</sup> See Collective Bargaining Agreement, Healthcare Services Group, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement, SSP America, *supra* note 60; Collective Bargaining Agreement, Delaware Contractors, *supra* note 60; Collective Bargaining Agreement, EmpRes, *supra* note 57; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra*

A smaller number of CBAs (18%) contained detailed reinstatement provisions, allowing union members who lost work authorization or were terminated because their employer discovered they lacked authorization to return to their previous position if they could amend their status within a certain time window.<sup>64</sup> Although the short window of these reinstatement provisions may not reflect the actual time it takes to navigate immigration proceedings,<sup>65</sup> this type of provision provides increased job security and allows the union to preserve seniority, an incentive for members to join and remain within the union.

The most inclusive union provisions provided protections for immigrant workers in the case of interactions with immigration enforcement agencies. Around one third of the CBAs (30%) required employers to involve the union in discussions about immigration status, whether they were geared towards a particular employee, related to changes in company policy or law, or spurred by contact from immigration enforcement agencies.<sup>66</sup> Many contracts (24%)

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note 60; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57; Collective Bargaining Agreement, Lakewood Hospital, *supra* note 57; Collective Bargaining Agreement, Block by Block, *supra* note 57; Collective Bargaining Agreement, Hilton Orlando Buena Vista Palace, *supra* note 60; Collective Bargaining Agreement, Doubletree, *supra* note 60; Collective Bargaining Agreement, Avalon Pullman, *supra* note 60; Collective Bargaining Agreement, Burgerville, *supra* note 61; Collective Bargaining Agreement, Bodega Latina, *supra* note 61; Collective Bargaining Agreement between SEIU 32BJ and Connecticut Cleaning Contractors Association (Jan. 1, 2020)), 40-42 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*).

<sup>64</sup> See Collective Bargaining Agreement, La Raza Centro Legal, *supra* note 57; Collective Bargaining Agreement, Block by Block, *supra* note 57; Collective Bargaining Agreement, Lakewood Hospital, *supra* note 57; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57; Collective Bargaining Agreement, Hartford Security, *supra* note 60; Collective Bargaining Agreement, Harvard University, *supra* note 60; Collective Bargaining Agreement, Doubletree, *supra* note 60; Collective Bargaining Agreement, Hilton Orlando Buena Vista Palace, *supra* note 60; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, SSP America, *supra* note 60; Collective Bargaining Agreement, Student Workers of Columbia, *supra* note 60.

<sup>65</sup> The processing time for an immigration application, once it has already been prepared and submitted, can range between one and fifty-nine months. See USCIS, *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year*, <https://egov.uscis.gov/processing-times/historic-pt>

<sup>66</sup> See Collective Bargaining Agreement, SSP America, *supra* note 60; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57; Collective Bargaining Agreement, Lakewood Hospital, *supra* note 57; Collective Bargaining Agreement, Block by Block, *supra* note 57; Collective Bargaining Agreement, Hilton Orlando Buena Vista Palace, *supra* note 60; Collective Bargaining Agreement, Doubletree, *supra* note 57; Collective Bargaining Agreement, Harvard University, *supra* note 59; Collective Bargaining Agreement, Hartford Security, *supra* note 57; Collective Bargaining Agreement, Healthcare Services, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement, Avamere, *supra* note 57; Collective Bargaining Agreement, Delaware Contractors, *supra* note 60; Collective Bargaining Agreement, EmpRes, *supra* note 57; Collective Bargaining Agreement, Richmond Area Multi-Services, *supra* note 57; Collective Bargaining Agreement between SEIU 775 and Catholic Community Services (July 1, 2021), 16 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between UFCW Local 9 and Seneca Foods Corporation (Feb. 1, 2020), 17 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU Healthcare 1199NW Registered Nurses and Swedish/Edmonds (Apr. 6, 2020), 79 (on file with the *Harvard*

outlined procedures for the employer, union, and workers to follow when the employer receives a No-Match letter, which informs employers that a worker's social security number does not match their name, or any similar contact from immigration enforcement agencies.<sup>67</sup> A small minority of contracts forbade the employer from requiring an employee to meet with U.S. Immigration and Customs Enforcement (ICE).<sup>68</sup> This category of contracts allows unions to insert themselves as an intermediate actor between workers and employers, or workers and immigration enforcement agencies, which can help ensure that a worker's rights are protected and prevent immigration arrests at work.

The CBA review indicates that immigration-specific protections for workers can ensure that their rights are respected in the workplace and materially increase their ability to navigate the challenges that accompany noncitizen status. For some, a union contract even provided a pathway to citizenship.<sup>69</sup> However, only 6% of the total contracts provided substantive immigration-related protections, illustrating that there is still vast room for improvement within the labor movement. This number perhaps overstates the impact of the CBAs studied, as only 4% of total contracts issued contained provisions beyond what was already mandated by law.<sup>70</sup>

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*Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU Healthcare 1199NW and Swedish Medical Center Service (Apr. 6, 2020), 69-70 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*); Collective Bargaining Agreement between SEIU Healthcare 1199 NW and Swedish Medical Center Registered Nurses Unit (Mar. 15, 2021), 92 (on file with the *Harvard Civil Rights-Civil Liberties Law Review*).

<sup>67</sup> See Collective Bargaining Agreement, Lakewood Hospital, *supra* note 57; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57; Collective Bargaining Agreement, Doubletree, *supra* note 60; Collective Bargaining Agreement, Hilton Orlando Buena Vista Palace, *supra* note 60; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, SSP America, *supra* note 60; Collective Bargaining Agreement, Healthcare Services Group, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement, Delaware Contractors, *supra* note 60; Collective Bargaining Agreement, EmpRes, *supra* note 57; Collective Bargaining Agreement, Avamere, *supra* note 60; Collective Bargaining Agreement, Burgerville, *supra* note 61; Collective Bargaining Agreement, Connecticut Cleaning Contractors Assn., *supra* note 63; Collective Bargaining Agreement, Swedish/Edmonds, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Service, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Registered Nurses, *supra* note 66.

<sup>68</sup> See Collective Bargaining Agreement, Swedish/Edmonds, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Service, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Registered Nurses, *supra* note 66.

<sup>69</sup> See Collective Bargaining Agreement, Richmond Area Multi-Services, *supra* note 57.

<sup>70</sup> See Collective Bargaining Agreement, Lakewood Hospital, *supra* note 57; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57; Collective Bargaining Agreement, Doubletree, *supra* note 60; Collective Bargaining Agreement, Hilton Orlando Buena Vista Palace, *supra* note 60; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, SSP America, *supra* note 60; Collective Bargaining Agreement, Healthcare Services, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement, Delaware Contractors, *supra* note 60; Collective Bargaining Agreement, EmpRes, *supra* note 57; Collective Bargaining Agreement, Avamere, *supra* note 60; Collective Bargaining

These contracts illustrate that some unions are observing changes in the labor movement that are taking place outside the context of CBAs. The substantive protections offered in the CBAs studied illustrate that unions have potential to materially advance the conditions of immigrant workers and address the unique needs that they face. Furthermore, unions are beginning to understand the necessity of meeting the current needs of the working class for their continued survival. Despite these underwhelming statistics, hope remains. Worker centers and alternative organizing models have illustrated how new creative strategies can overcome organizing barriers in the immigrant workforce.<sup>71</sup> The success of these models has assured unions that it is worth investing resources to run organizing campaigns in immigrant communities. Additionally, these models have highlighted the specific needs of this community that unions have previously ignored. To continue this success, more unions can build on their importance to this segment of the workforce by providing direct benefits to immigrant workers.

#### UNIONS AS IMMIGRATION INTERMEDIARIES

While unions must continue to make progress on incorporating immigrant workers into the rank-and-file, the CBA review did reveal an important offering that unions can provide their immigrant members. Many unions are inserting protections that allow the union to serve as an intermediate party in the workplace between the employee and the employer or an immigration enforcement official.<sup>72</sup> Significantly, these protections could perhaps only exist in a unionized workplace because a union, unlike an alternative organizing model, has physical presence in the workplace. Similarly, these union provisions give workers protections beyond what is required by law, which is only possible through contract negotiations. The following section

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Agreement, Burgerville, *supra* note 61; Collective Bargaining Agreement, Connecticut Cleaning Contractors Assn., *supra* note 63; Collective Bargaining Agreement, Swedish/Edmonds, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Service, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Registered Nurses, *supra* note 66; Collective Bargaining Agreement, Harvard University, *supra* note 60; Collective Bargaining Agreement, Hartford Security, *supra* note 60; Collective Bargaining Agreement, Student Workers of Columbia, *supra* note 60; Collective Bargaining Agreement, Richmond Area Multi-Services, *supra* note 57; Collective Bargaining Agreement, Preble St, *supra* note 57; Collective Bargaining Agreement, Block by Block, *supra* note 57; Collective Bargaining Agreement, La Raza Centro Legal, *supra* note 57; Collective Bargaining Agreement, Bodega Latina, *supra* note 61; Collective Bargaining Agreement, Avalon Pullman, *supra* note 60; Collective Bargaining Agreement, Catholic Community Services, *supra* note 66; Collective Bargaining Agreement, Seneca Foods, *supra* note 66; Collective Bargaining Agreement, Colorado People's Alliance, *supra* note 60; Collective Bargaining Agreement, Columbia Postdoctoral Workers, *supra* note 57; Collective Bargaining Agreement, Thrillist Media Group, *supra* note 57; Collective Bargaining Agreement, Committee to Protect Journalists, *supra* note 60; Collective Bargaining Agreement, Creative Management Technologies, *supra* note 60; Collective Bargaining Agreement, Jewish Currents, *supra* note 60; Collective Bargaining Agreement, New York University, *supra* note 60; Collective Bargaining Agreement, Slate Magazine, *supra* note 60.

<sup>71</sup> Rivichin, *supra* note 2, at 430.

<sup>72</sup> See *supra* notes 67-69.

details and suggests proposals for the various ways that unions can uniquely position themselves as immigration intermediaries.

A. *Procedures for Contact with Immigration Enforcement Agencies*

Immigration enforcement often takes place in the workplace.<sup>73</sup> Much attention has been given to the ways in which No-Match letters, issued by the Department of Labor (DOL) when auditing employer I-9 records, have been used to intimidate undocumented workers.<sup>74</sup> Although there are many potentially innocuous reasons as to why the DOL may issue a No-Match letter, employers will commonly use these letters as implicit threats of deportation to workers to stifle organizing campaigns.<sup>75</sup> For example, during a larger battle with the Korean Immigrant Workers Advocates, who sought to unionize grocery stores in LA's Koreatown, employers used No-Match letters as a basis for firing a large majority of workers who were active in organizing a union.<sup>76</sup> Furthermore, workplace raids, wherein ICE unexpectedly arrives to interrogate workers on their status, have been on the rise as the federal government revived a focus on arresting and detaining people while at work.<sup>77</sup>

As a result, procedures relating to possible immigration enforcement in the workplace were among the most popular immigration-related provisions in CBAs studied. These procedures detail how employers can react to receiving a No-Match letter or contact from immigration authorities, with some provisions even going so far as to prohibit employer collaboration with ICE.<sup>78</sup> These provisions ensure that union leaders are able to either instruct workers on how to avoid being apprehended or talk on behalf of vulnerable workers to immigration enforcement. Organizers are critical advocates for workers following workplace raids because they apply public pressure on elected officials to intervene on behalf of workers, support affected families, and connect those detained to legal representation.<sup>79</sup> Thus, provisions that enable unions to step in during immigration enforcement events may

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<sup>73</sup> Shannon Gleeson & Kati Griffith, *Employers as Subjects of the Immigration State: How the State Fosters Employment Insecurity for Temporary Immigrant Workers*, 46 L. & SOC. INQUIRY, 92, 93 (2021).

<sup>74</sup> *Id.* at 96.

<sup>75</sup> *Id.*

<sup>76</sup> Victor Narro, *Impacting Next Wave Organizing: Creative Campaign Strategies of the Los Angeles Worker Center*, 50 N.Y. L. SCH. L. REV. 465, 483 (2006).

<sup>77</sup> Kati Griffith & Shannon Gleeson, *Trump's 'Immigration' Law Agenda: Intensifying Employment-Based Enforcement and Un-Authorizing the Authorized*, 48 SW. L. REV. 475, 481-82 (2019).

<sup>78</sup> See Collective Bargaining Agreement, Swedish/Edmonds, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Service, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Registered Nurses, *supra* note 66.

<sup>79</sup> Nicole Hallett, *The #Buffalo25 and the New Era of Immigration Enforcement*, 21 CUNY L. REV. 1, 11-12 (2017).

prevent apprehension and enable quick mobilization in support of detained union members.

Additionally, these provisions often limit the steps an employer can take during these immigration enforcement procedures. For example, some contracts required employers to notify the union so that union leadership may represent the employee upon receipt of a No-Match letter or similar contact by the Department of Homeland Security (DHS).<sup>80</sup> Under some of these provisions, employers can only allow inspection of I-9 forms by DHS or DOL if a request is made in writing at least three days beforehand or if a legal order specifically names employees or requires production of their I-9s.<sup>81</sup> Furthermore, the employer must attempt to offer a private setting for any questioning by DHS.<sup>82</sup>

Other contracts prohibited employers from requiring that an employee meet with ICE or prevented employers from handing over information about their workers unless required by law.<sup>83</sup> Many of the analyzed contracts required that the employer give an employee reasonable time to correct a discrepancy highlighted in a No-Match letter.<sup>84</sup> Similarly, many contracts

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<sup>80</sup> See Collective Bargaining Agreement, SSP America, *supra* note 59; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57; Collective Bargaining Agreement, Lakewood Hospital, *supra* note 57; Collective Bargaining Agreement, Block by Block, *supra* note 57; Collective Bargaining Agreement, Hilton Orlando Buena Vista Palace, *supra* note 60; Collective Bargaining Agreement, Doubletree, *supra* note 57; Collective Bargaining Agreement, Harvard University, *supra* note 60; Collective Bargaining Agreement, Hartford Security, *supra* note 57; Collective Bargaining Agreement, Healthcare Services Group, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement, Avamere, *supra* note 60; Collective Bargaining Agreement, Delaware Contractors, *supra* note 60; Collective Bargaining Agreement, EmpRes, *supra* note 57; Collective Bargaining Agreement, Richmond Area Multi-Services, *supra* note 57; Collective Bargaining Agreement, Catholic Community Services, *supra* note 66; Collective Bargaining Agreement, Seneca Foods, *supra* note 66; Collective Bargaining Agreement, Swedish/Edmonds, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Service, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Registered Nurses, *supra* note 66.

<sup>81</sup> See, e.g., Collective Bargaining Agreement, Avamere, *supra* note 60; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, Healthcare Services, *supra* note 57; Collective Bargaining Agreement, SSP America, *supra* note 60.

<sup>82</sup> *Id.*

<sup>83</sup> See Collective Bargaining Agreement, Healthcare Services, *supra* note 57; Collective Bargaining Agreement, Swedish/Edmonds, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Service, *supra* note 66; Collective Bargaining Agreement, Swedish Medical Center Registered Nurses, *supra* note 66; Collective Bargaining Agreement, Colorado People's Alliance, *supra* note 60; Collective Bargaining Agreement, Northwest Immigrant Rights Project, *supra* note 57; Collective Bargaining Agreement, Harvard University, *supra* note 60; Collective Bargaining Agreement, Preble Street, *supra* note 57; Collective Bargaining Agreement, EmpRes, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57.

<sup>84</sup> See Collective Bargaining Agreement, Burgerville, *supra* note 61; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, Connecticut Cleaning Contractors Assn., *supra* note 63; Collective Bargaining Agreement, Delaware Contractors, *supra* note 60; Collective Bargaining Agreement, Lakewood Hospital,

required that the employer meet with the union to resolve questions surrounding a worker's immigration status or inquiries from immigration enforcement agencies.<sup>85</sup>

These procedures represent a unique opportunity for unions to position themselves as protectors within the workplace. Contact with immigration enforcement agencies presents a grave threat to non-citizen workers, who many employers can exploit.<sup>86</sup> Inserting the union as a third party to these discussions can mitigate a power imbalance between immigration enforcement agencies and employees, as well as provide peace of mind to both workers and employers. Unions can instantly react to these kinds of events in a way that worker centers can only do after the fact.

### *B. Procedures for Immigration-Related Discussions with Employers*

Unions can also serve as intermediaries when workers discuss their status with employers. Several CBAs required that union members be notified, if not involved, whenever an employer approaches an employee about their immigration status.<sup>87</sup> Furthermore, some CBAs required employers to meet with the union when changes to immigration law affect workplace policies. While a union cannot ask an employer to violate the law by knowingly hiring unauthorized workers,<sup>88</sup> the union's presence can ensure workers' rights are respected and employers do not intimidate workers due to their immigration status. Furthermore, the union may voice the workforce's collective concerns without singling out individual employees who may be directly affected by changes in immigration laws.

This study revealed many instances where union involvement in immigration-related discussions has yielded some positive changes for their workers. For example, union contracts protected workers against retaliation for legally amending their immigration status, and thus receiving new social security numbers.<sup>89</sup> Unions also ensured that accommodations

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*supra* note 57; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57.

<sup>85</sup> See Collective Bargaining Agreement, Doubletree, *supra* note 60; Collective Bargaining Agreement, Hilton Orlando Buena Vista Palace, *supra* note 60; Collective Bargaining Agreement, Burgerville, *supra* note 61; Collective Bargaining Agreement, Avamere, *supra* note 60; Collective Bargaining Agreement, SSP America, *supra* note 60.

<sup>86</sup> Gleeson & Griffith, *supra* note 73, at 96.

<sup>87</sup> See *supra* note 67.

<sup>88</sup> 8 U.S.C. § 1324a.

<sup>89</sup> See Collective Bargaining Agreement, Healthcare Services Group, *supra* note 57; Collective Bargaining Agreement, Vancouver Specialty and Rehabilitation Center, *supra* note 57; Collective Bargaining Agreement, SSP America, *supra* note 60; Collective Bargaining Agreement, Delaware Contractors, *supra* note 60; Collective Bargaining Agreement, EmpRes, *supra* note 57; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57; Collective Bargaining Agreement, Lakewood Hospital, *supra* note 57; Collective Bargaining Agreement, Block by Block, *supra* note 57; Collective Bargaining Agreement, Hilton Orlando Buena Vista Palace, *supra*

were made for workers who were terminated upon expiration of their immigration status. These accommodations included allowing employees to work remotely or obtain reinstatement once they regain authorization.<sup>90</sup> Through CBAs, unions also gained authority to initiate conversations about employer-sponsored visas on behalf of employees, thereby ensuring that employers were promptly communicating with workers.<sup>91</sup>

The reverse is also true. As intermediaries, unions have asked employers not to discuss a worker's immigration status after an I-9 is completed and to prohibit discussion of a worker's status with outside parties. With the added authority of a union, workers can ensure that their employers respect their rights to privacy and mitigate the risk of having their immigration status weaponized against them.

These provisions have the potential to transform the workplace for immigrants with temporary status, such as Temporary Protected Status (TPS). Although work authorization provides such immigrants greater stability, extensive research has shown that they face unique vulnerabilities, namely navigating the unpredictable and onerous bureaucracy involved in renewing their status. These vulnerabilities contribute to heightened worker precarity.<sup>92</sup> Many employers prefer not to hire workers with temporary status because it is difficult to verify the authenticity of their papers or follow the rapid changes in an already complex immigration law system, instead working with authorized or unauthorized workers.<sup>93</sup> The disfavor towards workers with temporary status often leads these workers to work in

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note 60; Collective Bargaining Agreement, Doubletree, *supra* note 60; Collective Bargaining Agreement, Avalon Pullman, *supra* note 60; Collective Bargaining Agreement, Burgerville, *supra* note 61; Collective Bargaining Agreement, Bodega Latina, *supra* note 61; Collective Bargaining Agreement, Connecticut Cleaning Contractors Assn., *supra* note 63.

<sup>90</sup> See Collective Bargaining Agreement, La Raza Centro Legal, *supra* note 57; Collective Bargaining Agreement, Block by Block, *supra* note 57; Collective Bargaining Agreement, Lakewood Hospital, *supra* note 57; Collective Bargaining Agreement, Jobs with Justice Education Fund, *supra* note 57; Collective Bargaining Agreement, Hartford Security, *supra* note 60; Collective Bargaining Agreement, Harvard University, *supra* note 60; Collective Bargaining Agreement, Doubletree, *supra* note 60; Collective Bargaining Agreement, Hilton Orlando Buena Vista Palace, *supra* note 60; Collective Bargaining Agreement, Fountain Valley Regional Hospital, *supra* note 60; Collective Bargaining Agreement, SSP America, *supra* note 60; Collective Bargaining Agreement, Student Workers of Columbia, *supra* note 60.

<sup>91</sup> See, e.g., Collective Bargaining Agreement, Richmond Area Multi-Services, *supra* note 57 (requiring employer compliance in discussions on a worker's status).

<sup>92</sup> See, e.g., Cecilia Menjívar, *Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States*, 111 AM. J. SOC. 999 (2006); Jennifer Chacon, *Producing Liminal Legality*, 92 DENV. U. L. REV. 709 (2015); Miranda Cady Hallett, *Temporary Protection, Enduring Contradiction: The Contested and Contradictory Meaning of Temporary Immigration Status*, 39 L. & SOC. INQUIRY 621 (2014); Leticia Saucedo, *Employment Authorization, Alienage Discrimination and Executive Authority*, 38 BERKELEY J. EMP. & LAB. L. 183 (2017); Kati Griffith, Shannon Gleeson, & Vivian Vazquez, *Immigrants in Shifting Times on Long Island, NY: The Stakes of Losing Temporary Status*, 97 DENV. L. REV. 743 (2020); Gleeson & Griffith, *supra* note 21.

<sup>93</sup> Gleeson & Griffith, *supra* note 73 at 106–11.

unfavorable conditions out of necessity, despite their authorization to work in the United States.<sup>94</sup>

However, union involvement in discussions with employers has the potential to bridge this gap of semi-legality. Collective bargaining agreements could enable workers to stay in their jobs by requiring employers to comply with a temporary worker's status renewal. Union leaders could keep pace with policy changes in immigration law, keep employers informed about policies like TPS, and instruct them on how to read the often confusing and misleading paperwork accompanying temporary statuses. Grievance procedures might provide for stronger remedies if an employee is dismissed or retaliated against based on their complex immigration status. Unions can thereby strengthen protections and reduce employment insecurity for this class of workers.

### C. *Provisions Learned from Alternative Methods of Organizing*

Unions have also served as intermediaries between immigrant workers and the immigration system as a whole, which is often very complex and difficult to navigate for individuals who have limited proficiency in English or the U.S. legal system. Many CBAs incorporated other creative solutions for how to assist immigrant workers with immigration-related needs that mirrored many of the services being offered by worker centers or other new alternative models of organizing. The notable advantage of placing these services in a union contract is that unions have been able to push the costs of these services onto employers. These provisions focused on increasing access to educational or legal resources, following the example of many worker centers.<sup>95</sup>

For example, one contract required an employer to fund courses to educate their workers on basic immigration law and forms of immigration relief.<sup>96</sup> Other unions have ensured access to legal assistance by requiring employers to place workers in contact with legal assistance clinics and cover any costs associated with filing immigration applications.<sup>97</sup> While these services overlap with the resources offered by worker centers, unions have notably shifted the burden of providing these services to the employer, rather than the organizers.

This insight can help inform other organizers about how unions can serve immigrant populations as intermediaries. While some have pushed unions to adopt the strategies of worker centers,<sup>98</sup> the two organizing models

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<sup>94</sup> *Id.* at 108 (“[T]he unpredictable prospect that TPS workers pose for employers translates into less certainty for workers about obtaining and keeping their job or finding a better one.”).

<sup>95</sup> Narro, *supra* note 76, at 467–68.

<sup>96</sup> See Collective Bargaining Agreement, La Raza Centro Legal, *supra* note 57.

<sup>97</sup> See Collective Bargaining Agreement, Student Workers of Columbia, *supra* note 60; Collective Bargaining Agreement, Harvard University, *supra* note 60.

<sup>98</sup> See Jennifer Hill, *Can Unions Use Worker Center Strategies?: In an Age of Doing More with Less, Unions Should Consider Thinking Locally but Acting Globally*, 5 FIU L. Rev. 551, 556 (2010).

are currently viewed as competitive alternatives. If unions and worker centers re-envision their relationship with one another, they can collaborate would be to fully organize this hard-to-reach population. One potential avenue of collaboration may include partnerships between unions and worker centers to negotiate employer sponsorship of the services provided by worker centers, who often have a greater understanding of community needs based on their close relationship with the areas they serve. Further, unions can offer political legitimacy and greater mobilization power to worker centers.<sup>99</sup> Worker centers, in turn, can encourage members to unionize their workplaces and connect them to trusted union leadership.<sup>100</sup>

### CONCLUSION

By examining collective bargaining agreements, the Note offers examples of provisions from contracts across the country that are aimed at improving the material conditions of immigrant workers. These provisions indicate that most unions have largely neglected to incorporate immigrant protections within their contracts; however, several CBAs provide examples at how unions can meaningfully protect their workers from intimidation from employers or detention from workplace raids. Some of these methods are new innovations that illustrate the value of having a union in the workplace that can intervene on a worker's behalf during particularly sensitive interactions with employers or immigration enforcement. Other methods are reactions to the growth of alternative organizing, which has underlined the importance of access to resources to navigate immigration status.

Notably, however, CBAs only represent the finished product of an often long and arduous contract negotiation process between union representatives and employers. Absent from this study are the honest but unsuccessful union efforts to organize or negotiate for immigrant rights. The review is also necessarily limited by the number of contracts made publicly available on legal databases. Submission of CBAs to the DOL is optional.<sup>101</sup> Therefore, there could be many more union attempts to incorporate immigrant workers that are not accessible for this kind of study.

While this Note highlights several types of provisions as models for future contract negotiations, the value of these provisions should be gauged by their impact on the lived experience of immigrant workers. Further research is needed to understand whether these provisions are impactful on the

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<sup>99</sup> Rathod, *supra* note 7, at 627.

<sup>100</sup> For example, the Korean Immigrant Worker Advocate (KIWA) in LA successfully encouraged union organization among the members of their worker center. *See* Narro, *supra* note 76, at 485.

<sup>101</sup> U.S. Department of Labor, *Collective Bargaining Agreements on File: Online Listings of Private and Public Sector Agreements*, DOL.gov, <https://www.dol.gov/agencies/olms/regs/compliance/cba> [<https://perma.cc/RE6A-V5L2>] (stating that CBAs will be collected voluntarily and will not be accepted if either the employer or union objects).

ground. It remains unclear whether these new rights on paper are available to be exercised by the people they affect, or if these contracts simply add to the “dual identity” of immigrant workers.<sup>102</sup> More qualitative work is needed to assess whether unions have succeeded in providing benefits to immigrant workers or are merely virtue signaling.

Protections for immigrant workers are vital amid the most recent wave of workplace ICE raids and the United States increase in anti-immigrant rhetoric. The vulnerability many workers face due to immigration status lowers their wages and worsens their working conditions as well as the working conditions for entire low-wage industries.<sup>103</sup> As a result of this connection between immigrant workers and the entire labor market, incorporating immigrant workers is critical to the future of the labor movement.<sup>104</sup> This review indicates crucial areas where unions can serve as immigration intermediaries in the workplace. Where unions are having success in organizing immigrant workers, their small steps towards progress give hope for a future just economy.

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<sup>102</sup> See Bosniak, *supra* note 19, at 976.

<sup>103</sup> Griffith & Gleeson, *supra* note 73, at 486.

<sup>104</sup> Cruz, *supra* note 2, at 656-660.



