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Immigration Policing Through the Backdoor: City Ordinances, The "Right to the City," and the Exclusion of Undocumented Day Laborers

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IMMIGRATION POLICING THROUGH THE BACKDOOR: CITY ORDINANCES, THE "RIGHT TO THE CITY," AND THE EXCLUSION OF UNDOCUMENTED DAY LABORERS[1]

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Abstract: Whereas the federal government has exclusive authority over immigration in the United States, during the past decade (and particularly since 9/11), many cities have formulated "grassroots" policies that enable local immigration policing "through the backdoor," and have the *indirect*—but intended—effect of excluding undocumented immigrants from their jurisdictions. Providing a national overview and three case studies from the Phoenix, Arizona, metropolitan region, this article focuses specifically on the way in which cities are deploying public space ordinances to police (presumed) undocumented day laborers within their jurisdictions. This study underscores how noncitizen status can compromise claims to "the city," and thus makes an argument that the legal geographic literature on city ordinances, public space, and the "right to the city" must engage with immigrant legal status and break free from the "territorial trap" of the nation-state, in which citizenship status is either assumed or considered a non-issue. [Key words: right to the city, public space, immigration, day labor, legal geography, Phoenix.]

"Power to regulate immigration is unquestionably exclusively a federal power."
—U.S. Supreme Court Justice William Brennan in *DeCanas v. Bica* (1976, p. 354)

"Illegal immigration is no longer a federal issue—
it's a local community issue … a local government issue"
—Stacey O'Connell, Arizona State Director, Minuteman Civil Defense Corps
(pers. comm. with author on October 12, 2006)

INTRODUCTION

As the epigraph by Supreme Court Justice Brennan suggests, the federal government of the United States has long had sole authority over immigration enforcement and the formulation of immigration policy. Local and state governments are prevented by both the U.S. Constitution and a body of Supreme Court case law from formulating or enforcing policies that directly influence the admission, exclusion, or expulsion of noncitizens

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from the territory of the United States. While federal legislation adopted in 1996 has offered city and state law enforcement agencies the opportunity to become local partners in federal immigration enforcement (i.e., arresting undocumented immigrants for immigration violations),[3] most local police forces have rejected this partnership citing, among other concerns, the costs of implementing such a strategy and the public safety outcomes that might result if local police were also "La Migra."

Although rejecting the opportunity to be *directly* involved in federal immigration enforcement, at the urging of their constituents many subnational governments have elected to practice immigration policing "through the back door." As this article will show, an increasing number of cities and states are utilizing the tools at their disposal—local land-use ordinances and ordinances that prevent certain behaviors in the public spaces of the city—to (severely) constrain the opportunities and/or behaviors of the cities' undocumented residents, and essentially to "get these people out of town" (Barry, 2006, p. A1). By invoking, formulating, and enforcing such local ordinances, cities are, in effect, doing local immigration policing by proxy.

In what follows, I explore one example that is illustrative of this phenomenon: the ways in which cities have deployed public space and land-use ordinances to control the development and expansion of formal and informal day labor hiring sites within their jurisdictions. Because the vast majority of day laborers are recently arrived immigrants, and a significant proportion are undocumented, I interpret the enforcement of these ordinances as, *inter alia*, locally scaled attempts to control "illegal immigration."

In the first section of this study, I describe the current landscape of undocumented immigration and day labor in the United States, as well as the federal legislative and enforcement context in which "local immigration policing-by-proxy" has emerged over the past decade. There has been a fair amount of scholarly research that profiles day labor markets and day laborers in general across the United States (Valenzuela, 2000; Toma and Esbenshade, 2001; Malpica, 2002; España, 2003; Valenzuela et al., 2005, 2006; Fine, 2006; Theodore et al., 2006). However, there is a dearth of research on both the responses of local communities to day laborers-as-immigrants, as well as the recent flowering of "grassroots" immigration policies across the United States, even though these policies have taken center stage in many local governments and in the mass media.[4] In the next section, therefore, I provide a national overview of these local ordinances in order to demonstrate the range of tactics employed by cities to manage immigrant day laborers and day labor markets. At this point, I shall pause to address an important theoretical concern that emerges from the empirical material—specifically, that noncitizen status can compromise claims to "the city," and therefore that the legal geographic literature on city ordinances, public space, and the "right to the city" must engage with the legal status of

[3]The U.S. federal government enabled local immigration policing with the passage of the Illegal Immigrant Reform and Immigrant Responsibility Act and Antiterrorism and Effective Death Penalty Act in 1996.

[4]There are several notable exceptions on both issues. For a discussion of local policy responses to day laborers, see Esbenshade (2000) and Kornzweig (2000). And for discussions of "local immigration policy" see Wells (2004) on the overall "grassroots reconfiguration" of immigration policy in the United States, Hayduk (2006) on local noncitizen voting measures, Varsanyi (2007) on the local and state adoption of the *matrículas consulares* as a valid form of identification for unauthorized residents, and Romero (2005) on the debate over unauthorized students and their access to in-state college and university tuition.

immigrants and break free from a vision of membership that is "territorially trapped" in the nation-state. I then turn to three brief case studies of cities in the Phoenix, Arizona metropolitan region, which provide additional detail as to how day labor policies were developed in these localities. I will conclude by reemphasizing the importance of engaging, both theoretically and empirically, with migrant legal status as an important axis of marginalization, because exclusionary city ordinances (despite federal authority over immigration enforcement) have the power to simultaneously shape both urban and national publics.

IMMIGRANT DAY LABOR AND THE RISE OF LOCAL IMMIGRATION POLICING

Informal labor markets are a longstanding feature on the American economic landscape (Way, 1993). Whereas native-born workers have been and continue to be an important presence in casual employment markets (Wallace, 1965; Peck and Theodore, 2001; Kerr and Dole, 2005), immigrant laborers have long played a central role in filling the ranks of day labor markets (Wilentz, 1984; Kamber, 2001).

Although once predominantly a fixture in traditional immigrant-destination cities such as Los Angeles and New York, day labor markets are now present in communities throughout the country. In collecting data for a recently released report, *On the Corner: Day Labor in the United States* (2006), Abel Valenzuela and his colleagues interviewed 2,660 randomly selected day laborers at 264 hiring sites in 139 cities across the United States. They found that approximately 117,600 workers were either seeking employment or working as day laborers on any given day. The distribution of hiring sites still reflects traditional immigrant settlement destinations to some extent, but a growing percentage of day labor markets are today found in regions not traditionally regarded as "immigrant gateways," including the Midwest (3% of sites), Southeast (13%), and South (13%; Valenzuela et al., 2006, p. 5). This changing distribution is a reflection of a distinct and relatively rapid shift in the settlement choices of immigrants over the past two decades, away from the traditional gateway cities such as Los Angeles, Houston, and Tucson to nontraditional areas of settlement such as Georgia, North Carolina, and Indiana. As evidence of this dramatic shift, the Mexican immigrant population (both legal and undocumented) in "nongateway" states grew dramatically between 1990 and 2000, ranging from 200%–400% in New York, Washington, and Wisconsin to more than 1800% in North Carolina, Tennessee, and Alabama (Zúñiga and Hernández-León, 2005, p. xiv).[5]

Not all day laborers are unauthorized immigrants, though in their recent research Valenzuela et al. (2006) discovered that the majority are both undocumented and recent arrivals—approximately three-quarters of the day labor workforce is estimated to be unauthorized, and 60% have been in the United States for five years or less. Furthermore, although a significant proportion (21%) of day laborers sought work from formal day labor hiring centers (Valenzuela et al., 2006, p. 27), the majority of hiring sites are informal. Given the nature of the hiring process, informal day labor markets are typically

[5]While not the focus of this article, see Zúñiga and Hernández-León (2005) for a discussion of why this shift has occurred.

found in locations that are highly visible and accessible to potential employers—for instance, on sidewalks at busy intersections and in the parking lots of large home improvement stores.

Over the past few decades, as the number of undocumented immigrants living in the United States has increased—from an estimated 3 million in the early 1990s to about 12 million today (Passel, 2006)—and informal day labor markets have proliferated in both traditional and nontraditional immigrant destinations, the term "day laborer" has become synonymous with "illegal immigrant" in popular discourse. And as such, tensions surrounding undocumented immigration are increasingly focused on day labor markets, which are often the most visible manifestation of "illegal immigration" at the local scale. The necessary visibility, presumed illegality, and the sometimes large-scale nature of day labor markets has made them a ready focal point for local frustrations over unauthorized immigration in a growing number of communities across the country (Esbenshade, 2000).

Different local stakeholders articulate various motivations for wanting to manage or eliminate day labor markets in their communities, but many native-born or naturalized city residents, homeowners, and local business owners connect their frustrations over undocumented immigration, broadly speaking, with the presumed illegal status of day laborers present in "their" communities (Esbenshade, 2000).[6] Accordingly, these local stakeholders view the workers' legal status as both the primary problem as well as the source of a potential solution. If day laborers are "illegal immigrants," so goes the frequently articulated argument, then they should be arrested by federal Immigration and Customs Enforcement (ICE) agents and deported.

As emphasized in the epigraph quotation by Justice Brennan—"Power to regulate immigration is unquestionably exclusively a federal power" (*DeCanas v. Bica*, 1976, p. 354)—the federal government has sole authority over immigration-related matters in the United States. In other words, only the federal government has the power to admit, exclude, or expel noncitizens. This "plenary power doctrine" is grounded in the Naturalization Clause of the U.S. Constitution, as well as in a series of Supreme Court cases decided in the late 19th century, and has been upheld ever since (Aleinikoff, 2002; Varsanyi, 2007).[7] Thus the federal government's sole authority over immigration enforcement means that city, county, and state governments cannot become directly involved in immigration matters.

Despite this mandate, the federal government is currently prioritizing border enforcement while drastically underfunding the Bureau of Immigration and Customs Enforcement (ICE), which is responsible for immigration enforcement within the United States. While there are now 11,000 Border Patrol agents and 6,000 National Guard troops stationed on the borders of the United States (principally along the U.S.–Mexico border), only a small fraction of that number are assigned to investigate undocumented immigration inside U.S. territory. As a result, enforcement of employer sanctions, as mandated by the 1986 Immigration Reform and Control Act, has dropped precipitously over the past 15 years. For example, the number of employer audits (investigations into the legal status of

[6]I put "their" in quotation marks, because day laborers frequently live in the same communities as their critics and thus are local residents as well.
[7]For instance, see *Chae Chan Ping v. United States* (1889) and *Fong Yue Ting v. United States* (1893).

employees) has dropped from 10,000 in 1990 to less than 2,200 in 2003 during a period in which the estimated undocumented population of the United States quadrupled (Brownell, 2005).

As the federal government has pulled back from internal immigration policing and enforcement, residents concerned about day labor and/or unauthorized immigration have turned to their local governments and police forces to take action regarding the perceived "illegal immigration problem." Even though the federal government has plenary power over immigration matters, Congress and the executive branch, starting in 1996 and continuing in the post-9/11 period, have authorized local and state governments to undertake immigration policing should they choose to assume that responsibility (Coleman, 2005; Varsanyi and Provine, 2007). While the fundamental constitutionality of this devolution of immigration policing powers is still being debated by legal scholars (Hethmon, 2004; Pham, 2004), current local immigration policing does not conflict with federal plenary powers as they have been explicitly authorized by Congress.

To date, few subnational jurisdictions have taken up the offer to perform federally sanctioned local immigration policing. However, this has not meant that cities are disinterested observers of undocumented immigration. On the contrary, there has been a recent proliferation of locally generated, grassroots policies that engage with the presence of undocumented residents in cities, counties, and states across the nation (Wells, 2004; Varsanyi, 2006). In the growing presence of unauthorized resident populations, myriad subnational governments are taking matters into their own hands by developing policies that in some cases protect their unauthorized residents, and in other cases seek to constrain and expel those residents from their jurisdictions. Given the federal government's plenary power over immigration, these local governments appear to be walking a fine line when formulating these policies since, constitutionally speaking, "local immigration policy" is an impossibility. Although subnational governments do not have the constitutional power to formulate grassroots immigration policies as such, they do have explicit power to regulate and police public space within their jurisdictions via local land-use and zoning regulations, ordinances that regulate behaviors in public space (e.g., laws that criminalize loitering), and the enforcement of local and state laws (e.g., trespassing, traffic ordinances). As the local policies described in the next section illustrate, a secondary (and, I would argue, intended) effect of controlling and criminalizing certain behaviors in public space is policing the persons within those spaces—day laborers—who, by necessity of their livelihood strategy, participate in outlawed behaviors.

IMMIGRATION POLICING-BY-PROXY: A NATIONAL OVERVIEW OF LOCAL POLICIES

There are no federal laws that speak directly to the prohibition or permission to both work as a day laborer or to hire day laborers. Under the 1986 Immigration Reform and Control Act (IRCA), employers must verify that their potential employees are able to work legally in the United States, but this only applies to employees who are hired for more than three days, as opposed to casual labor hired on a day-to-day, informal basis. The day-to-day nature of informal day labor markets, in combination with this "three-day loophole," provides contractors and employers a means by which they can regularly visit the same day labor sites and hire the same laborers, who, in effect, work for them on an

informal, but permanent basis. And since the hiring occurs on a daily basis, no federal law is being broken, as such, even if the spirit of the law is neglected in these circumstances.

In the absence of clearly enforceable federal laws regulating the hiring of day labor and day labor markets on the one hand, and the rising complaints by business owners and city residents regarding the presence of day labor hiring sites (and presumed "illegal immigrants") on the other, city governments have turned to their own legislative toolkits seeking solutions. As I will discuss next, these locally generated strategies consist of four approaches: the establishment of formal day labor hiring sites; enforcement of existing ordinances (e.g., housing, trespassing, anti-solicitation ordinances); creation of new city ordinances (specifically, "employer registration" ordinances and "illegal immigration relief" acts); and the deployment of unofficial enforcement strategies, including harassment and intimidation.

Formal Day Labor Hiring Sites

First, a number of city governments have considered establishing formal day labor hiring sites to ease conflicts and complaints about (and from) day laborers. As Valenzuela et al. report (2006, pp. 6–7), there are approximately 63 formal worker centers throughout the United States, over half of which have been established since 2000. Formal hiring centers are frequently the product of partnerships between a variety of stakeholders, including community organizations, faith-based organizations, law-enforcement agencies, and local governments. Valenzuela et al. (2006, p. 7) found that the majority of these hiring centers provided a combination of services, such as a space in which laborers can gather, a job allocation system that imposed some degree of organization and coordination concerning the hiring process, a requirement that laborers and employers register with the site, and a minimum wage requirement.

Whereas a number of city governments have supported the establishment of formal hiring sites within their jurisdictions, others have considered and passed ordinances prohibiting these centers, either by restricting the use of taxpayer money to establish or run the centers, or by restricting the use of public property for such centers. For example, debates over the establishment of a publicly funded day labor hiring center in the Washington suburb of Herndon, Virginia, gained national prominence during the summer of 2005. City officials proposed to build a day labor center using county funding in an effort to respond to merchant and resident complaints about the expansion of an informal hiring site within the municipality. However, city residents and outside interest groups, such as the Minutemen Civilian Defense Corps (hereafter, the "Minutemen"), argued that it was illegal to build a hiring site with public money because this was tantamount to supporting the hiring of illegal immigrants in violation of IRCA (Morello, 2005). Though highly controversial, Herndon's government ultimately decided to build a publicly funded day labor hiring center.

As mentioned above, there are currently no federal restrictions on the local establishment of formal day labor hiring centers, including those partially funded with taxpayer money. However, several cases currently making their way to the Supreme Court may set a federal precedent on this issue. *Judicial Watch*, a conservative think tank in Washington, DC, has filed a number of lawsuits across the country against cities, including Herndon and Laguna Beach, California, which use public funding to run day labor centers within

their jurisdictions. The suits claim these cities are violating federal law by facilitating the hiring of illegal immigrants in violation of IRCA (Delson, 2006).

Enforcement of Existing City Ordinances

In seeking to manage or eliminate informal hiring sites (and indirectly, undocumented immigrants) within their jurisdictions, many cities use ordinances that are already on the books and instruct their police departments to enforce them in the area of the day labor market in question.

Housing ordinances. Some cities use local housing laws in seeking to eliminate their informal day labor markets. Immigrant day laborers, particularly those who are recent U.S. arrivals and live in suburban areas without adequate affordable housing, often share rental units, and it is not uncommon to hear of 20–30 people living together in homes scattered throughout suburban communities. As indirect attempts to constrain the housing options of day laborers and drive them out of town, cities are using anti-crowding or "stacking" ordinances to eliminate cheap or illegal housing units that are believed to be magnets for immigrant day laborers. For instance, the mayor of Morristown, New Jersey, Donald Cresitello, is a highly vocal critic of the city's informal day labor market, and aggressively utilizes the city's anti-stacking ordinance to target landlords who rent to day laborers living in the city. Since taking office in January 2006, he has hired additional city housing inspectors and increased the fines of those landlords found in violation of the ordinance (Seman, 2006).

Trespassing ordinances. Various cities and at least one state, Arizona, have also attempted to use trespassing laws to manage both day labor markets and, more broadly, the presence of undocumented immigrants. For example, in 2005, police in several New Hampshire towns arrested ten undocumented residents on criminal trespassing charges, making the argument that illegal presence in the United States also implied criminal presence within town boundaries (Belluck, 2005). In the motion filed to dismiss the trespassing charges, the city prosecutor argued that state law defined "A person guilty of criminal trespass if, knowing that he is not licensed or privileged to do so, he enters or remains in any place" and that "[the immigrant's] omission to get permission to be in this country is his failure to act, just as a sexual offender who fails to register commits an omission to act when legally required to do so" (as quoted by McLean, 2005, p. A1). More recently, eight laborers playing soccer on a public field were arrested on similar grounds in the town of Brewster, New York (O'Conner, 2006). And in Arizona the state legislature passed a bill in 2006 authorizing city police departments to arrest undocumented immigrants using state-level trespassing laws (Archibold, 2006).

Thus far, these attempts to use trespassing ordinances to arrest undocumented migrants for simply being present within jurisdictional limits are not succeeding. A New Hampshire state judge rejected the strategy taken by the local police forces, arguing that the criminal trespassing charges were unconstitutional attempts at regulating immigration, an area in which only the federal government has authority. Arizona Governor Janet Napolitano vetoed the legislature's bill, and the Brewster case drew a legal challenge, both on similar grounds.

Anti-solicitation ordinances. Cities have also turned to anti-solicitation ordinances in their attempts to regulate the activities of day laborers who congregate at informal hiring

sites. Originally on the books as a means of cracking down on prostitution, anti-solicitation ordinances seek to restrict commercial transactions between potential employers in a vehicle and potential employees on the sidewalk. The use of anti-solicitation ordinances in restricting day laborers has had mixed success in the courts. The city of Agoura Hills, California adopted an ordinance in 1991 that prohibited individuals on sidewalks from seeking employment from persons traveling in a vehicle. The city claimed that day laborers and potential employers were conducting business in lanes of traffic, blocking the flow of traffic, and creating a safety hazard. The law was thus justified as a traffic safety measure. This law was ultimately upheld on appeal, because the court found it did not violate the day laborers' right to work, but only sought to restrict their activities in ways that increased safety and served the legitimate public interest (*Xiloj-Itzep v. City of Agoura Hills*, 1994; see also Kornzweig, 2000). In contrast, in 2004, after police officers arrested sixty day laborers in Redondo Beach, California under a similar anti-solicitation ordinance, a U.S. District Court judge declared this anti-solicitation law was not constitutional as it was too broad and "could conceivably restrict people from hailing taxis, or Girl Scouts from selling cookies outside of their school" (Judge Consuelo B. Marshall, as quoted by Gorman, 2006, p. 3).

Creation of New City Ordinances

Cities are also seeking ways to restrict or eliminate day labor markets and (presumed undocumented) immigrant day laborers by creating new city ordinances, which fall into two categories.

Employer registration. The Southern California city of Vista achieved notoriety in 2006 by passing the nation's first day labor employer registration ordinance. In the months leading up to the passage of the ordinance, the San Diego chapter of the Minutemen protested at a busy informal day labor hiring site within the city. According to Minutemen founder, Jim Gilchrist, the goal of the protests was to "educate" potential employers that they were, according to the interpretation of the Minutemen, breaking U.S. tax and labor laws by hiring undocumented day laborers (Gilchrist, as quoted by Klawonn, 2006). As part of their protest, members of the Minutemen also took pictures of the license plates of those who hired day laborers and posted them on a website (www.wehirealiens.com). Responding to these pressures, the Vista city council passed an ordinance in June 2006 that requires employers of immigrant day laborers to register with the city, post proof of registration on their vehicles while hiring day laborers, and give the workers a "term sheet" describing the job and wages as well as providing employer contact information (*Vista City Council Ordinance No. 2006-8*). The ordinance is currently being challenged in court. The American Civil Liberties Union (A.C.L.U.) and California Rural Legal Assistance filed the suit, and are claiming that the ordinance is unconstitutional because it violates the free speech and equal protection rights of the employers, and also has discriminatory intent (Rodriguez, 2006).

Illegal Immigration Relief Acts. During 2006, a new variety of "anti-day labor/anti-undocumented resident" ordinance was added to the local toolkit. A number of cities across the country have now passed "Illegal Immigration Relief Acts," which do not target day laborers at hiring sites but rather, like the anti-stacking ordinances discussed above, restrict their broader living and working conditions, with the intent of making

the cities in question broadly inhospitable for undocumented residents.[8] Hazleton, Pennsylvania was the first city to pass such an ordinance in July 2006 (*Hazleton Ordinance 2006-13*). The original Hazleton ordinance, on which subsequent ordinances were modeled, included three major provisions: (1) it declared that English is the city's official language; (2) it required all tenants and potential tenants to apply for an "occupancy permit" to establish their legal residency in the United States, and established fines for undocumented residents who did not have an occupancy permit while renting property within the city, as well as on landlords who rented to undocumented residents ($1,000 per day per undocumented resident); and (3) it denied permits or contracts to businesses that "aided and abetted" (hired) undocumented immigrants, not only in the city of Hazleton, but *anywhere in the United States*, including the establishment of a day labor hiring center which did not verify legal work status.

A lawsuit was filed by the A.C.L.U. and the Puerto Rican Legal Defense and Education Fund two weeks after the adoption of the ordinance, on the grounds that the ordinance was "riddled with constitutional flaws," clearly preempted federal authority over immigration, and would discriminate against any resident of the city who appeared to be foreign (Preston, 2006). The city responded by adopting a revised version of the original ordinance, which was slated to take effect in November 2006, but it, too, now faces legal challenges by the A.C.L.U. and P.R.L.D.E.F. (Associated Press, 2006). Many legal observers assumed that the challenges being brought against these local ordinances will eventually make their way to the U.S. Supreme Court and establish a nationwide precedent.

Unofficial City Enforcement Strategies

Finally, it is important to note that not all locally scaled strategies are official policies sanctioned by legislative decree and circulated publicly. Harassment of day laborers by local police, private security guards, merchants, and/or citizens' groups (such as the Minutemen) also play an important role in attempts to manage, relocate, or eliminate informal hiring sites (Esbenshade, 2000; Valenzuela et al., 2006). As the recent national study conducted by Valenzuela et al. (2006) recounts, 19% of day laborers surveyed nationally reported at least one instance of harassment by merchants, 16% reported harassment by local police officers, and 9% reported harassment or abuse by private security guards. Forms of harassment included verbal insults, threats or acts of violence, intimidation, and being photographed or videotaped. To provide a specific example, Joseph Turner, founder of the California anti-immigrant group "Save our State," was recently quoted as encouraging his group's members to bring baseball bats to an anti-day labor rally in Redondo Beach, California, noting "if we're lucky, we're gonna need them" (as quoted by Wall, 2005).

Despite their legal status, day laborers and those representing them have successfully fought these unofficial harassment policies on equal protection grounds. A federal judge

[8]According to the Puerto Rican Legal Defense and Education Fund, as of September 2006, six cities in the United States have adopted these ordinances, four cities are in the preliminary stages of adopting them, 26 cities are considering these ordinances, and four have considered but rejected them (Preston, 2006).

recently decided in favor of six day laborers, who were represented by the National Day Labor Organizing Network and the Puerto Rican Legal Defense and Education Fund in a lawsuit against the City of Mamaroneck, New York. The judge upheld the laborers' claim on equal protection grounds, stating that the local government had used its police force in a "deliberate and coordinated" campaign to drive day laborers out of the city based solely on their Hispanic appearance (Santos, 2006; Fitzgerald, 2007).

"THE RIGHT TO THE CITY" AND THE EXCLUSION OF LEGAL STATUS

To frame this study, I draw heavily upon the legal geographical literature on "the right to the city" to explore the way in which cities are deploying local public space and land-use ordinances to constrain the behavior of undocumented day laborers seeking work and living within their jurisdictions. Whereas the national overview of these ordinances discussed above provided us with a snapshot of "local immigration" policies taking shape across the country, the three city case studies examined next, although brief, begin to illuminate the processes whereby these policies evolved in particular contexts. In each case—Chandler, Phoenix, and Mesa, Arizona—policy outcomes have been the result of negotiations among various stakeholders, each of which has sought to solidify their vision of an appropriate public by, among other things, enforcing local ordinances that govern behavior in urban public spaces. In contrast to other stakeholders such as small business owners and citizen residents, undocumented residents are often unable or unwilling to assert their "right to the city" given their lack of standing as "illegal immigrants" and fears of deportation. In this way, exclusions from local publics build upon exclusions from the national public, and vice versa. However, legal status—a very real and meaningful axis of marginalization for many urban residents—has not yet been substantively addressed in "right to the city" scholarship. Before turning to the case studies, therefore, it is important to pause and explore the broader theoretical implications of migrant legal status for this literature.

A founding scholar in this subfield of legal geography is Don Mitchell. In a series of case studies and texts spanning the past decade, Mitchell (2003, p. 4) has sought to understand:

> who has the *right* to the city and its public spaces. How is that right determined—both in law and on the streets themselves? How is it policed, legitimized, or undermined? And how does that right—limited as it usually is, contested as it must be—give form to social justice (or its absence) in the city?

Whereas the study of the city and social justice has a longer history in geography (Harvey, 1973; Castells, 1977), Mitchell and those working within this theoretical framework have focused specifically on how contestations over who is or is not permitted to be present in urban public spaces relates to broader struggles over societal membership and legitimacy. In other words, they have explored the way in which urban public space and "the public" are mutually constituted. Much of this research, including Mitchell's, has focused on how deployments of law—particularly city ordinances—have played a central role in these struggles. Scholars have explored, for instance, the ways in which local ordinances and/or the policing of public space have been used to constrain the behavior (and

therefore presence) of homeless individuals (Smith, 1992, 1996; Mitchell, 1995, 1998a, 1998b, 2003; Amster, 2002), panhandlers (Ellickson, 1996), youth (Valentine, 1996, 2004; Collins and Kearns, 2001; Stratford, 2002), protesters (Staeheli and Thompson, 1997; D'Arcus, 2003, 2004; Mitchell, 2004; Mitchell and Staeheli, 2005), labor organizers (Mitchell, 2002), and immigrant day laborers (Esbenshade, 2000).

These studies have drawn both explicitly and implicitly upon French urban theorist Henri Lefebvre's notion of "the right to the city," to frame the way in which claims to urban space are tightly woven into broader claims for societal membership and legitimacy. In Lefebvre's sociospatial theorization, the city is the product of a dialectical relationship between two competing visions of urban space: (1) "representations of space," or the planned, abstract, controlled spaces of city planners, who understand urban space primarily through its exchange-value, and (2) "representational space," or urban space appropriated for its use-value, and hence concrete, differentiated, and lived-in by its denizens or *citadins*. In Lefebvre's mind, the struggle for urban space and the "right to the city" is the struggle for lived spaced over abstract space, for "representational space" over "representations of space," and ultimately for the city's inhabitants against the forces of capitalism (and by extension, the state), and for their right to inhabit the city. As he writes, "*the right to the city* is like a cry and demand," "a transformed and renewed *right to urban life*," which "gathers the interests … of the whole society and firstly of all those who *inhabit*" (Lefebvre, 1996 [1968], p. 158, *emphasis in the original*; see also Lefebvre, 1991).

To Lefebvre's sociospatial dialectic, Mitchell adds a third conception of urban public space: "spaces *for* representation," or those spaces "within which political movements can stake out the territory that allows them to be *seen* (and heard)" (1995, p. 115; 2003, p. 129). In elaborating on this third conception of urban space, Mitchell begins to drive wedges into Lefebvre's dialectical understanding of "inhabitants" versus "the new bourgeois aristocracy [who] no longer inhabit" (Lefebvre, 1996 [1968], p. 159): "inhabitants," after all, are not a homogenous group representing unified interests. Exclusions cut across "the public" as well, and are concretized in laws and practices governing public space. Indeed, a number of scholars have recently argued that Lefebvre's singular focus on the working class ("without [the working class] nothing is possible"; Lefebvre, 1996 [1968], p. 154) neglects other important axes of marginalization such as race (McCann, 1999), gender (Fenster, 2005), sexual orientation (Hubbard, 2001), and immigrant status (Dikeç and Gilbert, 2002).[9]

I note here an additional exclusion within legal geographic theorizations and empirical studies deploying "the right to the city": migrant legal status. Their mere presence in the spaces of the city indicates, following the work of Mitchell and others, that undocumented residents are inhabitants and therefore have standing from which to lay claim to

[9]Though such analyses are certainly interesting and necessary, in this case, I am less interested in undertaking a close reading of Lefebvre and interrogating his framing of "the right to the city" against the contemporary neoliberal migration context. I agree with others that Lefebvre was a product of his time and place, and could not have anticipated the extent of the changes in the contemporary era (McCann, 1999; Brenner, 2000; Dikeç and Gilbert, 2002). What I aim for, then, is an analysis that incorporates not only Lefebvre's words, but most importantly, how *contemporary* scholars are deploying his ideas to understand the ways in which urban space and the public are mutually constituted.

membership. After all, as renters and homeowners, parents to schoolchildren, consumers, and so forth, they are *de facto* members of local communities, which would presumably gain them purchase as valid members of "the public."

But in which public can undocumented residents claim membership and rights? The local public? The national public? What happens when the inhabitants are "illegal," and not considered appropriate members of the national public according to federal laws, but are simultaneously caught up in struggles over their ability to be present in the public spaces of the city? It is one thing for homeless individuals or protesters to struggle and fight for their rightful space and place in the city. The challenges they face are certainly dire at times, but these individuals do not, on the whole, face the added and very real possibility of deportation when attempting to claim their rights. Despite their "illegal" status, undocumented residents are entitled to various constitutional protections. And yet, the sword of Damocles—their legal status—is always hanging over the heads of these residents. If they come forward to claim the rights due to them, they may only gain a pyrrhic victory: a win accompanied by a deportation order.

Despite this very real and present threat of total marginalization from the nation-state, scholars writing in the "right to the city" vein of legal geography are largely silent as to how the legal or immigration status of those seeking the right to the city might impact their claims (see Dikeç and Gilbert, 2002, for one important exception). In my view, legal geographers working within the "right to the city" framework have tended, thus far, to remain "territorially trapped" in the framework of the nation-state. The "territorial trap," as set forth by Agnew (1994) and Agnew and Corbridge (1995), describes the tendency of international relations (IR) theorists to, *inter alia*, uncritically assume the nation-state to be the primary geographical unit of analysis. Although Agnew and Corbridge's objects of criticism are mainstream IR theorists, who are situated within the nation-state "looking out" at other nation-states, I believe the same critique can be leveled at theorists who "look inward": scholars of membership (or citizenship), including those writing within the "right to the city" framework.

As legal scholar Linda Bosniak argues (2006), scholars of membership and citizenship often take the boundaries of the national community for granted and begin their analyses with the presumption of citizenship. To take a well-known example, T. H. Marshall's famous essay, "Citizenship and Social Class" (1950), presumes citizenship and then proceeds to explore different strands of the concept—civil, political, and social—*for citizens*. The same critique can be applied to many contemporary analyses of citizenship and membership, including feminist- and race-oriented analyses that explore the ways in which the supposedly neutral and identity-free liberal democratic "citizen" is actually White, middle/upper-class, heterosexual, and male (e.g., Fraser, 1990). By no means am I discounting these efforts, since they play a crucial role in understanding the exclusions inherent to citizenship and thereby, enable increasingly inclusive visions. But to repeat my initial assertion, for the most part these excellent analyses of membership take the boundary between citizen and alien for granted and address those of us on the inside of citizenship as the total universe of concern. This reflects mainstream thinking about the nature of political community, as reflected in this assertion by U.S. Supreme Court Justice Harry Blackmun in *Cabell v. Chavez-Salido* (1982), a case that upheld a California statute barring the employment of noncitizens in state-level jobs which served a "political function":

> Self-government, whether direct or through representatives, begins by defining the scope of the community of the governed and thus of the governors as well. Aliens are by definition those outside of this community. (pp. 439–440)

In a territorially trapped vision of membership, citizenship is simply assumed and the boundaries around membership (and how they play a role in inclusion and exclusion) are a non-issue. If noncitizens are mentioned, they are assumed to be either extraterritorial, temporary visitors to the nation-state or legal permanent residents on the pathway to citizenship. But what happens if noncitizens are living permanently *as noncitizens* within the territorial nation-state, or even more acutely, if they are living permanently in the nation-state *without (explicit) authorization*, as in the case of undocumented residents? They are *de facto* members, but are excluded from most analyses of membership. How might we—and must we—theorize membership for such individuals? Bosniak makes this critique for citizenship studies, broadly considered, but I argue that this exclusion—of the question of legal status and the boundaries of membership—is also evident in the "right to the city" literature. And as legal status is a very real and existing means by which individuals are marginalized, an important axis of marginalization is going unexamined.

As geographer Tovi Fenster writes, "[t]he right to the city as Lefebvre defines it asserts a *normative* rather than *juridical* right based on inhabitance" (2005, p. 22, emphasis added). In contrast, much of the recent "right to the city" scholarship engages not with normative visions, but very productively and specifically with grounded legal contestations over the right to public space in specific places and contexts (Mitchell, 2002, p. 70). Don Mitchell argues, contrary to many on the progressive left who have dismissed "rights talk" and the state as avenues for progressive social change, that "rights matter … and so does law" (2003, p. 6). In other words:

> [r]ights establish an important *ideal* against which the behavior of the state, capital, and other powerful actors must be measured—and held accountable. They provide an institutionalized framework, no matter how incomplete, within which the goals of social struggle can not only be organized but also attained. (2003, p. 25)

But again, the focus on legal remedy and the possibility of the state as "a key protector of the weak" (Mitchell, 2003, p. 25) becomes somewhat strained when undocumented residents' legal "rights to the city" are in question, specifically because their legal status as persons within the territorial nation-state is simultaneously in doubt.

Despite these challenges, as the case studies in the remainder of this article demonstrate, it would be both fruitful and (given the realities "on the ground") crucial to incorporate immigrant legal status into deployments of the "right to the city" and legal geographic analyses of exclusionary ordinances and public space.

We can begin to make this connection by understanding both the role of the city and unauthorized migration in contemporary neoliberal economic restructuring. On one hand, neoliberal restructuring has simultaneously lowered barriers to the international flow of capital and raised barriers to the international flow of people (Coleman, 2005; Varsanyi and Nevins, 2007). However, as discussed above, a combination of increasing border militarization, lax internal workplace enforcement by the federal government, and continued demand by businesses for flexible labor has resulted in an increase in unauthorized

migration, now with cities on the front lines. In this sense, as Neil Brenner has argued, "the urban scale appears to have become the central institutional, political, and geographical interface upon, within, and through which the contradictory politics of capitalist restructuring are currently being fought out" (2000, p. 374). And in this particular case, the contradictory politics involve cities versus the federal government, different constituencies in cities against one another, and, ultimately, conflicts that are literally embodied by undocumented residents, day laborers, police officers, and community activists in urban public spaces.

With these two issues in mind—how tensions surrounding undocumented immigration are playing out in struggles over urban spaces, and how (il)legal status compromises day laborers' participation in those struggles—I turn next to an exploration of the ways in which three Arizona cities have deployed local ordinances to manage day laborers seeking work on their city sidewalks, streets, and parking lots.

THREE PHOENIX-AREA CASE STUDIES

In Arizona, local attempts to manage informal day labor markets face an additional barrier. In 2005, Governor Janet Napolitano signed House Bill 2592 into law, making Arizona the only state that prohibits spending taxpayer money on the establishment or operations of formal day labor hiring centers. Thus one of the most successful means by which communities can manage their day labor markets, which are cited as having positive benefits for all stakeholders (e.g., laborers, employers, business interests, and community residents) is now further out of reach. Although there is no prohibition on the establishment of day labor centers as such, these facilities must be wholly operated with private funding. As a result, there are currently only two formal hiring sites in metropolitan Phoenix: the Macehualli Work Center in northeast Phoenix, and the Light and Life Day Labor Center in suburban Chandler. Given this prohibition on public funding, communities in the region have even fewer options when seeking to manage day labor participants. In this section, I discuss three Phoenix-area case studies—the cities of Chandler, Mesa, and Phoenix—which will provide further nuance and detail to the earlier discussion of local immigration policing by proxy and the challenges faced by undocumented residents in their quest for access to public space.

Chandler

Chandler is an incorporated city located in the southeastern sector of the metropolis. Paralleling the rapid growth of the Phoenix region, Chandler was the seventh fastest growing city in the United States between 1990 and 2000; between 1990 and 1996, it was the second fastest growing city with a population of more than 100,000. The current population of Chandler is just under 250,000, and is 77% non-Hispanic White and 21% Latino.

Chandler's government has had to strike a delicate balance in attempting to manage its informal day labor markets because the city was the site of the infamous "Chandler Roundups," a series of three multi-day raids during the summer of 1997 (Romero and Serag, 2005; Romero, 2006). During these raids, the Chandler Police Department, working in tandem with agents from the Tucson sector of the U.S. Border Patrol, stopped and

questioned thousands of Latinos—citizens, legal, and undocumented residents—and entered their homes without warrants or probable cause. Chandler's police officers had asked hundreds of Latino residents for their "papers," and ultimately detained 432 suspected undocumented immigrants and placed them in deportation hearings. Chandler's Latino community was understandably outraged by the racial profiling inherent in this local immigration enforcement effort. A number of residents subsequently won a $400,000 settlement regarding the roundup.

Given this delicate history, the Chandler government now treads carefully in the formulation of strategies to manage and control its day labor markets. Day laborers congregate in two locations in Chandler: on a stretch of public sidewalk and in a public parking lot. Business owners are the most vocal critics of these informal hiring sites, complaining that the congregations of day laborers negatively impact their businesses by intimidating potential customers. Additionally, a recently completed freeway extension now brings the majority of traffic entering the city down Arizona Avenue, the site of the day labor markets, resulting in complaints by prominent Chandler citizens, government officials, and business owners that the city's image is being tarnished because the first thing that people see when driving into Chandler is an informal hiring site (*Arizona Republic* Southeast Valley Editorial Board, 2006). The city government also voices concerns about traffic safety issues. As the volume of traffic grows along Arizona Avenue, city officials claim that day laborers and employers using lanes of traffic to negotiate employment endanger themselves and others.

Given the racially charged history of the "roundups," the Chandler City Council assigned the "day labor question" to the city's Human Relations Commission (HRC) in 2005. In seeking solutions, the HRC held meetings with key stakeholders, including owners of small businesses and residents from the area in question, day laborers, contractors, and Hispanic community leaders (Chandler Human Relations Commission, 2005), It also incorporated comments from unsolicited emails and communications from interested residents, and held a Regional Day Labor Forum that brought various national and local experts together to discuss a range of available options. Chandler is unique in the Phoenix metropolitan area because it has a privately operated day labor hiring center within its jurisdiction. Hence the goal of many interested parties was to find a way to shift the day laborers from the informal hiring site on Arizona Avenue to the hiring center.

At the urging of the HRC, the city adopted a traffic ordinance strategy. Drawing upon existing state laws, the city consulted with affected businesses and developed a "No Parking/No Stopping or Standing" zone at the site of the informal day labor market. From 4 a.m. through 9 a.m., six days a week, parking and stopping is prohibited along designated stretches of Arizona Avenue, and violators are issued $25 tickets (Muench, 2005). When the enforcement started, 100 signs were posted in the enforcement zone and two police officers were specially assigned to it. During the first two weeks, in September 2005, they issued warnings to prospective employers, explained the new policy, and provided them with information about the formal hiring site. In the following two months, the officers issued 34 citations for illegal stopping and standing. At the end of the year, the police returned to their regular patrol duty, but continued random enforcement efforts along Arizona Avenue. Over 100 citations had been issued since the beginning of the enforcement campaign.

Importantly, given the racially charged nature of the Chandler roundups, the city has followed HRC recommendations to target the demand side of day labor hiring. Therefore, it is prospective employers, not the laborers themselves, who are the focus of the current enforcement efforts (Powell, 2006). The traffic ordinance strategy has only been partially successful in shifting the location of the day labor market (Mulero, 2006; Powell, 2006). First, there is a perception by Chandler police that those hiring day laborers along Arizona Avenue are willing to gamble that they will receive a ticket, and that the $25 fine is not high enough. More problematically, there is anecdotal evidence that employers are simply passing the fines on to the laborers and docking their wages accordingly. Therefore, the city is continuing to explore other options, including relying upon county ordinances that permit a higher fine ($85), or amending its own ordinances so that fines are stepped upward with each violation (Powell, 2006).

Phoenix

Despite the fact that the City of Phoenix contains one of the two formal day labor hiring sites in the region, the Macehualli Worker Center, the city is large enough that a number of informal sites still operate throughout its jurisdiction. In 2005, an informal site at 36th Street and Thomas Avenue, in front of a Home Depot home improvement superstore, became the focus of anti-day labor, anti-illegal immigration demonstrations by the Minutemen; this caught the attention of the local media and the Phoenix Police Department, and made the location a test-case for how the city and its police would respond to the day labor "problem" (Melendez, 2006; O'Connell, pers. comm., October 12, 2006).

For several years in the late 1990s, the management of Home Depot had set up a rudimentary day labor hiring site in the store's parking lot. The store provided rental toilets and facilitated trash pickup, but shuttered the facilities when local residents and business owners complained about the growing presence of day laborers and "illegal immigrants" in the community (Hynes, October 26, 2006, interview with author). But a demand persisted for day labor at this particular location, and on any given day 75–200 laborers simply continued to gather on the sidewalk in front of the store in an informal hiring site.

In response to continued complaints by local residents and business owners, as well as organized and regular demonstrations by the Minutemen, the Phoenix Police Department devised a strategy in conjunction with local business owners, day laborers (including representatives from the Macehualli), and residents that relied on the enforcement of several different local ordinances in tandem. First, because the day laborers were gathering in the parking lot of Home Depot—private property—the police started to enforce "no trespassing" ordinances, which resulted in citations and, for repeat offenders, arrests (Melendez, 2006). Second, "No Stopping or Standing" signs were posted in the area to enable citing of potential employers for traffic violations if they stopped to pick up laborers. Additionally, at the outset of the enforcement campaign, three arrests were made under a "no solicitation" ordinance, but given the constitutional ambiguity of anti-solicitation ordinances, Phoenix's City Prosecutor dismissed all three cases.

This enforcement strategy has had mixed success in removing day laborers from the informal hiring site at Thomas and 36th Street. According to the Phoenix Police Department (2005), the 75–200 day laborers who used to gather regularly at this site had

now been reduced to around 20. But as Commander Hynes of the Central City precinct admitted to the author, their enforcement measures had simply "squeezed the balloon" and displaced the issue. Whereas targeted enforcement at this particular site had some impact, the day laborers and their potential employers had simply gone elsewhere in the city (Hynes, October 26, 2006, interview with author).

Mesa

Like Chandler, Mesa is located in the southeastern sector of metropolitan Phoenix. Reflecting the rapid, recent population growth of the Phoenix area, Mesa is now the 40th largest city in the United States (Juozapavicius, 2005a) and the third largest in Arizona, after Phoenix and Tucson, with a population larger than that of St. Louis, Miami, or Pittsburgh. The city's Latino population is also growing rapidly: in 2003, 25% of the population was Latino, up from 20% in 2000 (www.cityofmesa.org).

In the late 1990s, Mesa's government began receiving complaints about day laborers from several constituencies. First, business owners complained that the congregations of day laborers (averaging 50–75 laborers) were negatively impacting their businesses, as potential customers were being harassed by laborers seeking work. Second, individuals in the community sent emails, called the city government, and attended city council meetings complaining about "illegal immigration" and perceived changes in their neighborhoods (e.g., instances of 15–20 laborers living in a single house, multiple cars parked on the street, loud music playing late into the night, beer cans on the street). Importantly, these city residents made a direct connection between the day laborers and undocumented immigration, thought that the federal government was not doing enough about "illegal aliens," and urged the city to do something about the perceived problem (Juozapavicius, 2005b).

Mesa differs from Chandler in several important ways. First, although the Mesa police had never participated in a "roundup," many members of the Minutemen live in Mesa; and the city and surrounding areas were represented by State Representative Russell Pearce, who recently called for a resurrection of the much-maligned 1950s INS deportation campaign, "Operation Wetback." Second, the city government was the first in the region to commission a task force to deal with the presence of informal day labor markets and seek alternatives (Mesa Day Labor Task Force, 2000). With input from a wide range of stakeholders, including three day laborers appointed to the commission as well as a number of day laborers who participated in a commission-led survey, the study concluded that a formal day labor center was the best solution to perceived problems. However, given the anti-immigrant climate of the city, there was no political support for building such a center, and there is still no formal hiring site in the city. The city government says that it will only consider a center if it is privately funded and can guarantee that all laborers are legally in the United States. Third, unlike Chandler, where day laborers congregate on public property (sidewalks and a public parking lot), the two informal day labor markets in Mesa were located on private property, specifically the parking lots of two strip malls. As a result, the city government drew upon different legal tools and ordinances in seeking to manage the day labor hiring sites (Jensen, 2005).

Talks with business owners and representatives of the Mesa Police Department, along with the fact that the laborers were congregating on private property, led the city

government to choose a "no trespassing" strategy. The city did not pass a new ordinance, but relied upon extant city trespassing laws. Business owners who wanted to participate in the program signed an agreement with the police force, and signs were posted on these properties reading "Day Labor Pick-Up Prohibited." Then, starting in July 2005, police spent three weeks warning laborers and employers about the new policy, and urged them to find alternative pickup spots, such as the laborers' apartment buildings. After the warning period, Mesa police began enforcing the ordinance. Police officers were assigned to observe the day laborers and potential employers. If employers and laborers used the private parking lot to arrange employment, but did not patronize the business, the police would cite both the laborer(s) and employers for trespassing. During the initial enforcement period, approximately 110 citations were issued, entailing fines of $500, a requirement to appear in court, and a potential 30 days in jail. The police did not make any effort to contact ICE, and were concerned only with discouraging the gathering of day laborers at the informal hiring site. Thus far, the city is only partially satisfied with the outcome of the enforcement campaign, and continues to seek additional options (Ross, 2006).

CONCLUSION

For many local government officials, city residents, and police officers, the formulation of local ordinances is not explicitly about controlling "illegal immigration" at the local scale. With the notable exceptions detailed above (such as cities like Hazleton, Pennsylvania, which has adopted "Illegal Immigration Reform Acts"), most city government officials and police officers generally echo the words of Supreme Court Justice Brennan that the federal government has responsibility for immigration enforcement, and that the hands of local government are tied in these matters. In none of my interviews did representatives of city governments or police officers explicitly state that they were engaged in immigration enforcement with these ordinances. Rather, their stated justifications for passing these ordinances referred to traffic safety, public nuisance issues, and complaints that informal day labor hiring sites were harming local businesses. Nonetheless, city officials are responsive to city residents—especially voting residents and/or those who are vocal at public meetings—who more often draw connections between day laborers and undocumented immigration, and, frustrated with declining federal enforcement efforts, demand action from local governments.

Particularly in Arizona, a state on the frontlines of conflict and heated debate over "illegal immigration," the ability of undocumented day laborers to struggle for their "right to the city," or (as evidenced by the case studies above) even participate in or influence conversations about how public spaces might be regulated, is tenuous. Day laborers do have certain rights in Arizona, but many of those rights are guaranteed to them as *laborers*—not *immigrants*. And even when they are urged to step forward by the police and claim those rights, many do not out of fear of arrest and deportation. For instance, after eight years of data collection and lobbying by two immigrant rights advocates, Phoenix recently passed an ordinance that criminalizes nonpayment of day laborer wages as "theft of service" (González, 2006); but affected laborers, particularly at informal hiring sites such as the Phoenix Home Depot discussed above, have been hesitant to contact the police. As an officer assigned to the area recently noted, "[The day laborers] associate the police of being on the Minuteman side. Because of that, they've been more

reluctant to come up and say, 'Hey, I've been a victim'" (Officer Gregory Gibbs, as quoted by González, 2006, p. A1).

As much of the scholarship influenced by Lefebvre demonstrates, the "right to the city" is gained, more frequently than not, through a struggle by marginalized groups to have their voices heard. As the immigrants' rights marches of 2006 remind us, undocumented immigrants and residents are at the forefront of many of these struggles, and indeed many commentators have begun to call the contemporary immigrants' rights movement the civil rights movement of the 21st century. Nonetheless, scholars have not yet explicitly engaged with the struggles of undocumented residents for their "rights to the city," or grappled with the ways in which legal status compromises or silences these rights claims (see Dikeç and Gilbert, 2002; Varsanyi, 2006). This analytical blind spot may arise in part because "the right to the city" in some measure implies a cosmopolitan form of membership, based on *inhabitance* and a right to "urban society" (Lefebvre, 1996 [1968]) that rejects and transcends the constraints of the state, including the necessity of national borders and territorially bounded national communities of the Westphalian geopolitical order (Purcell, 2003).

In my view, however, one of the greatest attractions of the research being conducted by critical human geographers and urbanists within the "right to the city" framework is their ability to be simultaneously inspired by normative visions as well as by profoundly grounded, empirical work relevant to contemporary struggles. As recent dramatic increases in workplace immigration raids and deportations remind us, legal status has a real and (for the moment) enduring impact on undocumented urban residents working, living, and seeking their right to the city. As such, I urge legal geographers to transcend the territorial trap and explore the ways in which the deployment of exclusionary city ordinances are not only about shaping an *urban* public, but about shaping a *national* public as well.

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Vista City Council Ordinance No. 2006-8. "An Ordinance of the City Council of the city of Vista, California, Adding Chapter 5.90 to the Vista Municipal Code Relating to Day Labor Employment."