

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

-----X  
MICHELE AND WILLIAM BERKOSKI, JR., ZOFIA AND  
BLAZEJ STEC, AND BARBARA AND WIESLAW OLKO

Plaintiffs

-against-

THE BOARD OF TRUSTEES OF THE INCORPORATED  
VILLAGE OF SOUTHAMPTON, THE INCORPORATED  
VILLAGE OF SOUTHAMPTON, THE TOWN BOARD OF  
THE TOWN OF SOUTHAMPTON, THE TOWN OF  
SOUTHAMPTON, MARK EPLEY, IN HIS CAPACITY AS  
THE MAYOR OF THE INCORPORATED VILLAGE OF  
SOUTHAMPTON AND MEMBER OF THE POLICE  
COMMITTEE OF THE INCORPORATED VILLAGE OF  
SOUTHAMPTON, PATRICK A. HEANEY, IN HIS  
CAPACITY AS THE SUPERVISOR OF THE TOWN OF  
SOUTHAMPTON, THE POLICE COMMITTEE OF THE  
INCORPORATED VILLAGE OF SOUTHAMPTON,  
WILLIAM WILSON, IN HIS CAPACITY AS A MEMBER  
OF THE POLICE COMMITTEE OF THE INCORPORATED  
VILLAGE OF SOUTHAMPTON AND THOMAS  
CUMMINGS IN HIS CAPACITY AS A MEMBER OF THE  
POLICE COMMITTEE OF THE INCORPORATED  
VILLAGE OF SOUTHAMPTON,

Defendants.

Index No. 07-12608

Hon. Jeffrey Arlen Spinner

-----X  
**BRIEF OF *AMICI CURIAE* THE SUFFOLK COUNTY COALITION  
FOR LEGAL IMMIGRATION (NO AMNESTY)  
AND JUDICIAL WATCH, INC.**

Jason B. Aldrich  
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*Counsel for Amici Curiae*

## **INTEREST OF THE *AMICI CURIAE***

The Suffolk County Coalition for Legal Immigration (NO AMNESTY) (the “Coalition”) and Judicial Watch, Inc., by counsel, hereby submit this brief as *amici curiae* in support of Plaintiffs and the Town of Southampton.

The Coalition, an unincorporated association of concerned residents of the Town of Southampton (“Town”), the Village of Southampton (“Village”), and Suffolk County, supports enforcement of immigration laws and securing the borders. It also is opposed to any use of taxpayer resources that undermines existing immigration laws, promotes illegal immigration, or facilitates the employment of persons not legally present in the United States.

Judicial Watch, Inc. (“Judicial Watch”) is a not-for-profit, tax-exempt educational organization that seeks to promote integrity, transparency, and accountability in government and fidelity to the rule of law. As part of its efforts to promote fidelity to the rule of law, Judicial Watch has provided legal representation to taxpayers and taxpayer organizations seeking to challenge local government actions and expenditures that undermine federal immigration laws. *See Karunakaram v. Town of Herndon*, No. CH 2005 4013 (Fairfax Co., Va. Cir. Ct.) (lawsuit challenging use of taxpayer resources to operate day laborer site); *Garcia v. City of Laguna Beach*, No. 06CC10595 (Orange Co., Calif. Super. Ct.) (lawsuit challenging use of taxpayer resources to operate day laborer site); *Sturgeon v. Bratton*, No. BC351646 (Los Angeles Co., Calif. Super. Ct.) (lawsuit challenging police department policy limiting communication between officers and federal immigration officials). Judicial Watch also regularly files *amicus curiae* briefs as a means to advance its public interest mission.

## PRELIMINARY STATEMENT

*Amici* support Plaintiffs' and the Town of Southhampton's legal arguments that the Village's plan to operate a day laborer hiring site on protected open land purchased with monies from the Community Preservation Fund ("CPF") violates state law. In addition, *amici* respectfully submit that the Village's proposed creation of a day laborer hiring site also is contrary to federal law relating to the employment of illegal aliens and, contrary to the Village's legal argument, is not required by the First Amendment to the U.S. Constitution.

The property at issue, which is located along Aldrich Lane and North Sea Road (hereafter "the CPF Land"), is owned jointly by the Village and the Town and was purchased with CPF monies. Not only does the Village intend to use the CPF Land for a day laborer hiring site, but it has already made some modifications to the property for this purpose. In addition, the Village reportedly plans to have a third party -- proposed Intervenor "The Coalition for a Worklink Center" and/or Catholic Charities -- operate the hiring site. *See, e.g.*, Susan J. Greenberg, "Village, Town Debate Creation of Hiring Site," *Suffolk Life*, April 11, 2007 (attached as Exhibit 1); Lisa Finn, "Green Light for Southhampton Hiring Site," *The Independent*, April 3, 2007 (Exhibit 2). The Village asserts that its actions are necessary to ameliorate the "adverse impacts on public health, safety, and welfare" caused by the "street-side solicitation of employment" throughout the Village. *See* Aff. of Village Mayor in Opp. to Mot. for Prel. Inj., at 10.

## ARGUMENT

### **I. The Village's Creation of a Hiring Site on CPF Land Is Contrary to State Law.**

Land purchased with CPF monies is governed by a detailed statutory scheme that authorizes only a narrow range of uses and imposes several specific duties and requirements. Specifically, land purchased with CPF monies must be used in a manner that is “compatible with the natural, scenic, historic, and open space character of such lands” and “preserves the native biological diversity of such lands.” Town Law § 64-e(9); Town Code § 140-6. In addition, the law “limits improvements to enhancing access for passive use of such lands, such as nature trails, boardwalks, bicycle paths and peripheral parking areas, provided such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat.” *Id.* A local government may enter into an agreement with a nonprofit corporation “engaged in land trust activities” to land purchased with CPF monies in a manner consistent with the statute. *Id.*

Working in conjunction with the Coalition, in April 2007, Judicial Watch submitted a Freedom of Information Law (“FOIL”) request to the Village seeking access to records regarding the Village’s proposed use of the CPF Land for a day laborer hiring site, and, more specifically, how the proposed use was consistent with the requirements of the CPF. Judicial Watch requested that the Village produce the following documents, among others:

- Estimates of the number of day laborers expected to use the hiring site on a daily, weekly, monthly, annual, or other similar basis;
- Estimates of the number of employers expected to use the hiring site on a daily, weekly, monthly, annual, or other similar basis;
- Estimates or studies of traffic volume, traffic flow, and/or traffic patterns associated with the proposed use of the parcel as a hiring site;

- Increases or expansion of police presence associated with the proposed use of the parcel as a hiring site;
- Analyses, determinations, or findings of whether (or how) the proposed use of the parcel as a hiring site allows public use and enjoyment of the parcel in a manner compatible with its natural, scenic, historic, and open space character (*see, e.g.*, N.Y. Town Law § 64-e(9));
- Analyses, determinations, or findings of whether (or how) the proposed use of the parcel as a hiring site will preserve the native biological diversity of the parcel and surrounding lands (*see, e.g.*, N.Y. Town Law § 64-e(9));
- Analyses, determinations, or findings of whether (or how) any proposed improvements to the parcel for use as a hiring site, including but not limited to construction of the gravel driveway, will or will not degrade the ecological value of the parcel or threaten essential wildlife habitat (*see, e.g.*, N.Y. Town Law § 64-e(9)); and
- The identity of the entity or organization that will be operating the hiring site, including whether the entity or organization is organized as a not-for-profit corporation under the corporation law and whether the entity or organization has been engaged previously in land trust activities or management (*see, e.g.*, N.Y. Town Law § 64-e(9)).

*See* Letter to Diane Carpenter dated April 30, 2007 (Exhibit 3).

It certainly would be reasonable to expect that, if a municipality were going to propose a particular use of land purchased with CPF monies, then it first would review the CPF statute and undertake an analysis to determine whether the proposed use was consistent with the requirements of the statute. And certainly, it also would be reasonable to expect that, if a municipality undertook such an analysis, then it would have at least some documentation of its efforts, if not its conclusions. Good government and sound policy formulation would require no less. Revealingly, when the Village responded to Judicial Watch's FOIL request by letter from the Village Attorney dated May 25, 2007, it stated that it had no documents responsive to any of

the requests referenced above. *See* Exhibit 4. Nor did it have any documents responsive to any of Judicial Watch's other, comparable requests. *Id.*

The Village apparently failed to undertake even the most basic analysis of whether its proposed use of the protected land at issue is consistent with the requirements of the statute. Although it is entrusted with maintaining the "natural, scenic, historic, and open space character" of the CPF Land, the Village apparently has made no effort to estimate the number of day laborers who will use the site, the number of prospective employers who will be present on the site, or the resulting traffic impact, much less whether a hiring site is compatible with the natural and open space character of the land. Similarly, the Village cannot have fulfilled its duty not to "degrade the ecological value" of the land or "threaten essential wildlife habitat" if it did not even consider the impact that the proposed day laborer hiring site will have on the on the CPF Land at issue.<sup>1</sup> Certainly if it had done so, then the Village would be able to produce at least some records responsive to Judicial Watch's FOIL request.

While *amici* will not reiterate here the cogent analyses presented by Plaintiffs and the Town in their briefs, logic and common sense would appear to indicate that use of the CPF Land as a hiring site for day laborer is inconsistent with the requirements governing the use of land purchased with CPF monies. Rather, it would appear that the Village views the CPF Land as a convenient depository for all of the "adverse impacts on public health, safety, and welfare" to

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<sup>1</sup> The Village also has the responsibility to select a not-for-profit corporation engaged in land trust activities to manage the CPF Land in a manner that furthers the requirements of the statute. Instead, the Village apparently plans to select a provider of social services -- either the Coalition for a Worklink Center or Catholic Charities -- to operate the hiring site.

which Mayor Epley referred in his affidavit to the Court. Clearly, the Village's proposed use of the CPF Land to create and operate a hiring site for day laborers is contrary to state law.

## **II. The Village's Facilitation of the Employment of Illegal Aliens Is Contrary to Federal Law.**

It is the Village's stated purpose to use the CPF Land at issue to operate a site that facilitates the hiring of day laborers by prospective employers. As set forth below, creating and operating a taxpayer-funded marketplace that facilitates the hiring of anyone not authorized to work in the United States violates federal immigration laws.

It is common knowledge that it is unlawful for employers to hire persons who are not authorized to work in the United States. Federal law expressly prohibits the recruiting or hiring of an alien if it is known that the alien is not authorized to work in the United States. 8 U.S.C. § 1324a(a)(1)(A). Moreover, it is unlawful to hire any individual for employment in the United States without complying with federal employment eligibility verification requirements. 8 U.S.C. § 1324a(a)(1)(B)(I). It also is unlawful to aid or abet the commission of an offense against the United States. 8 U.S.C. § 2.

In addition, federal immigration law makes it illegal to "encourage or induce an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law." 8 U.S.C. § 1324(a)(1)(A)(iv). Federal immigration laws also make it unlawful to aid or abet the commission of such acts. 8 U.S.C. § 1324(a)(1)(A)(v)(II). Facilitating the illegal employment of undocumented aliens may be deemed encouraging or inducing an alien to come to, enter, or

reside in the United States. *See, e.g., U.S. v. Kim*, 193 F.3d 567, 574 (2<sup>d</sup> Cir. 1999); *United States v. Oloyede*, 982 F.2d 133 (4<sup>th</sup> Cir. 1992).

In Suffolk County, like elsewhere in the United States, it cannot be reasonably disputed that day laborers consist predominantly of persons not legally present or authorized to work in the United States. Village Mayor Epley recently acknowledged that day laborers are subject to deportation as illegal aliens. *Southampton Press*, “The View East: ‘High Noon’ With Mark Epley” (May 31, 2007) (“Either they [federal government] have to deport all these guys, or they have to have a registration program so that the men don’t stand on the street.”) (Exhibit 5). Moreover, a recent, comprehensive study of day laborers confirms that at least seventy-five percent (75%) of day laborers in the United States are illegal aliens. *See Abel Valenzuela, Jr., et al.*, “On the Corner: Day Labor in the United States,” at 4 (Jan. 2006) (UCLA/University of Illinois survey of 2,260 day laborers at 264 hiring sites in 20 states, including New York) (Exhibit 6). Accordingly, it is abundantly clear that users of the Village’s proposed hiring site will include illegal aliens.

By creating and operating a taxpayer-funded marketplace for the employment of illegal aliens, the Village will become complicit in illegal activity. It also will encourage and induce illegal aliens to remain in the United States by making it easier for them to obtain employment and will aid and abet unlawful hiring. Such conduct violates both the letter and the spirit of federal law. It should not be countenanced by the Court.

### **III. The Village’s Attempt to Hide Behind the First Amendment Is Unavailing.**

The Village attempts to justify its actions by invoking the alleged First Amendment rights of day laborers. First, as a preliminary matter, it is axiomatic that the First Amendment cannot be

invoked as a justification to engage in illegal activity. *United States ex rel. John Turner v. Williams*, 194 U.S. 279, 292 (1904); *see also Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Rights*, 413 U.S. 376 (1973) (no First Amendment right to advertise illegal activity). Illegal aliens simply have no right under the First Amendment to seek illegal employment, and employers likewise have no right to hire them.

In any event, the Village's own interpretation of the First Amendment belies its application in this case. The First Amendment rights of day laborers, assuming any exist, do not allow the Village to trample valid land-use statutes or violate federal law. Nor do they create an affirmative duty to provide a taxpayer-funded marketplace for laborers to solicit employment, legal or otherwise. On the contrary, the First Amendment allows many limitations on speech, including the power to enact content-neutral "time, place or manner" restrictions. *See, e.g., Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989); *Perry Educ. Ass'n v. Perry Local Educators Ass'n*, 460 U.S. 37, 45 (1982).

The speech at issue in this case undisputably is "commercial speech," and, as such, it is entitled to lesser protection under the First Amendment, if it is entitled to any protection at all. *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, 447 U.S. 557, 562-63 (1980) (holding that the Constitution "accords a lesser protection" to commercial speech and only if that speech concerns "lawful activity"). In *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981), the U.S. Supreme Court reaffirmed that, in *Central Hudson Gas & Electric Corp.*, it:

adopted a four (4) part test for determining the validity of government restrictions on commercial speech, as distinguished from more fully protected speech. (1) The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading. A restriction on otherwise protected commercial speech is valid only if it (2) seeks to implement a substantial

governmental interest, (3) directly advances that interest, and (4) reaches no further than necessary to accomplish the given objective.

453 U.S. at 507 (citing *Central Hudson Gas & Electric Corp.*, 447 U.S. at 563-66). By contrast, the authority on which the Village chiefly arises, *Loper v. New York City Police Dep't.*, 999 F.2d 699, 704 (2d Cir. 1993), did not even address regulation of commercial speech, but instead concerned loitering/begging, which the Court found analogous to more protected, expressive speech.<sup>2</sup> If this Court were to interpret soliciting employment as more akin to expressive political speech than less protected commercial speech, it would effectively destroy the distinction between political speech and commercial speech established by the U.S. Supreme Court in *Central Hudson Gas & Electric Corp.* and reaffirmed in *Metromedia, Inc.*

The Village is well aware of its power to regulate speech. Just recently, the Village adopted an ordinance proscribing demonstrations on a public street in front of a private residence. See Mitchell Freedman, *Newsday*, “Law Makes It Illegal to Picket at Mayor’s House” (May 30, 2007) (Exhibit 7).<sup>3</sup> The Village also recently entered into a settlement agreement relating to the upcoming July 4<sup>th</sup> parade under which the Village will adopt regulations governing participation in the parade. Jennifer Davis, *Southampton Press*, “Settlement Clears the Way for July 4 Parade” (May 31, 2007) (Exhibit 8). While both of these situations involve political speech, as opposed to lesser-valued commercial speech, the ability of the Village to impose reasonable “time, place or manner” restriction on speech is unquestioned.

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<sup>2</sup> The Village also erroneously relies on *People v. Barton*, 8 N.Y.3d 70 (N.Y. 2006), which likewise addressed an anti-panhandling statute rather than commercial speech.

<sup>3</sup> This new ordinance apparently was enacted after opponents of the proposed hiring site demonstrated in front of Mayor Epley’s residence.

In this case, the Village seeks to end “street-side solicitation of employment” but erroneously believes that, in order to do so, it is necessary to create an alternative channel for day laborers to solicit employment. Not only does this argument erroneously rely on the standards governing regulation of political speech, which requires alternate channels of communication be left open (*Perry Educ. Ass’n*, 460 U.S. at 45), but it also ignores the standard applicable to regulation of commercial speech, which does not contain any such requirement. *Metromedia, Inc.*, 453 U.S. at 507; *Central Hudson Gas & Electric Corp.*, 447 U.S. at 563-66. Moreover, the Village has a variety of options available to it to address the problem of street-side solicitation of employment other than creating and operating a taxpayer-funded marketplace that facilitates unlawful hiring. The Village, like all municipalities, has well-established authority to regulate persons engaged in commerce. Municipalities routinely require that such persons obtain a registration and/or license relating to their commercial activities. The Town, for instance, requires that any persons who solicit on the street or door-to-door first obtain a license and, among other information, provide photographs and fingerprints to be used in a criminal background check. *See* Town Code § 254-(3)(4) (“Peddlers and Solicitors Law”) (Exhibit 9).

The Village thus has other, reasonable alternatives available to address street-side solicitation of employment, such as a licensing or registration scheme. As part of a registration process, the Village could require verification of eligibility for employment in the United States in order to promote, rather than undermine, enforcement of federal immigration laws. This could be accomplished easily through the electronic system now widely used by employers called “Basic Pilot,” a program created and administered by the federal government. *See* Exhibit 10. In the alternative, it could require, as part of the registration process, that persons seeking to engage

in street-side solicitation swear under penalty of perjury that they are authorized to work in the United States. Regardless, the Village clearly can regulate the street-side solicitation of employment in a manner that not only is consistent with the law, but also promotes enforcement of federal immigration laws.

Accordingly, *Amici* respectfully suggest that the Village explore such reasonable alternatives rather creating and operating a taxpayer-funded marketplace that facilitates unlawful employment and runs afoul of both state and federal law.

Dated: June 25, 2007  
Washington, D.C.

Respectfully submitted,  
JUDICIAL WATCH, INC.

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**CERTIFICATE OF SERVICE**


I hereby certify that on the 25<sup>th</sup> of June, 2007, the foregoing Order to Show Cause, Affirmation in Support of Filing of Brief By *Amici Curiae*, and the accompanying Brief of *Amici Curiae* The Suffolk County Coalition for Legal Immigration (NO AMNESTY) and Judicial Watch, Inc. was sent by overnight mail to the following:

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# **EXHIBIT 1**

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# SUFFOLK LIFE

04/11/2007

## Village, Town Debate Creation Of Hiring Site

By: Susan J Greenberg

**In the midst of the ongoing controversy surrounding the gathering of day laborers at the 7-Eleven on North Sea Road in Southampton Village, last week Village Mayor Mark Epley announced the creation of an official hiring site, to be located on preserved parkland adjacent to Aldrich Lane. However, Southampton Town officials have raised concerns over whether the property should be used for such purposes.**

The fact that the day laborers were "spreading through the village" was a "safety and aesthetic issue," said Epley, who was inspired to take action when he took a self-paid trip to Jupiter, Florida, where similar issues had been resolved through the implementation of a hiring site and the creation of laws designed to prohibit solicitation. "Something had to be done," he explained.

Although there will be no construction of a structure on the parcel, as the land has been preserved as open space under Southampton Town's Community Preservation Fund, tall evergreen trees will be planted for the sake of privacy, and a gravel U-shaped driveway and curb cuts will be installed so as to allow for the traffic flow of contractors picking up workers, according to Epley.

Southampton Town Councilwoman Linda Kabot expressed her concerns about the use of CPF land for the purpose of a hiring site. There are some questions about the allowable uses for the parcel, which was bought with town funds, but is primarily under the management and ownership of the village, she said. "Although the mayor is installing the typical improvements that one would see in a park, the use of the land as a hiring site is not a municipal purpose," said Kabot, who added that neither she nor any other board member was contacted by Epley before the improvements for the site were initiated.

The exact operating details have yet to be confirmed, Epley said, but it is estimated that the site will be open from 6:30 a.m. to 10 a.m., with stiff fines to be imposed under a yet-to-be-instituted anti-solicitation law for people not obeying the time constraints. Fines under the ordinance also will be imposed if people go outside of the boundaries of the site, which should be approximately 10 feet from the curb. "There will be a heavy police presence there to keep order," said Epley.

Sandra Dunn, executive director of Organizacion Latino Americana of Eastern Long Island, and spokesperson for the Coalition for a Worklink Center, an umbrella of local organizations galvanized to address the issue of day-laborer hiring, said that the site "is a good first step on the part of the mayor."

Dunn said that the coalition has been working with the mayor for a year and a half in order to come up with a solution. Some of the previous ideas that were met with community protest or bureaucratic obstacles included the construction of an eight- by 40-foot trailer near the train station in the village, and a previous initiative to erect what turned out to be a disallowable building on the current Aldrich Lane parcel.

But Councilman Christopher Nuzzi expressed serious reservations about the creation of a hiring site, stating that his position "has always been" that public property and public funds "should not be used for the facilitation of any illegal activity," such as the hiring of undocumented workers.

However, said Nuzzi, he has great sympathy for the predicament of Epley, who he said was put in the "untenable position" of having to deal with the local illegal immigration issue "due to the inaction" of the federal government. "The responsibility for illegal immigration in Southampton does not rest on Mark Epley's shoulders," said Nuzzi, who added that he believes Epley's actions are due to his frustration over a lack of viable solutions. "He was forced unfairly to deal with this very real situation in his backyard, and he came up with what he believes is a practical solution," Nuzzi stated. "Meanwhile, the federal government, and our local senators and [representatives] in Congress ... are refusing to take a stand either way about any kind of solution, which leaves all of our small towns without recourse."

Epley said that he had exhausted all appeals for help from outside entities to no avail, including multiple calls to political officials from every level of government. "I was very frustrated with the lack of response I got from absolutely everybody and decided to take action in this manner," Epley explained.

The work on the site should be finished by the end of the month, confirmed the mayor, and the ordinance should be in place a few weeks after that. Dunn confirmed that the site will be run by Catholic Charities, which will keep the venue organized by registering both workers and the people who come to hire them. In addition, said Dunn, Catholic Charities will eventually install benches and portable toilets, which are allowable under CPF parkland regulations.

Kabot confirmed that a letter was recently sent to Epley from Southampton Town Supervisor Patrick Heaney "reminding" him that the property "is jointly owned by the town and the village for the specific use of parks and recreation use" through the community

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preservation project plan for the site, which was developed before it was purchased. "The supervisor raised many questions in the letter, one of which brings up the issue of liability," Kabot said. "If it is owned by both the town and the village, then there is joint liability, and both entities should have a say about its use."

"Although we will continue to look for other alternatives, this seems to be the best solution as of now," said Dunn, who added that the eventual goal of the coalition is to have a hiring site with a permanent structure where other services, such as community outreach programs and English classes, can be offered.

Kabot said that "there will be many discussions at upcoming board meetings about the steps that the board may or may not take regarding the site."



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## **EXHIBIT 2**



Currently, the mayor said, the situation is escalating, with day laborers spread out onto North Sea Road, up Willow Street, and standing on Jobs Lane, Hampton Road and Hill Street. "I have them in virtually every parking lot on North Sea Road, and it has to get consolidated. It's not a pro-immigration or an anti-immigration stance."

He added, "My goal is very simple: To get day laborers off the streets and put them in a place that is aesthetically more pleasing and significantly more safe."

Epley traveled recently to Jupiter, Florida, a community that had experienced similar day laborer conflicts – until the town purchased a church, where Catholic Charities now operates a resource center which serves as a hiring function day laborers.

Epley, who toured the area with a Southampton resident who winters in Jupiter, was shown before-and-after pictures. "Before, he told me he couldn't even drive down that road without people running into the street, trying to get hired. When I saw the differences there, I got sick for my community. And I said, 'I've got to do something.'"

To that end, Epley met with members of The Coalition for a Work Link Center, seeking solutions.

Residents are outraged over the latest site plans. Elaine Kahl said, during Easter week, the hiring site signals "the crucifixion of the East End United States citizen."

Kahl questions what's behind the hedges. "Is it real, or is it criminal contempt?"

Epley said he's made it clear that there will be no buildings on the lot; Sister Margaret Smyth and members of the coalition have pledged to organize day laborers.

Sandra Dunn, spokesperson for the worklink coalition, said, "We're thrilled that he's taking this very important first step toward a formal hiring site in the village."

Dunn said that while a structure would have been ideal, coalition members are pleased, as long as the mayor pledges to provide security to "keep anti-immigrant protestors from encroaching upon" the parcel. Such security, and perhaps an ordinance, is needed, she said, "to keep anti-immigrant protestors from harassing the day laborers and their supporters. It's really gotten out of control with the forces of hate."

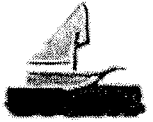
Epley said increased village police enforcement and presence will be provided, but not continually. He's looking to model municipalities that have set up buffer zones, with designated areas for protesting, allowing for freedom of speech but mitigating potential violence in the area.

Dunn confirmed the worklink coalition would be providing supervision and registering day laborers, but it will take time. "Ideally, we'd have a building, but we don't have to have one."

As for the CPF argument, Epley said it won't come into play because no structures will be built.

Assemblyman Fred Thiele said as long as only landscaping and a circular drive are added, the village won't violate CPF regulations. Only adding a building or offering services would violate the CPF requirements.

Epley said following East Hampton's lead and policing the area more

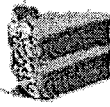


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heavily would have only spread day laborers all over the village and town.

The mayor has sought other alternatives and has discussed ideas with Legislator Jay Schneiderman, including utilizing rest areas on County Road 39 or Gabreski Airport. Both times, said Epley, he "ran into a stone wall."

Epley acknowledged that while "there's no easy answer," his goal has always been "consolidation and organization."

As for residents in the area protesting the hiring site on Aldrich Lane, Epley said the legislation he's proposing will move day laborers out of the 7-Eleven parking lot and away from residents' property onto the lot.

Epley said with plantings almost complete, this week, gravel will be put down and a curb cut completed. He anticipates the site will be ready this week.

The mayor added his attorney is drafting legislation, which he hopes to have ready for review by next week's village board meeting, so that a public hearing can be scheduled. "The reality is that legislation is probably a month and a half away."

As for costs, Epley said all plantings and gravel have been donated; he has instructed village workers to track all costs and hours spent on labor so that reimbursement can be sought from not-for-profit organizations. Police, presumably, would be paid by the village.

The mayor plans to proceed with plans to collaborate with Southampton Town Supervisor Skip Heaney, developing an inter-municipal agreement on code enforcement for the licensing of contractors.

The bottom line, said Epley, is that the village is shouldering a federal problem. "We're all alone," he said. "I hope the federal government gets off its butt and makes a decision."

Wedell started the Anti Illegal Immigrant Association, comprised of contractors.

Although he has four kids and other things to do, Wedell, an East Moriches resident who works in Southampton, vows to keep protesting. "When you corner a desperate man, this is what you get. Desperate times call for desperate measures."

Of the site, Wedell believes Epley is "trying to shove it down everyone's throat. He snuck it in the back door."

Epley's goal has always been a plan. "If this doesn't work, we'll go back to the drawing board," he said. "I'm not afraid to try something new."

lfinn@indyeastend.com

Thanks for visiting The Independent

## **EXHIBIT 3**



# Judicial Watch

*Because no one is above the law!*

**VIA FACSIMILE (631-283-5606)**  
**AND CERTIFIED U.S. MAIL**

April 30, 2007

Ms. Diane Carpenter  
Town of Southampton  
116 Hampton Road  
Southampton, NY 11968

**Re: New York Freedom of Information Law Request**

Dear Ms Carpenter:

Judicial Watch, Inc. has been following with interest the Village of Southampton's proposed use of a parcel of land owned jointly with the Town of Southampton and purchased with revenues from the Community Preservation Fund. It is our understanding that the parcel will be used for a day laborer hiring site, which is to be operated either by an entity known as "The Coalition for A Work Link" or Catholic Charities. *See, e.g.,* Susan J. Greenberg, "Village, Town Debate Creation of Hiring Site," *Suffolk Life*, April 11, 2007; Lisa Finn, "Green Light for Southampton Hiring Site," *The Independent*, April 3, 2007. We also understand that a gravel driveway has been constructed on the parcel, and, at a minimum, benches and portable toilets are to be installed. *Id.* The parcel, formerly known as the Knight's Last Stand property, is located along Aldrich Lane, off North Sea Road.

Pursuant to the provisions of the New York Freedom of Information Law, N.Y. Public Officers Law, §§ 84-90, Judicial Watch, Inc. requests that the Town of Southampton produce any and all records concerning or relating to the following subjects:

1. Communications with the Village of Southampton regarding the proposed use of the parcel as a hiring site;
2. Estimates of the number of day laborers expected to use the hiring site on a daily, weekly, monthly, annual, or other similar basis;
3. Estimates of the number of employers expected to use the hiring site on a daily, weekly, monthly, annual, or other similar basis;

4. Estimates or studies of traffic volume, traffic flow, and/or traffic patterns associated with the proposed use of the parcel as a hiring site;
5. Increases in or expansion of police presence associated with the proposed use of the parcel as a hiring site;
6. Maps, diagrams, plans, descriptions, or schematics showing the route of the gravel driveway constructed on the parcel;
7. Risk and/or liability assessments associated with use of the parcel as a hiring site, including any anticipated need for liability insurance;
8. Analyses, determinations, or findings of whether (or how) the proposed use of the parcel as a hiring site allows public use and enjoyment of the parcel in a manner compatible with its natural, scenic, historic, and open space character (*see, e.g.*, N.Y. Town Law § 64-e(9));
9. Analyses, determinations, or findings regarding whether (or how) the proposed use of the parcel as a hiring site will preserve the native biological diversity of the parcel and surrounding lands (*see, e.g.*, N.Y. Town Law § 64-e(9));
10. Analyses, determinations, or findings regarding whether (or how) any proposed improvements to the parcel for use as a hiring site, including but not limited to construction of the gravel driveway, will enhance access for passive use of the parcel (*see, e.g.*, N.Y. Town Law § 64-e(9));
11. Analyses, determinations, or findings regarding whether (or how) any proposed improvements to the parcel for use as a hiring site, including but not limited to construction of the gravel driveway, will or will not degrade the ecological value of the parcel or threaten essential wildlife habitat (*see, e.g.*, N.Y. Town Law § 64-e(9)); and
12. The identity of the entity or organization that will be operating the hiring site, including whether the entity or organization is organized as a not-for-profit corporation under the corporation law and whether the entity or organization has been engaged previously in land trust activities or management (*see, e.g.*, N.Y. Town Law § 64-e(9)).

Please produce copies of the requested records to Judicial Watch, Inc. at 501 School Street, S.W., Suite 500, Washington, DC 20024, within five (5) business days of your receipt of

Town of Southampton, NY  
April 30, 2007  
Page 3

this request. N.Y. Public Officers Law § 89(3)(a). If the requested records cannot be produced within five (5) working days, please notify us in writing of the reasons for the delay and the approximate date, within twenty (20) days of the date of receipt of the request, by which the records will be available. *Id.* If for any reason any portion of the request is denied, please inform us of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed. *Id.*

Judicial Watch, Inc. requests that copies of the above-referenced records be furnished to it without charge, as the proposed use of the parcel as a hiring site has generated substantial public interest and debate. Production of the requested records will further inform public debate on the issue. As a not-for-profit, tax exempt, educational organization, Judicial Watch, Inc. does not seek access to the requested records for any personal or commercial benefit. In the event copying fees are to be charged for the requested records, Judicial Watch, Inc. agrees to pay up to \$200.00 in copying costs. Please advise us in advance if the cost of copying the requested records is likely to exceed \$200.00.

If you do not understand this request, or any portion thereof, or if you feel you require clarification of this request, or any portion thereof, please contact us at (202) 646-5172.

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.



Paul J. Orfanedes

cc: Supervisor Patrick A. Heaney

## **EXHIBIT 4**

**RICHARD E. DEPETRIS**

**Attorney At Law**  
21 South Main Street  
Southampton, NY 11968

Tel. (631) 287-2777  
Fax (631) 287-2776

Mailing Address:  
P.O. Box 2297  
Southampton, NY 11969-2297

May 25, 2007

VIA FAX TO (202) 646-5199

Judicial Watch, Inc.  
501 School Street, S.W.  
Suite 725  
Washington, DC 20024  
Attention: Paul J. Orfanedes

Re: FOIL request

Dear Mr. Orfanedes:

I am the Village Attorney of the Village of Southampton. This is in response to your letters to the Mayor dated April 30, 2007 and May 23, 2007.

For your information, the Village Administrator (James A. Van Nostrand) is the records access officer under FOIL. Therefore, your FOIL request should have been submitted to the Village Administrator (at the Village Office, 23 Main Street, Southampton, NY) rather than to the Mayor. The Mayor's involvement under FOIL is limited to hearing appeals from a denial of access by the Village Administrator.

Upon receipt of your letter dated 4/30/07, the Mayor's office sent a copy thereof to me, because I am familiar with legal issues relating to the public park situate at Aldrich Lane and North Sea Road. I assumed that the Mayor's office would transmit your FOIL request to the Village Administrator, and the Mayor's office assumed that I would transmit your FOIL request to the Village Administrator. As a result of such misunderstanding, neither the Mayor's office nor I transmitted your 4/30/07 letter to the Village Administrator.

Upon receipt of your letter dated 5/23/07, the Mayor's office sent a copy thereof to me. I spoke with the Mayor late yesterday, and we then became aware of the misunderstanding which resulted in your 4/30/07 letter not being transmitted to the Village Administrator. For the future, if you submit any FOIL requests directly to the Village Administrator, that would avoid the foregoing situation.

Judicial Watch, Inc.  
Page 2  
May 25, 2007

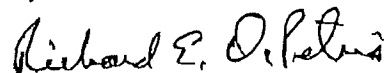
In any event, I am now transmitting to the Village Administrator your 4/30/07 and 5/23/07 letters to the Mayor. Therefore, you should receive a response from the Village Administrator in the near future.

It appears to me that your 4/30/07 letter reflects a lack of understanding as to the legal situation regarding the above-mentioned public park. In any event, since your letter is simply a FOIL request, there is no apparent reason to address the legal situation in this letter.

As Village Attorney, I am familiar with the legal situation regarding the above-mentioned public park. Based on my familiarity therewith, I believe that the Village has no records regarding item nos. 2 through 13 in your FOIL request. In any event, the Village Administrator will respond thereto when he reviews your FOIL request.

With respect to item 1 in your FOIL request, I believe that the Village does have some records regarding same. In any event, the Village Administrator will respond thereto when he reviews your FOIL request.

Very truly yours,



Richard E. DePetris

RED:bp

cc: Mayor Mark Epley  
James A. Van Nostrand, Village Administrator

## **EXHIBIT 5**

# THE VIEW EAST

## 'High Noon' with Mark Epley

By Reynolds Dodson

What are we to make of Mark Epley? Is he a modern Gary Cooper, bravely taking on the Frank Miller gang while the rest of the town cowers behind closed doors? Or is the mayor a loose cannon who's unfit for public office?

To find out, I went to see him in Southampton Village Hall last week. I had been listening to various people around town and found that even among those I respect (that does not include the Minutemen and the Anti-Illegal Immigrant Alliance), there was no unanimity.

I found Mark Epley to be, as billed, a down-to-earth guy who speaks dispassionately about things that get other people riled up. He said that, yes, he does find himself in a lonely position, because that's what happens when you "try to think outside the box." He said the reason other local politicians have not stepped forward is because they don't want their homes picketed and their families threatened.

He quickly added that other mayors have faced similar problems. He said that Tom Suozzi, the Nassau County executive who was once mayor of Glen Cove, told him that they had had laborers on the streets there, too. They solved that by fencing off a municipal lot and telling the men, "Stay behind that fence, and no one will bother you." Mark says that's what he tried to do on Aldrich Lane.

I asked him about some of the other proposed sites. He said that he didn't like the train station because it was too residential and would create too much traffic on nearby streets. He said that he would be willing to put the hiring site on the lot adjoining Aldrich Lane (facing County Road 39, next to Snow White Laundry) but didn't want to spend village taxpayers' money on it.

Like Fred Thiele, Steve Kenny and others I've talked to, he's hoping for a private donor. He says he's been in touch with Bishop Murphy of the Catholic Church, and there are alternatives under discussion. But he added, "I just put that hedge up because I wanted to get those men off the street by spring." Since the village has control over that land, he did not expect legal repercussions.

I asked him how it felt to be a conservative being lionized by such as The New York Times editorial writers. He chuckled.

"People who know me know I'm pretty conservative," he said. "There were many Republicans who advised me, 'Just leave the immigrant issue alone. There's nothing you can do about it.'" But he said he felt he had to act for the good of the village.

Is there an ultimate solution? Yes, he said—the federal government. "Either they have to deport all

these guys, or they have to have a registration program so that the men don't stand on the street. You walk through the village and you see 'Help Wanted' signs in every store. If there were a registration program, those men could apply for those jobs."

I switched gears and asked about the proposed Olde Towne subdivision on Wickapogue Road. Did he see it as a conflict of interest that he's friends with the developer, Bob Gianos?

"No," he said. "I don't have any financial relationship with Mr. Gianos.

If I did, I would recuse myself. But I went to the town and asked them to buy that property with CPF money—if not the whole property, at least part." Unfortunately, he said, "the numbers are just too great." There's a lot of money in the CPF fund, but not that much.

I reminded him that soon after his election a man named Gerry Ferrara submitted plans for a wide-frontage house on Post Lane, and two lawyers from Manhattan knocked down a historic house on Lewis Street. Did these events temper his views on the sacrosanct rights of property owners?

"I do feel there have to be controls," he said. "We put new zoning laws into effect in November 2005, and I said, 'Let's take one year. At the end of that, we'll look at the applications and see where we stand.'"

He's convinced that many of the problems are because of odd-shaped lots and poor architecture. You can have two houses of similar size on lots of the same square footage, he said, and one will be acceptable while the other isn't.

After we parted, I tried to collect my thoughts.

I think this is a guy who's trying to do the best he can under difficult circumstances. He's accused of acting too precipitately without building a consensus, and he seems to accept that criticism. I got the feeling that if he can learn from his mistakes, control his pro-developer instincts and get through next month's election, he could be a good mayor.

E-Mail: [Reynoldsdodson@optonline.net](mailto:Reynoldsdodson@optonline.net)

*I found Mark Epley to be, as billed, a down-to-earth guy who speaks dispassionately about things that get other people riled up.*

*Southampton Press 5/31/2007*

2007, CHAMBER

## **EXHIBIT 6**

# ON THE CORNER: Day Labor in the United States

## Executive Summary

This report profiles, for the first time, the national phenomenon of day labor in the United States. Men and women looking for employment in open-air markets by the side of the road, at busy intersections, in front of home improvement stores and in other public spaces are ubiquitous in cities across the nation. The circumstances that give rise to this labor market are complex and poorly understood. In this report, we analyze data from the National Day Labor Survey, the first systematic and scientific study of the day-labor sector and its workforce in the United States.

This portrait of day labor in the United States is based on a national survey of 2,660 day laborers. These workers were randomly selected at 264 hiring sites in 139 municipalities in 20 states and the District of Columbia. The sheer number of these sites, combined with their presence in every region in the country, reflects the enormous breadth of this labor market niche.

Our findings reveal that the day-labor market is rife with violations of workers' rights. Day laborers are regularly denied payment for their work, many are subjected to demonstrably hazardous job sites, and most endure insults and abuses by employers. The growth of day-labor hiring sites combined with rising levels of workers' rights violations is a national trend that warrants attention from policy makers at all levels of government.

In some cities, the rise of day labor has been accompanied by community tensions, in part because of inaccurate and unsubstantiated portrayals of these workers. The aim of this study is to provide sound empirical data on the day-labor phenomenon that can inform public discussions and provide the basis for thoughtful policy approaches to this complex issue. Below, we present some of the most important findings from the National Day Labor Survey.

### The Organization of Day Labor in the United States

- Day labor is a nationwide phenomenon. On any given day, approximately 117,600 workers are either looking for day-labor jobs or working as day laborers. The dimensions of the day-labor market are fluid; on a daily basis new workers enter this market while others leave it. Similarly, hiring sites diminish in size or disappear, while new ones emerge. The national count of the day-labor workforce represents a snapshot of this workforce in the United States. The largest concentration of day laborers is in the West (42 percent), followed by the East (23 percent), Southwest (18 percent), South (12 percent) and Midwest (4 percent).
- Day laborers search for work in different types of hiring sites. The vast majority (79 percent) of hiring sites are informal and include workers standing in front of businesses (24 percent), home improvement stores (22 percent), gas stations (10 percent) and on busy streets (8 percent). Most of these sites are near residential neighborhoods. One in five (21 percent) day laborers search for work at day-labor worker centers.

## **Day-Labor Work**

- Day laborers are primarily employed by homeowners/renters (49 percent) and construction contractors (43 percent). Their top five occupations include construction laborer, gardener and landscaper, painter, roofer, and drywall installer.
- Day laborers search for work on a full-time basis. The vast majority (83 percent) relies on day-labor work as their sole source of income. Seventy percent search for work five or more days a week, while 9 percent seek work only one or two days a week. Three-quarters (74 percent) of day laborers have worked in this market for less than three years, suggesting that many make the transition into jobs in other sectors of the economy.

## **Wages and Earnings**

- Day labor pays poorly. The median hourly wage for day laborers is \$10. However, employment is unstable and insecure, resulting in volatile monthly earnings. Median monthly earnings in July and August 2004 were \$700. Median earnings during peak periods (good months) are \$1,400, while in slow periods (bad months) median monthly earnings fall to just \$500. Even if day laborers have many more good months than bad months, it is unlikely that their annual earnings will exceed \$15,000, keeping them at or below the federal poverty threshold.

## **Workplace Safety and Employment Abuses**

- Day laborers regularly suffer employer abuse. Almost half of all day laborers experienced at least one instance of wage theft in the two months prior to being surveyed. In addition, 44 percent were denied food/water or breaks while on the job.
- Workplace injuries are common. One in five day laborers has suffered a work-related injury, and more than half of those who were injured in the past year did not receive medical care. More than two-thirds of injured day laborers have lost time from work.
- Merchants and police often unfairly target day laborers while they seek work. Almost one-fifth (19 percent) of all day laborers have been subjected to insults by merchants, and 15 percent have been refused services by local businesses. Day laborers also report being insulted (16 percent), arrested (9 percent) and cited (11 percent) by police while they search for employment.

## **The Day-Labor Workforce**

- Many day laborers support themselves and their family through this work. A significant number of day laborers are either married (36 percent) or living with a partner (7 percent), and almost two-thirds (63 percent) have children. Twenty-eight percent of the children of day laborers are U.S. citizens. Therefore, the need for day laborers to earn an income, in most cases, is made all the more urgent by the responsibility to support their family.

- Day laborers are active members of their communities. Half (52 percent) of all day laborers attend church regularly, one-fifth (22 percent) are involved in sports clubs and one-quarter (26 percent) participate in community worker centers.
- The day-labor workforce in the United States is predominantly immigrant and Latino. Most day laborers were born in Mexico (59 percent) and Central America (28 percent), but the third-largest group (7 percent) was born in the United States. Two-fifths (40 percent) of day laborers have lived in the United States for more than 6 years. Three-quarters (75 percent) of the day-labor workforce are undocumented migrants. About 11 percent of the undocumented day-labor workforce has a pending application for an adjustment of their immigration status.

### **Worker Centers**

- Worker centers have emerged as the most comprehensive response to the challenges associated with the growth of day labor. Community organizations, municipal governments, faith-based organizations and other local stakeholders have created and operate day-labor worker centers to reduce workers' rights violations and to help communities address competing concerns over day labor. At the time of the study, 63 day-labor worker centers were operating in 17 states, and another 15 community-based organizations served, organized or advocated on behalf of day laborers. Since then, other cities have initiated the process of opening worker centers.

### **Policy Framework**

Day labor is a complex issue, and there is no single solution to the conflicts it has generated. A practical approach to many of the problems highlighted in this report is offered by worker centers. We recommend the creation of additional worker centers in cities across the country because we believe they can improve conditions dramatically in the day-labor market.

However, fully responding to the myriad problems, violations and abuses in the day-labor market also requires a broader policy approach that includes:

- improved worker protections.
- better enforcement of workplace safety conditions.
- increased access to legal services (to remedy rights violations).
- the implementation of workforce development strategies that can help day laborers make the transition from the informal economy into better jobs.
- realistic immigration reform, including normalizing the immigration status of undocumented migrants.

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The National Day Labor Study was made possible through generous support from The Ford Foundation, The Rockefeller Foundation, The Community Foundation for the National Capital Region's Washington Area Partnership for Immigrants and UCLA's Center for the Study of Urban Poverty through the dean of social sciences.

## AUTHORS

**Abel Valenzuela Jr.** is associate professor of Chicana/o studies and urban planning at UCLA. He also is the director of the Center for the Study of Urban Poverty. He has researched day labor for almost 10 years and has published numerous research articles, book chapters and technical reports on this topic.

**Nik Theodore** is the director of the Center for Urban Economic Development and assistant professor of urban planning and policy at the University of Illinois at Chicago. He has published numerous research articles and technical reports on low-wage work, including day labor in informal markets and the temporary staffing industry.

**Edwin Meléndez** is professor of Management and Urban Policy at the Milano Graduate School of Management and Urban Policy at the New School University. He has published books, research articles and reports on workforce development, poverty and Latinos in the labor market and day labor.

**Ana Luz Gonzalez** is a Ph.D. student in urban planning at UCLA. She was project coordinator for the National Day Labor Survey.

## ACKNOWLEDGMENTS

A project as large and complicated as this one requires many people to complete successfully. We were very fortunate to have so many graciously lend their time and expertise. As a result, the final products of this enormous study are much better and we owe our gratitude to our colleagues, students, and staff who assisted in this project. In addition to the universities that supported our work, we also are grateful and thank the following individuals who assisted us with survey development, data collection, sampling, and weighting: Mike Massagli, Manuel Pastor, Hector Cordero-Guzman, Luis Guarnizo, Annette Bernhardt, Janette Kawachi, Adriele Robles, Paula Carvajal, Michael Rodriguez, Olivia Carter-Pokras, Marielena Hincapié, Paul Ong and Doug Houston. We thank the following individuals who assisted in data collection and who put up with substandard accommodations and small stipends, they are: Cynthia Paredes, Jason Gutierrez, Melissa Frias Rocha, Francisco Pacheco, Jorge Pena, Rosa Icela Castillo Barraza, John Arvizu, Ingrid McCall, Lorena Diaz Valles, Marco Amador, Julio Lopez, Ivonne Montiel Palacios, Alfredo Burgos, Morelia Baltazar, Tesia Bojorquez, Amy Langrehr, Jacinta Carvalho, Maribeth Bandas, Ronald Vega Pardo, Rosa-Denisse Ortega, Lucia Martinez, Francisco Cartagena, Yecenia Castillo, Marc Doussard, Jessica Greenberg and Graciela Ribota. Finally, we thank several individuals who assisted us with preliminary hiring site identification and with the logistical coordination to implement this study, Javier Gallardo, Salvador Reza, Eric Rodriguez, Nancy Villasenor, Nelson Motto, Carlos Preza, Rafael Aguilar, Nancy Lopez, Ofelia Cuevas, Araceli Almazan, Aerin Cho, and Jennifer Tran.

# ON THE CORNER: Day Labor in the United States

## **Introduction: Day Labor in the United States**

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Each morning, at hundreds of open-air hiring sites in cities throughout the United States, workers and employers meet to arrange employment for the day. These sites are *day-labor markets* where workers gather in the early morning hours, eagerly awaiting prospective employers to hire them to complete short-term clean-up, gardening, painting, demolition and other manual-labor projects. The day-labor site is a spot market where workers and employers meet to negotiate the terms of employment, including job tasks, wages and length of the work day. Daily assignments are mainly for work in the construction and landscaping industries, though day laborers are also hired as farm workers, cleaners and movers. Their employers are usually residential construction contractors and homeowners who need immediate help with work projects.

Day-labor sites tend to form near home improvement stores, at busy intersections, and in parks and other public spaces. Many hiring sites are quite large, with upwards of 75 workers assembling to search for work each day, and a few sites draw more than 200 job seekers on a typical workday. The number and size of hiring sites nationwide has increased dramatically in recent years, raising questions regarding the driving forces behind the growth of day-labor hiring sites in the United States, and what these sites mean for urban labor markets and the communities in which they are located.

The reasons behind the growth of day labor in the United States are many, and involve the complex interaction between the forces of labor supply and demand, patterns of industrial change, and increased migration flows to the United States. On the demand side of the labor market, there has been a push for greater labor market flexibility in all sectors of the U.S. economy, and the construction industry is no exception. Cost pressures in the industry have induced construction contractors to adopt alternative hiring practices, and many have increased their use of contingent workers who are hired on an as-needed basis. Of course, outside of its unionized segments, the construction industry has always employed a large share of on-call workers who are hired on short notice for short-term projects. The formation and growth of day-labor hiring sites is, in part, an outgrowth of the ongoing demand for contingent workers within the construction industry and allied activities such as landscaping and material hauling.

On the supply side of urban labor markets, workers are increasingly turning to day-labor hiring sites, and other sources of contingent work like temp agencies and labor brokers, following the deterioration of job opportunities in the local economy. Plant closings and mass layoffs continue to plague many cities, particularly old industrial centers, which have seen the widespread loss of manufacturing jobs and employment in ancillary industries. For many workers in cities with declining employment prospects,

day labor provides a chance to regain a foothold in the urban economy. For others, it is a first job in the United States and an opportunity to acquire work experience, skills and employer contacts. For still others, it represents an opportunity to earn an income when temporarily laid off from a job elsewhere in the economy. As a result of these and other factors, many workers have come to rely on day-labor hiring sites for job opportunities.

The growth of day-labor hiring sites is also related to changing patterns of immigration to the United States, particularly increased immigration flows outside of traditional port-of-entry cities like New York, Los Angeles and Chicago. New migratory circuits have developed in the South and parts of the East and Midwest, especially in small cities and towns with abundant employment opportunities, at least in low-wage occupations. There has been a dramatic increase in labor migration to these areas, and day-labor hiring sites have become one mechanism for organizing the supply of immigrant laborers for the construction industry and other sectors of the economy. Historically, U.S. employers have relied on immigrant labor to fill jobs in a range of occupations, and that demand has not abated. In fact, it has grown as cost pressures remake the terms of competition in a range of industries, pushing employers to find new strategies for remaining competitive. Industries as diverse as agricultural production, textile manufacturing, child care, restaurants, food processing and construction attempt to cope with cost pressures by hiring undocumented immigrants at low wage rates (see Hum, 2003; Nees, 2005; Sassen, 2005).

The proliferation of day-labor hiring sites in the United States has occurred within the context of these shifts in labor supply and demand, and signs point to the continued growth of day-labor work. However, like many other lower-wage occupations, day labor has been characterized by routine violations of workers' rights. Reports of the nonpayment of wages and workplace safety concerns, among others, suggest that the emergence of day labor is not an entirely benign phenomenon, particularly for its workforce. These issues have attracted attention from the media, policy makers and the general public. But informed public debate on the scope and significance of day labor has been hampered by the lack of accurate information about this labor market. This study seeks to address this shortcoming.

The findings presented in this report are based on the National Day Labor Survey. A random sample of day laborers was drawn from 264 hiring sites in 139 municipalities in 20 states and the District of Columbia. A total of 2,660 day laborers were surveyed during July and August 2004. Day laborers were asked a series of questions regarding their work experiences, demographic characteristics and issues related to day-labor work. The report is divided into four sections. **Section I** examines the organization of the day-labor market, highlighting the size of the market, its geographic distribution and the types of hiring sites that comprise this labor market. **Section II** describes the work of day laborers, including their job assignments, wages and earnings, and working conditions. This section also documents the incidence of workers' rights abuses and violations of basic labor standards that too often accompany day-labor work. **Section III** presents a demographic profile of the day laborers, including their personal characteristics and work

experiences. **Section IV** considers approaches to safeguarding workers' rights, normalizing the hiring of day laborers, and resolving many of the community tensions that have developed around this labor issue.

## Section I

### The Organization of the Day-Labor Market

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On any given day, approximately 117,600 workers are either looking for day-labor jobs or employed as a day laborer.<sup>1</sup> More than three-quarters of day laborers (79 percent) congregate at informal hiring sites that have formed in front of home improvement stores and gas stations, along busy thoroughfares and near expressway onramps, and in parks and other public spaces. The remaining 21 percent seek work through day-labor worker centers that operate formalized hiring halls where employers and workers arrange the terms of employment for the day.

The largest concentration of hiring sites and day laborers is in the West, while the Midwest is the region with the fewest number of sites and workers (Table 1). The size of individual day-labor hiring sites varies considerably. One-third of all sites are small sites (with 25 workers or less), 37 percent are medium sites (with 26 to 50 job seekers), 23 percent are large sites (with 51 to 100 job seekers) and 7 percent are very large sites (with more than 100 job seekers).<sup>2</sup> The day-labor hiring site is a dynamic labor market whose size and dimensions change by the season, week, day and even hour. The daily flow of workers through a site can vary dramatically as workers leave the site once they receive a job assignment and new job seekers are drawn to the site in their search for employment.

An example of the hourly changes in the number of day laborers looking for work one morning at a large site in the Phoenix metropolitan area illustrates this point. Workers began gathering at the site before 6 a.m., and by 6:30 a.m. 32 job seekers were present. The number of available workers increased to 71 and 83 job seekers at 7:30 a.m. and 8:30 a.m., respectively, even as some workers left the site to work that day. Employers continued to select workers and by 9:30 a.m. the number of job seekers had fallen to 50. By 10:30 a.m., just 32 job seekers remained. Throughout the course of this morning, a similar process was replicated at each of the hundreds of other hiring sites across the country, as the number of available workers rose and fell depending on the strength of employer demand.

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<sup>1</sup> The dimensions of the day-labor market are very fluid; on a daily basis new workers enter this market while others leave it. Similarly, some hiring sites diminish in size or disappear, while new ones emerge. The national count of the day-labor workforce represents a snapshot of this workforce in the United States. This snapshot does not consider workers who might enter or leave the market through the course of a year. Nor does it estimate the growth of the market from when the survey was taken (2004) and the printing of this report. Therefore, the number reported is likely to be higher if we were to replicate the survey today or if we were to adjust to measure workers who participate in this market during a one-year period. See Appendix for a description of the methodology used for generating this estimate.

<sup>2</sup> These workforce estimates consider only the number of job seekers present at hiring sites on the day worker interviews were conducted (though additional counts were taken weeks prior to the fielding of the survey). Point-in-time counts were taken each hour for five hours. Therefore, these figures undercount the total size of the day-labor workforce since they do not account for workers who were hired prior to the time when the count was taken or workers who regularly use the hiring site but for some reason did not search for work on the day when we surveyed.

**Table 1: Distribution of Day Laborers and Hiring Sites by Region**

Region	Distribution of Workers	Percentage of Workers	Percentage of Hiring Sites
West	49,647	42	41
Midwest	5,059	4	3
Southeast	21,059	18	13
South	14,353	12	13
East	<u>27,529</u>	<u>23</u>	<u>30</u>
<b>Total</b>	117,647	99*	100

\*Total may differ from 100 percent due to rounding.

Source: National Day Labor Survey, 2004.

Hiring sites on the East Coast tend to be the largest in the country (Table 2). On average, 40 workers gather at these sites, while 36 workers gather at sites in the Midwest, and 32 workers gather at sites in the Southwest. The largest individual hiring sites are located in Langley Park, Md. (peak recorded workforce of 349 job seekers); Chicago (peak recorded workforce of 154 job seekers); Phoenix (peak recorded workforce of 138 job seekers); and San Francisco (peak recorded workforce of 133 job seekers).<sup>3</sup> Large sites of this sort tend to have an extensive and shifting geography that often encompasses several blocks along the major thoroughfare where workers congregate. The radius might also extend several blocks from the epicenter of the hiring site as workers fan out in all directions in the hope of improving their chances of securing a job opportunity with an employer.

**Table 2: Average Number of Job Seekers per Hiring Site, by Region**

Region	Average Number of Job Seekers
West	29
Midwest	36
Southwest	32
South	25
East	40
Total	32

Source: National Day Labor Survey, 2004.

<sup>3</sup> These figures count only those job seekers present at the hiring site and do not include day laborers who have left the site to work that day. Other very large hiring sites exist. However, these sites were not included in our sample and therefore workforce counts were not taken. Some of these sites, such as one in Queens, New York and another in Palm Beach County, Florida, have numbers of available workers that exceed those recorded here.

Most day-labor sites operate year round, even in the East and Midwest where winter months bring frigid temperatures. During the spring and summer months, the size and number of markets swells as construction industry activity increases and with it, the demand for informally employed laborers. In addition to the daily fluctuations that are typical of day labor, some workers cycle through this labor market as they use the contacts developed with employers to secure longer-term assignments or to identify employment opportunities in the formal economy. When these jobs are concluded or if an unemployment spell occurs, workers return to the informal hiring sites to again search for employment.

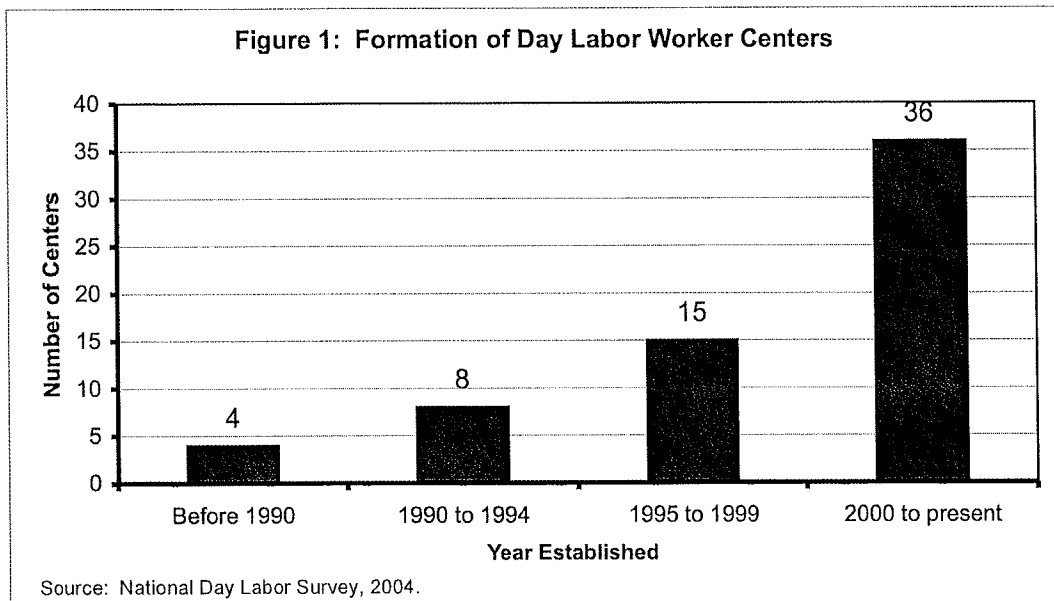
Fluctuations in the availability of work are endemic to the day-labor market. The day-labor workforce is an entirely contingent workforce; workers are hired only when employers need them and the duration of the employment “contract” (which consists of nothing more than a verbal agreement) is unsecured and open-ended. In other words, day laborers are entirely at-will employees and employers are in no way bound to honor promises of continuing employment, whether from one day to the next or from one hour to the next. In the following section of this report, we discuss the insecurity of day-labor employment, which explains many of the occupation’s defining characteristics (such as the low annual earnings of day laborers).

The very existence of the day-labor market, and the proliferation of day-labor hiring sites across the United States, is driven by employer demand. Day-labor markets have formed to supply workers to the construction and landscaping industries, and to provide help to homeowners/renters with clean-up, moving and gardening projects. The length of any given assignment is usually short, about one day. But because such a large number of employers turn to informal hiring sites as a source of workers, most day laborers are able to string together enough assignments to allow them to earn a modest income.

#### *Formal Hiring Sites: Day-Labor Worker Centers*

In addition to the hundreds of informal hiring sites that have proliferated across the United States, we identified 63 day-labor worker centers created by community organizations, municipal governments, faith-based organizations and other local stakeholders.

The creation of day-labor worker centers is a relatively recent phenomenon, with most having been established since 2000 (Figure 1). Centers typically are located near informal day-labor hiring sites, offering both workers and contractors an alternative to the unregulated sites found on street corners and in parking lots. Indeed, location can be a crucial determinant of a center’s success, and these hiring sites frequently are established in areas where both workers and employers have ready access. Fifty-seven percent of centers are located along busy thoroughfares, 53 percent are located in predominantly residential areas and 18 percent are located near home improvement stores where day laborers often congregate.



Many worker centers were created through partnerships between community organizations, local governments, faith-based organizations and law-enforcement agencies. Other partners may include local businesses and labor unions. Typically, community organizations, municipal governments or faith-based organizations assume the responsibilities of lead partner, and each of the worker centers surveyed is operated by one of these entities. Community organizations operate 43 day-labor worker centers (68 percent), while city government agencies and church groups each operate 10 centers (16 percent, respectively).

Most day-labor worker centers provide fairly basic accommodations to workers and employers. All operate as hiring halls where employers and day laborers can arrange work for the day. Available amenities and services typically include restrooms, drinking water, places to sit, telephones, classrooms, outreach to employers and parking facilities. But even such simple provisions are a marked improvement over informal hiring sites. Moreover, they serve to establish a worker center's presence in the day-labor market. The primary purpose of day-labor worker centers is to regulate the day-labor market by intervening in the market and establishing rules governing the search for work and the hiring of laborers.

We find that most worker centers:

1. provide a defined space for workers to assemble, as well as a job-allocation system (either a lottery, list of available workers or some other selection mechanism) that imposes order or a hiring queue on the day-labor hiring process.
2. require job seekers and employers to register with center staff.
3. set minimum wage rates.

4. monitor labor standards, employer behavior and worker quality.

Through these core activities, worker centers are able to place a floor under conditions in the day-labor market. As we show later in the report, day labor is characterized by rampant violations of labor standards, particularly when hiring is arranged through the types of informal and unregulated sites that have proliferated in recent years. The next section of this report examines the types of jobs day laborers are hired to complete, as well as their wages and working conditions, calling attention to many of the violations of labor and employment laws that are all too common in this labor market.

## Section II

### Day-Labor Work

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Day laborers are mainly employed by homeowners/renters (49 percent) who are looking for help with clean-up, moving and gardening projects, and by contractors (43 percent) for jobs in the construction and landscaping industries. They perform a variety of manual-labor jobs, most of which involve difficult and tedious physical labor. Top occupations include construction, moving and hauling, gardening and landscaping, and painting (Table 3). The fairly broad range of occupations performed by day laborers reflects a breadth of generalist (and some specialist) skills possessed by these workers. More than two-thirds of day laborers (69 percent) are hired repeatedly by the same employer, suggesting a pattern of satisfied employers and willing workers.

**Table 3: Top Occupations and Employers of Day Laborers**

	TOTAL (%)	West (%)	Midwest (%)	Southwest (%)	South (%)	East (%)
<b>Occupation</b>						
Construction laborer	90	92	92	88	92	88
Mover	83	87	75	81	86	79
Gardener/Landscaper	83	86	77	89	89	72
Painter	80	82	85	80	83	75
Roofer	66	67	81	67	67	62
House cleaner	64	62	67	72	67	60
Carpenter	56	54	69	55	67	55
Drywall installer	58	60	68	56	64	53
Farm worker	51	51	80	42	55	50
Dishwasher	39	38	53	32	51	39
Car washer	35	34	47	37	43	31
Electrician	21	24	20	18	25	16
Cook	17	18	27	7	22	16
Other	39	41	21	49	48	26
<b>Type of Employer</b>						
Contractor	43	40	41	41	46	50
Private individual	49	52	38	55	45	42
Company	6	4	20	3	9	7
Other day laborers	1	2	1	1	1	1

Source: National Day Labor Survey, 2004.

The vast majority (83 percent) of day laborers rely on day-labor work as their sole source of income. Seventy percent of day laborers search for work five or more days a week, while 9 percent seek work one or two days a week (Table 4), presumably on the weekend or when they have a day off from another job. The hourly wages and annual incomes of day laborers tend to be extremely volatile, and they are dependent on a range

of factors related to employer demand, the seasonality of various industries, worker qualifications and the ability of workers to negotiate a fair wage.

**Table 4: Number of Days Seeking Work**

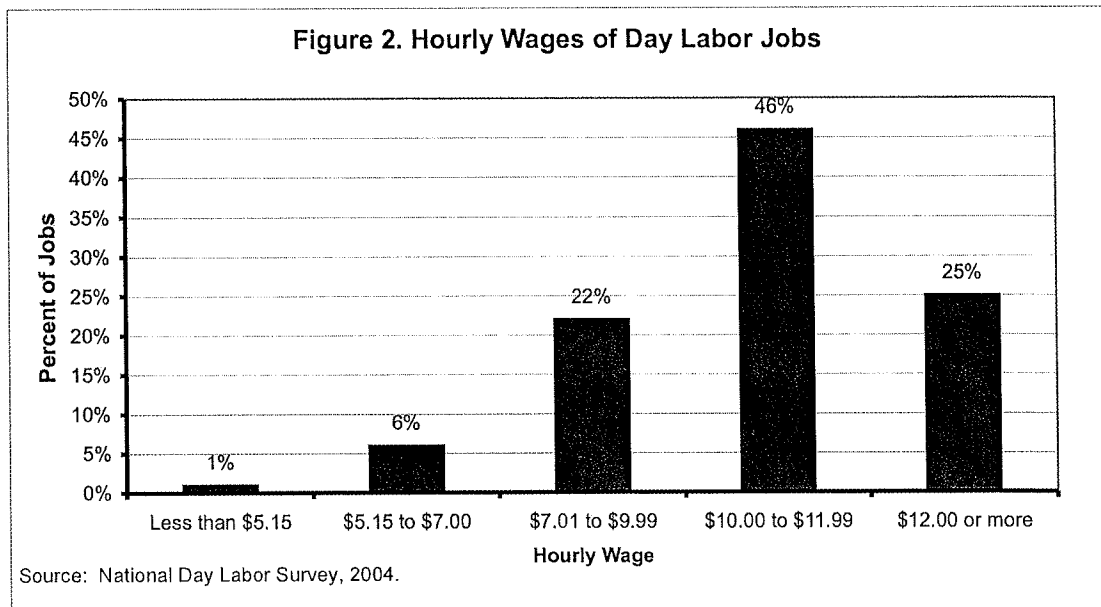
<b>Number of Days Seeking Work</b>	<b>Percentage of Day Laborers</b>
1	4
2	6
3	9
4	7
5	15
6	25
7	34
<b>Median (average)</b>	<b>6 days per week</b>

Source: National Day Labor Survey, 2004.

### *Wages and Earnings*

Survey respondents were asked to report their wages and earnings for each job worked during the week prior to when interviews were conducted. From these responses, it is possible to ascertain the wage profile of day-labor jobs (Figure 2). The median hourly wage of day-labor assignments is \$10. However, this figure masks wages at the low and high ends of the wage distribution. For example, at the low end, 1.4 percent of day-labor jobs pay less than the federal minimum wage of \$5.15 an hour, slightly more than 6 percent of assignments pay between the minimum wage and \$7 an hour, and 22 percent of assignments pay between \$7 and \$9.99 an hour. At the upper end of the wage distribution, 46 percent of day-labor jobs pay between \$10 and \$11.99 an hour, while one-quarter paid more than \$12. In cases where hourly wages above \$12 were earned, assignments tended to be highly skilled jobs, such as electrician and plumber.

Although the majority of day-labor assignments pays \$10 per hour or more, the monthly and yearly earnings of most day laborers place them among the working poor. The instability of work combined with occasionally low hourly wages results in low monthly earnings for most day laborers, even during peak periods when work is relatively plentiful (Table 5). In addition, workdays lost to job-related injuries and illness, and the underpayment of wages by some employers, contribute to the problem of low monthly earnings of day laborers.



**Table 5: Monthly Earnings of Day Laborers, Full-Time Workers**

Earnings	June/July 2004	Good Month	Bad Month
\$400 or less	25 percent	4 percent	42 percent
\$401 to \$800	36 percent	16 percent	44 percent
\$801 to \$1,200	22 percent	26 percent	11 percent
\$1,201 to \$1,600	9 percent	21 percent	2 percent
More than \$1,601	7 percent	34 percent	1 percent
Median	\$700	\$1,400	\$500

Source: National Day Labor Survey, 2004.

Workers who search for day-labor jobs on a full-time basis (i.e., four or more days a week) had median monthly earnings in June/July 2004 of \$700. However, one-quarter of full-time day laborers earned \$400 or less in that month. Monthly earnings of just \$400 for one-quarter of full-time day laborers are disturbing given that summer months are considered the optimal time of the year to secure day-labor work. On the upper end of the earnings scale, 7 percent of day laborers earned more than \$1,600 in that month. The volatility of monthly earnings can best be observed by comparing the earnings distribution of day laborers' peak (i.e., good months) and slow (i.e., bad months) periods. The median earnings level in a good month rises to \$1,400. However, in a bad

month, median earnings fall to just 36 percent of peak-period levels, or \$500. Therefore, even in cases where day laborers have many more good months than bad months, it will be unlikely that their annual earnings will exceed \$15,000, keeping most workers in this market at or below the federal poverty threshold.

### *Workplace Safety*

Day laborers experience a high incidence of workplace injury. One in five day laborers has suffered an injury while on the job. Rates of work-related injury are highest in the Midwest where one-third of day laborers have been hurt on the job. Most day laborers are aware that their work is dangerous, but the pressing need for employment finds them returning to this market to search for work. About three-quarters of day laborers nationwide find their occupations to be dangerous, while in the Midwest, where roofing jobs are undertaken at significantly higher rates than in the other regions, an astounding 92 percent find their work to be dangerous.

Lost work time due to injury is common among the day-labor workforce. Two-thirds of day laborers have missed work following an injury (Table 6). The incidence of lost work time due to injury is highest in the Southwest and Midwest where 85 percent and 72 percent of workers have missed work, respectively. In many cases, work-related injuries can be severe, resulting in extended periods of time out of work. In the past year, 39 percent of injured day laborers have missed one week or less of work, another 39 percent have missed one to four weeks of work and 22 percent have missed more than one month of work (including 39 percent of day laborers in the Midwest). In addition, many day laborers continue to work despite having suffered an injury. In the past year, 68 percent of day laborers have worked while in pain, yet another indication of these workers' dire need for employment.

Several factors contribute to the exceedingly high rates of on-the-job injury among the day-labor workforce. These include exposure to hazardous conditions (including exposure to chemicals, dust and toxic emissions), use of faulty equipment (including poor scaffold construction and tools that are in poor condition), lack of protective gear and safety equipment, and lack of safety training (Buchanan, 2004; Mehta and Theodore, 2006; Walter et al., 2002). To a certain extent, day laborers face potentially dangerous because many are employed in the construction industry which itself has high rates of work-related injury. But the levels of on-the-job injury experienced by day laborers cannot solely be accounted for by the industry in which they are employed. The inescapable conclusions are that day laborers are hired to undertake some of the most dangerous jobs at a worksite and there is little, if any, meaningful enforcement of health and safety laws. Day laborers continue to endure unsafe working conditions, mainly because they fear that if they speak up, complain, or otherwise challenge these conditions, they will either be fired or not paid for their work (Mehta and Theodore, 2006).

**Table 6: Day Laborer Injuries**

	<b>Total (%)</b>	<b>West (%)</b>	<b>Midwest (%)</b>	<b>Southwest (%)</b>	<b>South (%)</b>	<b>East (%)</b>
<b>Share of day laborers that considers jobs dangerous</b>	73	71	92	65	72	81
<b>Share of day laborers that suffered a work-related injury</b>	20	21	34	15	23	20
<b>Share of day laborers that suffered an injury requiring medical attention</b>	19	19	34	15	19	20
<b>Share of injured workers that missed work due to injury</b>	67	60	72	85	67	69
<b>Number of work days by injured workers</b>						
1 – 7 days	39	40	55	30	29	43
8 days – one month	39	40	7	47	47	36
30+ days	22	19	39	23	24	21
Mean number of days missed	33	26	35	32	41	39
<b>Number of days working while in pain</b>						
None	32	37	32	34	17	28
1 – 7 days	32	33	24	19	39	32
8 days – one month	25	17	27	35	38	28
More than one month	12	13	17	12	6	12
<b>Mean number of days worked in pain</b>	20	22	15	19	14	19

Source: National Day Labor Survey, 2004.

Among day laborers who have been injured on the job in the past year, more than half (54 percent) did not receive the medical care they needed for the injury, mainly because the worker could not afford health care or the employer refused to cover the worker under the company's workers' compensation insurance. It is likely that most of the work-related injuries suffered by day laborers that required medical attention should have been covered under workers' compensation policies. However, just 6 percent of injured day laborers had their medical expenses covered by their employer's workers' compensation insurance. In most cases, employers evade these costs (i.e., rising workers' compensation premiums), often by simply denying coverage to workers or by threatening workers with nonpayment of wages or other forms of retaliation should they attempt to file a claim.

### *Employer Abuses and Violations of Labor Standards*

Employer violations of day laborers' rights and violations of basic labor standards are an all too common occurrence in the day-labor market. Wage theft is the most typical abuse experienced by day laborers (Table 7). Nearly half of all day laborers (49 percent) have been completely denied payment by an employer for work they completed in the two months prior to being surveyed. Similarly, 48 percent have been underpaid by employers during the same time period. The nonpayment and underpayment of wages is a particular problem in the Midwest where 66 percent of day laborers were denied their wages in the two months prior to being surveyed, and 53 percent were underpaid. In fact, in every region of the country with the exception of the West (where the figure is still disturbingly high), at least half of day laborers have been denied their wages for work completed during the two months prior to being surveyed. Taken together, these figures reveal that wage theft is a routine aspect of day-labor work.

Wage theft is just one type of employer abuse endured by day laborers. During the two months prior to being surveyed, 44 percent of day laborers were denied food, water and breaks; 32 percent worked more hours than agreed to with the employer; 28 percent were insulted or threatened by the employer; and 27 percent were abandoned at the worksite by an employer. Finally, 18 percent of day laborers were subjected to violence by their employer during this time period (see also Valenzuela, 2006).

The above statistics on wage theft and other violations of basic labor standards indicate that the day-labor market is rife with employer abuse. These abuses further undermine the already-low earnings of day laborers, and they add to the instability and insecurity of day-labor work. Figures on employer abuse suggest that a significant segment of the employer base feels free to blatantly disregard U.S. labor laws and workers' rights. Yet these employers are able to continually hire day laborers because workers are in dire need of employment and because many day laborers believe that avenues for the enforcement of labor and employment laws are effectively closed to them. This belief is reinforced by the general climate of hostility that exists towards day laborers in many parts of the country.

Day laborers experience other hardships and abuses during their daily search for work, often drawing attention from law enforcement officials. We queried day laborers about their encounters with the police during the two months prior to the survey and 9 percent of them reported having been arrested when searching for work, 11 percent reported receiving police citations while at a hiring site, 15 percent reported having had their immigration status checked and 37 percent reported having been required by law enforcement officials to leave a hiring site. Private security guards also seek to disrupt day-labor hiring sites at or nearby the stores they patrol. Nine percent of day laborers have been insulted, harassed, or threatened by security guards in the two months prior to being surveyed. Harassment of day laborers by law enforcement and security personnel tends to be greatest in the Midwest.

**Table 7: Day Labor Abuses, Selected Two-Month Period**

	<b>Total</b>	<b>West</b>	<b>Midwest</b>	<b>Southwest</b>	<b>South</b>	<b>East</b>
	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>	<b>(%)</b>
<b>Experienced at least one instance of Employer Abuse</b>						
Nonpayment of wages	49	44	66	52	50	54
Underpayment of wages	48	46	53	49	37	54
Worked extra hours	32	32	31	26	26	39
Abandoned	27	28	23	20	30	31
No Food/Breaks	44	46	41	37	41	46
Violence	18	17	27	15	9	25
Insulted	28	24	36	24	33	35
<b>Experienced at least one instance of Merchant Abuse</b>						
Insulted	19	19	21	23	19	16
Threats	9	10	10	9	10	6
Violence	4	4	4	4	4	4
Refused services	14	17	34	8	11	13
Called police	24	25	27	29	20	19
<b>Experienced at least one instance of Police Abuse</b>						
Insulted	16	15	11	19	25	11
Arrested	9	9	16	5	16	6
Cited	11	15	25	5	13	7
Confiscated papers	3	3	9	2	3	3
Forced to leave site	37	39	34	42	38	28
Immigration status check	15	17	27	14	12	12
Photographed/Video taped	13	17	24	11	8	10
<b>Experienced at least one instance of Security Guard abuse</b>						
Insulted, harassed, or threatened	9	12	12	8	6	7
Violence	4	4	7	2	4	4
Robbery	2	2	7	0.5	2	3
Called police or immigration authorities	12	15	6	9	7	8
<b>Do not know where to report workplace abuses</b>	<b>70</b>	<b>70</b>	<b>56</b>	<b>75</b>	<b>67</b>	<b>69</b>

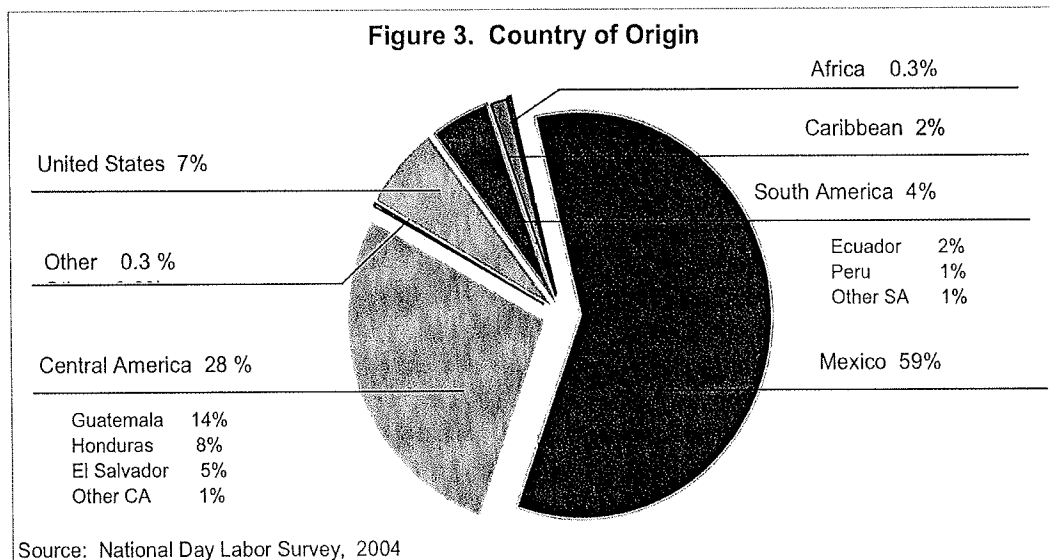
Source: National Day Labor Study, 2004.

Some local merchants and other businesses also attempt to deter day-labor activity by harassing workers, even though many others accommodate day laborers, largely because these workers contribute to business sales through their purchases of goods and services. Nearly one-quarter of day laborers had the police summoned by local merchants, 14 percent were refused services by local businesses, 19 percent were been insulted or verbally harassed by merchants and 9 percent were threatened by business owners in the two months prior to being surveyed.

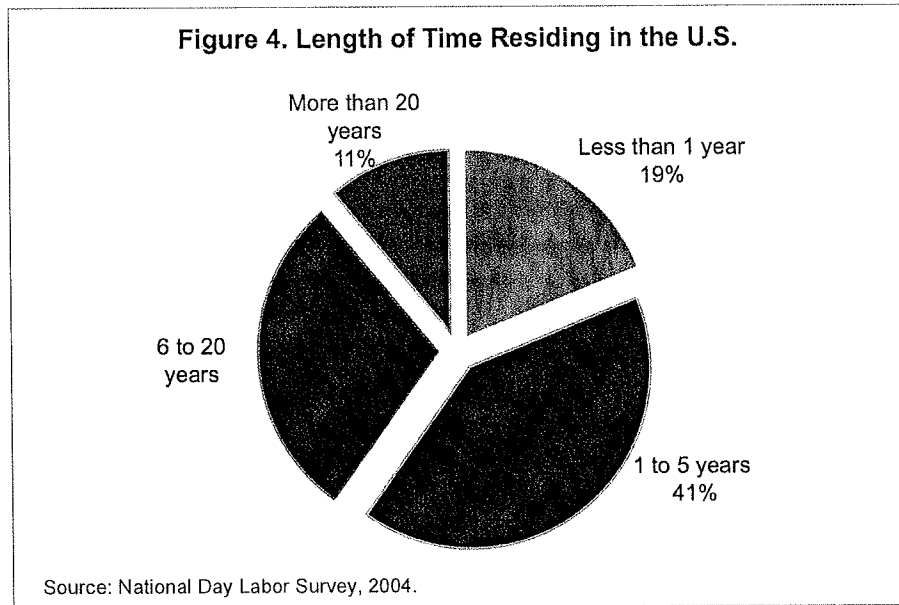
## Section IV

### The Characteristics of Day Laborers

The day-labor workforce in the United States is predominantly male (just 2 percent are female) and largely comprised of migrants from Mexico and Central America (Figure 3). More than half (59 percent) of day laborers were born in Mexico, 14 percent were born in Guatemala and 8 percent were born in Honduras. United States-born workers comprise 7 percent of the day-labor workforce, though in the southern region of the country, almost one in five day laborers was born in the United States. Three-quarters of the day-labor workforce are undocumented migrants. However, about 11 percent of the undocumented day-labor workforce has a pending application for an adjustment of their immigration status. It was not possible to determine how many of these workers may indeed be eligible for temporary or permanent immigration relief.



Overall, day laborers tend to be relatively recent immigrants. Almost one in five (19 percent) migrated to the United States less than one year before they were interviewed at a day-labor hiring site, while 40 percent has resided in the United States for one to five years (Figure 4). Less than one-third of day laborers (29 percent) has resided in the United States for between six and 20 years, and 11 percent has resided in the United States for more than two decades.



The most common reason reported by day laborers for why they traveled to the cities and towns where they are now working as a day laborer is that they heard that job opportunities existed (46 percent). Although 90 percent of day laborers had held a job in their country of origin (just 15 percent were day laborers in their country of origin), many (29 percent) had been employed in the agricultural sector just prior to migrating to the United States. Throughout Mexico and Central America, this sector pays very low wages and has been undergoing a protracted period of industrial restructuring which has brought about mounting job losses across the region (Massey, Durand and Malone, 2002).

One-quarter of day laborers worked in the construction industry in their country of origin, and another 9 percent had been employed as factory workers. However, the construction and manufacturing sectors too have experienced widespread job losses throughout much of Latin America. Interviewer field notes confirm that immigrant day laborers usually reported having left their country of origin for economic reasons, and that they turn to day-labor hiring sites as a way to become integrated into the U.S. economy. More than three-quarters of the immigrant day-labor workforce (78 percent) learned about informal day-labor hiring sites after migrating to the United States. Contrary to frequent assertions by critics, day-labor work and formal and informal hiring sites is not the “magnet” that draws immigrants to this country.

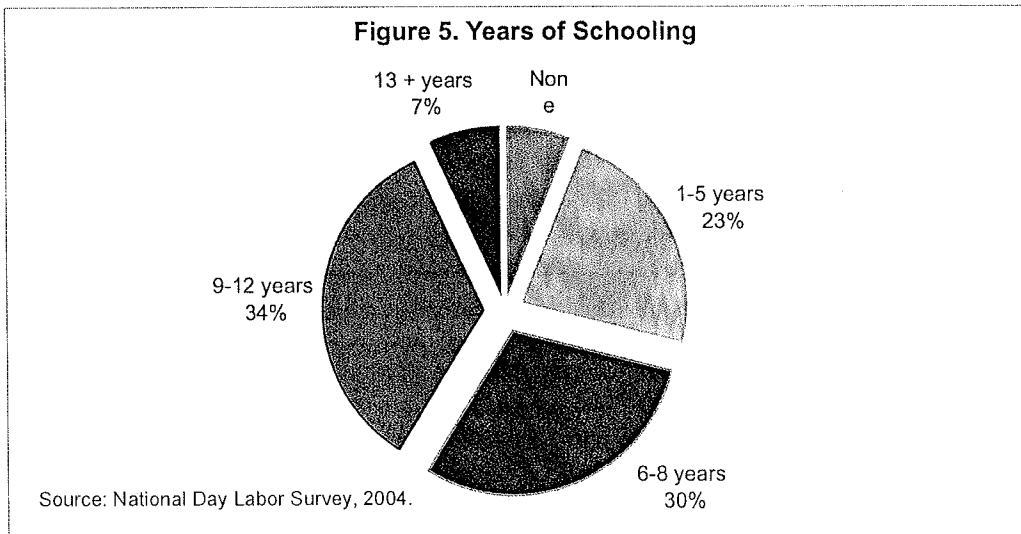
Many day laborers support themselves and their family through this work. A significant number of day laborers are either married (36 percent) or living with a partner (7 percent), and almost two-thirds (63 percent) have children. Twenty-nine percent of the children of day laborers are U.S. citizens born in the United States. Therefore, the need for day laborers to earn an income, in most cases, is made all the more urgent by the responsibility to support their family.

**Table 7: Day-Labor Worker Characteristics**

	Percentage
<b>Marital Status</b>	
Never Married	41
Married	36
Living with Partner	7
Separated	8
Divorced	7
Widowed	1
<b>Number of Children</b>	
None	37
1	14
2	19
3	13
4+	18
<b>Children Born in the U.S. (Citizens)</b>	29

Source: National Day Labor Survey, 2004.

A small percentage of day laborers do not have any formal schooling (6 percent). The remainder of this workforce has been educated either in the United States or in their country of origin. Less than one-quarter of day laborers (22 percent) have five years or less of schooling, while 30 percent have six to eight years of schooling and 42 percent have nine or more years of schooling (Figure 5).



For many day laborers, work in this market is a brief transition in their careers, while for others it is long-term source of employment. A large share of the day-labor workforce (44 percent) has participated in this market for less than one year, 30 percent has been in this market for one to three years and 26 percent has been in this market for more than three years. These figures correspond to statistics on the tenure of day laborers in the United States. Short-term employment (less than one year) in this market suggests that a substantial share of day laborers are able to make the transition out of the day-labor market, presumably to better-paying, more stable employment. For 60 percent of day laborers, this work was the first occupation they had held in the United States, meaning that for many workers, day labor is the entry point into the U.S. labor market.

Most day laborers hope to make the transition out of this sector and into stable and better paying jobs. The overwhelming majority of day laborers (86 percent) are seeking regular, permanent employment. One in six (17 percent) day laborers currently has another job in addition to participating in the day-labor market, though most of these jobs are low paying. More than two-thirds of these jobs (68 percent) pay hourly wages of less than \$10, and nearly 80 percent are part-time. This likely reflects the need to supplement the low earnings generated by day labor. It also is possible that day laborers who are able to make the transition out of this labor market do so by holding multiple jobs before leaving the day-labor market entirely. For others, the more typical pattern may be to move in and out of standard employment arrangements in the mainstream economy and in and out of the day-labor market. More than half of day laborers (57 percent) have held a permanent job in the United States, mainly in the construction industry, restaurants and the manufacturing sector. For these workers, day labor may offer a source of income while they search for another permanent job elsewhere in the local economy.

The demographic characteristics of the day-labor workforce provide insights into the location of this labor market vis-à-vis the mainstream economy. A substantial segment of this workforce is marginalized and in a vulnerable position. Lacking legal immigration status yet in urgent need of earning an income to support themselves and their families, many day laborers find themselves exposed to the vagaries of a labor market that is rife with violations of basic labor standards. In many respects, then, the day-labor market bears a strong resemblance to the wider informal economy of which it is apart. Workers are paid in cash, employment is insecure, and government regulation of wages and working conditions is weak or nonexistent. At the same time, the day-labor market provides limited pathways for some workers to enter the formal, mainstream economy. Through their participation in day labor, many workers are able to accumulate experience, develop skills and enhance their job-search networks, thus improving their chances of leaving this market for more stable employment. Other workers use day labor as a buffer for eventualities like the temporary or permanent layoffs that are exceedingly common in the low-wage segments of the U.S. economy. In this respect, day labor is simultaneously the employment of last resort, a source of income following job loss, and a pathway back into the mainstream economy. For still others, day labor is perhaps the

best job that they can reasonably hope to obtain. Job opportunities in their country of origin have deteriorated badly and their qualifications place them near the bottom of the U.S. labor market providing limited choices for employment. Perhaps the best chance for these workers to escape poverty-level wages is to improve their qualifications through on-the-job training in the day-labor market, thereby increasing their job opportunities over the long run.

So the day-labor market is something of a paradox. On the one hand, it is characterized by routine violations of basic labor standards, the workforce endures the hardships associated with low earnings levels and public opinion in some parts of the country has turned against day laborers. On the other hand, employer demand for the services of day laborers is strong and growing, and a substantial share of the day-labor workforce has made the transition to other areas of the economy where they are employed as construction workers and factory production workers, among other occupations. Seen in the light of the findings of this study, day labor occupies an unusual position in the U.S. economy. It is, at the same time, both *disconnected* from the mainstream economy given the rampant violations of employment and workplace safety laws that are found in this labor market, and *connected* to the mainstream economy by virtue of the role it plays in a dominant industry (construction) and the pathways between employment in the day-labor market and jobs in other parts of the economy. The final section of this report considers approaches to placing a floor under wages and working conditions in the day-labor market.

## **Section IV**

### **Worker Centers: Safeguarding Labor Rights in the Day-Labor Market**

As highlighted in this report, day labor is a nationwide phenomenon and it is growing. The sheer number of hiring sites, combined with their presence in every region in the country, reflects the enormous breadth of this labor market. The growth of day-labor hiring sites is a national trend that warrants attention from policy makers at all levels of government.

The top policy priority is clear: safeguarding, improving and enforcing labor standards in the day-labor market. Our findings reveal that the day-labor market is rife with violations of worker' rights (see also U.S. General Accounting Office, 2002). Day laborers regularly are denied payment for their work, many are subjected to demonstrably hazardous job sites, and most endure insults and abuses by employers. These employer practices prevail because the day-labor market is largely unregulated and because workers believe that they do not have an effective means of seeking recourse against abusive employers. This belief that formal legal channels through which wage theft and other illegal employer behavior can be challenged are closed to day laborers stems from the interaction between U.S. immigration law, employer practices and the economic deprivation of much of the day-labor workforce. The high incidence of labor rights violations is directly related to the status of most day laborers as undocumented immigrants, as well as to the economic marginalization of this workforce, and both of these factors have a profound effect on the day-to-day functioning of the market for day labor.

Day laborers are primarily workers who have migrated to the United States to search for work in response to economic hardships in their country of origin. With the need to immediately earn an income, they find themselves in a vulnerable position, are forced to accept most any job. The high incidence of wage theft, exposure to unsafe working conditions, and other worker abuses highlighted in our study indicate that employers often take advantage of day laborers' pressing need for work. Because most day laborers are working without immigration documents, exploitative employers are emboldened to withhold wage payments, abandon workers at job sites and subject workers to other abuses, including physical violence. Employers are often able to deter workers from contesting these violations by threatening to turn them over to federal immigration authorities. Even when employers do not make these threats overtly, day laborers, mindful of their status, are reluctant to seek recourse through government channels.

As a result, violations of basic labor standards have become a taken-for-granted feature of day-labor markets. One of the most important ways that workers in the informal economy take legal action against abusive employers is through workers' rights advocates employed by community-based organizations. However, a 2002 survey of day laborers in the New York metropolitan area found that only about 10 percent of day laborers have turned to community organizations to assist them in addressing workplace

concerns or in taking action against an abusive employer (Meléndez, Theodore and Valenzuela, 2006). This disconnect between day laborers and civil society organizations is exceedingly problematic for day laborers since nearly two-thirds reported that they do not know their rights as a worker or as an immigrant residing in the United States. Furthermore, 70 percent of day laborers nationwide do not even know where to report a workplace violation. As a result, abusive employers are often able to continue to violate workers' rights with impunity.

But this is changing. A growing cadre of day-labor worker centers has begun to challenge employment abuses in cities across the United States. There are at least 63 day-labor worker centers operating in 17 states, as well as another 15 community-based organizations that work closely with day laborers who seek work at informal hiring sites. Worker centers formalize day-labor employment by allowing workers to safely search for jobs and encouraging employers to hire day laborers from their premises. By monitoring working conditions and informing day laborers of their rights, worker centers serve, in the words of one director, as a "safe haven for workers to negotiate their job and not be on the street." In some cases these sites are no more than an enclosed, open-air venue with seats or benches. But many others are located in commercial buildings where they coordinate workers' rights activities, provide emergency services and sponsor community events. In short, they function as full-service community organizations.

### **Restoring the Floor: Worker Centers as New Labor Market Institutions**

Because they intervene effectively in the day-labor market, worker centers have emerged as the most comprehensive response to the workplace abuses that day laborers endure as well as to address community tensions that have arisen as a result of workers gathering near residential areas. Fundamental to their value is the ability of worker centers to intervene on both the demand and supply sides of the day-labor market. On the demand side, worker centers monitor the actions of employers, increase the transparency of the hiring process and provide an institutional foundation for holding employers accountable for workplace abuses. On the supply side, they organize and normalize the hiring of day laborers, monitor worker quality and provide opportunities for worker incorporation into the mainstream economy through employment assistance and, in some cases, skills training. The contributions of worker centers go beyond the day-labor market itself. In the communities in which day laborers work and live, these centers participate as key stakeholders in the resolution of neighborhood conflicts over day labor.

This portrait of worker centers may come as a surprise to those familiar with the negative attention received by worker centers in Herndon, Va.; Phoenix, Ariz.; and Farmingville, N.Y. Media accounts in those cities and others have misrepresented the functions and activities of worker centers by labeling them as "magnets" for undocumented immigration (even though 83 percent of day laborers learned of this market after migrating to the U.S.), as illegal gathering places, or as a waste of public resources. The ensuing controversy has obscured the important role of worker centers in establishing a floor under wages and working conditions in the day-labor market. Lost in the rancorous debate that is underway in some cities is that investment in day-labor

worker centers is a prudent, practical and fiscally responsible policy that communities across the United States should carefully consider. Indeed, the vast majority of worker centers were opened with little fanfare or controversy because various stakeholders, including day laborers, employers and community groups, came together to proffer thoughtful and pragmatic solutions to local concerns.

This leads to the question of how worker centers should be established, and how they can be linked to existing community institutions. The variety of existing models suggests that the worker center strategy can successfully be adapted to local conditions, and that these centers can be effective in a wide range of local contexts including operating in central business districts, residential neighborhoods and suburban locations. Many communities have entered negotiations with home improvement stores to support the opening of worker centers (e.g., Burbank, Calif.). Others have worked closely with city planning departments and elected officials to secure resources to create sanctioned hiring sites. The point is not that there is a single best-practice model or strategy for opening a worker center, but rather that the process should bring together day laborers, employers, merchants, residents and other community stakeholders, and the public sector to devise appropriate strategies. Above all, the creation of worker centers is a pragmatic solution. Day labor continues to grow in the United States, and implementing programs that can ensure that safeguards are in place to protect workers is now an urgent matter demanding attention.

From our observations and interviews of coordinators of worker centers across the United States,<sup>4</sup> we have found that several key elements should be in place for a worker center to be effective. First, worker centers should be visible and centrally located near where day laborers search for jobs and where employers look for workers. Second, when worker centers are discussed as a local policy response, day laborers and employers should be involved in those conversations. Third, most worker centers operate on minimal budgets; efforts should be made to generate creative cost-sharing streams, that include public-sector resources, contributions from local businesses, private donations and foundation grants to ensure the sustainability of centers. Fourth, the creation of worker centers often occurs in conjunction with the passing of anti-day-labor solicitation ordinances that require workers to vacate open-air hiring sites in favor of workers centers. Such measures usually are enforced through aggressive policing. However, these policies are counterproductive; they ignore issues of labor demand, misallocate police resources as law enforcement officers are tasked to issue citations or arrest day laborers who are simply looking for work, and their main impact is to penalize day laborers who search for work in public spaces. Finally, expectations for worker centers must be realistic. We have observed that the most successful worker centers have existed for many years, and that the incubation period for employer, worker, merchant and resident buy-in should not be underestimated. Time and resources are necessary if worker centers are to develop the capacity to effectively intervene in the day-labor market.

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<sup>4</sup> As part of our national study, we surveyed all 63 day-labor worker centers that were in operation in 2005, as well as 15 community-based organizations that work with day laborers. The findings from this component of our study will be released as a separate report.

## **Policy Recommendations**

Day labor is a complex issue, and there is no single solution to the conflicts it has generated. A practical approach to many of the problems highlighted in this report is offered by worker centers. We recommend the creation of additional worker centers in cities across the country because we believe they can dramatically and immediately improve conditions in the day-labor market.

While worker centers are an appropriate programmatic intervention at the local community level, fully responding to the myriad problems, violations and abuses in the day-labor market also requires a broader policy approach that includes:

### **1. *Improving enforcement of labor and employment laws:***

- All levels of government must ensure that the agencies charged with enforcing existing labor and employment laws are staffed appropriately and have the necessary resources to protect low-wage workers.
- Agencies responsible for enforcing labor and employment laws should hire bilingual staff and improve their capacity to serve low-wage immigrant workers by developing culturally and linguistically appropriate educational tools. Government agencies can develop partnerships with worker centers and other community organizations to plan and carry out such outreach and education efforts.
- There must be targeted enforcement by state and federal labor departments to ensure that all workers, regardless of immigration status, are getting paid for the work they have performed.
- Federal and state agencies charged with enforcing health and safety laws must prioritize targeted inspections and enforcement of high-risk workplaces for low-wage workers.
- Existing labor and employment laws must be amended to reflect the changing economic structure, which has resulted in an increased number of contingent workers being left without protection.

### **2. *Increasing the resources available to address labor conditions:***

- Low-wage workers must have access to legal services that assist workers in redressing the plethora of labor violations.
- Access to legal services must not be restricted based on immigration status.
- There is a need for increased funding for community organizations and worker centers that assist workers in defending their labor and civil rights.

3. *Expanding workforce development opportunities:*

- Workforce development strategies that can help day laborers make the transition from the informal economy into better jobs must be implemented.
- Educational and training opportunities that assist low-wage workers who are limited-English proficient in acquiring the necessary skills to obtain better paying and stable jobs are needed.
- Government agencies and the private sector must develop workforce development strategies that undocumented immigrants can also access.

4. *Enacting realistic immigration reform:*

- Congress must enact realistic immigration reform that normalizes the immigration status of undocumented migrants.
- Criminalizing undocumented workers and deputizing local police officers as immigration enforcement agents is not a viable solution, and only diverts local resources away from the real reform that is need.
- Immigration reform must address the family visa backlog and provide a path to citizenship to the undocumented migrants currently working in the United States.

## Appendix

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### Data Collection Procedures

A survey of day laborers, a highly visible, yet largely unknown population requires creative research approaches. Three factors make the fielding of a survey challenging.

1. Day laborers are employed by many different employers for a variety of jobs ranging in length from several hours to several weeks. As a result, the status of a worker in the day-labor market constantly fluctuates from looking for work (as a day laborer) to working in the formal or informal economy. This means that hiring sites, depending on the season, the current demand for day-labor work, and the time of day may not provide the most accurate count of day laborers.
2. Hiring sites, while usually quite visible, are nevertheless difficult to keep track of in their totality. New sites emerge, old sites disappear and some sites are difficult to find.
3. Day labor may be a temporary occupation. Some day laborers may be doing this type of work as a temporary holdover from a layoff or firing. Alternatively, workers in this market may be holding part- or full-time employment in the formal labor market and undertaking day-labor work to supplement their wages. Others may be using day-labor work as a stepping stone to regular employment in the formal labor market. The point is that at any given time, who is and who is not a day laborer is fluid.

To address these issues we sought to identify as many day-labor sites as possible, develop a random sampling frame and employ a screening mechanism that would allow us to identify day laborers. Prior to implementing our survey we initially identified more than 500 sites in 46 Metropolitan Statistical Areas (MSAs).

### Site Identification

We spent five months (November 2003-March 2004) identifying hiring sites and day-labor populations in the cities in each of the MSAs selected in our sample. Several procedures were used to identify day-labor hiring sites. First, we contacted community-based organizations, advocacy groups, churches, home improvement stores, police departments, city planning departments and merchants, as well as conducted Internet searches (i.e., looked at newspapers, websites, articles) to identify as many sites as possible within each MSA. We identified more than half of the hiring sites using this method.

Because our study’s methodology required that we verify the presence of day laborers in each of MSA, we undertook a scouting exercise. We also needed to confirm our data sources, particularly in those MSAs in which we were not confident that day-labor sites exist. In May 2004, we sent nine researchers to “scout” all of the MSAs that had conflicting or “thin” information about day laborers in that region. As a result of this exercise, we were able to confirm our site identification research and eliminate those sites that did not have a day-labor population. We also identified new sites using a “referral” system that in many ways resembles snowball sampling. We approached day laborers at different sites and asked them where else they go to search for work and asked workers at those new sites the same question. This method led to the identification of additional sites. While in the field scouting, we took extensive notes, including the counts of day laborers at each site, time of day workers gather, surrounding stores, amount of foot and automobile traffic, and demographic information, and labor exchanges were witnessed.

### Categories of Day-Labor Sites

In examining the 264 sites in our sample, two basic site types emerged. The first type of site we call “informal” which represents those sites that are: (1) connected to some specific industry such as painting (Dun Edwards, Standard Brand), landscaping or gardening (nurseries), moving (U-haul) and home improvement stores (Home Depot, Home Base), or (2) do not have any connection to a specific industry but may very well exist for other reasons such as foot or vehicular traffic, police cooperation, or historical reasons (i.e., site has existed for many years). The second type we call “formal” which represents day-labor worker centers that are either administered by a city or county, or managed by a community-based or faith-based organization and provides a space where workers and employers can negotiate the terms of employment.

Day laborers were found in 221 informal sites and 43 formal sites in 139 cities and in 36 sampled MSAs throughout the United States (Table A).

**Table A: Day Labor Sites**

Type of Day-Labor Site	Number of Sites	Number of Respondents
Informal	221	2,214
Formal	43	446
Total	264	2,660

Source: National Day Labor Survey, 2004.

Each site varied in size. *Small* sites were defined as having 25 or fewer day laborers present. *Medium* sites consisted of 26 to 50 day laborers present, and sites that had between 51 to 100 day laborers were considered *large*. *Mega* sites had more than 100

day laborers present (Table B). These site sizes are based on an initial count. They were subsequently revised when the research teams visited each site to survey workers.

**Table B: Size of Sites**

Size of Site	Frequency	%
Small Site ( $\leq 25$ )	129	49
Medium Site (26-50)	86	33
Large Site (51-100)	39	15
Mega Site (100+)	6	2
Other Identified <sup>5</sup>	4	2
<b>Total</b>	<b>264</b>	<b>101</b>

Source: National Day Labor Survey, 2004.

### Sampling Framework

The National Day Labor Survey adapted conventional survey sampling techniques, and supports statistical generalizations regarding:

- Day laborers found at the 264 sites in 36 sampled MSAs and throughout the United States on a typical day.
- Day laborers found at *all* sites in the 36 sampled MSAs and throughout the United States on a typical day.
- Persons in the 36 sampled MSAs and in the United States who seek work as day laborers.

Using information (i.e., field notes, counts of day laborers) from our site identification research carried out during November 2003-March 2004 and the scouting exercise in May 2004, we were able to establish “selection” counts for each site. Selection counts (a predetermined set of numbers) were based on the size (total number of day laborers) of the hiring sites prior to the survey conducted in July and August of 2004. Upon arrival at a given site a total count of all workers was taken at 6:30 in the morning. The count was repeated every hour until 10:30 a.m. and included day laborers that arrived after the initial count had been made. After all the workers had been counted the selection count was administered and potential survey participants were identified. Each worker who fell within the selection count (a random number) was approached and asked to participate in the survey.

<sup>5</sup> There is no data for the number of workers at four sites. The surveys collected there had a minimum impact on the study.

To determine which areas we would survey at, a total of 48 MSAs were randomly selected for our sample. The variables used to determine the selection for our sample were: (1) Size of total population, and (2) size of Latino population. MSAs were divided into four strata:

- Stratum 1 = small total population (<295,000) and small Latino population (<13,000);
- Stratum 2 = small total population (<295,000) and large Latino population ( $\geq 13,000$ );
- Stratum 3 = large total population ( $\geq 295,000$ ) and small Latino population (<13,000); and
- Stratum 4 = large total population ( $\geq 295,000$ ) and large Latino population ( $\geq 13,000$ ).<sup>6</sup>

We planned to sample a total of 50 MSAs. In order to give a higher probability of selection to cities with a large total population and a large Latino population (Strata 4), where we expected day laborers to concentrate, we implemented a disproportionate stratified sampling frame. Therefore, we selected 30 MSAs from Stratum 4; 5 from Stratum 2; 5 from Stratum 3; and 10 from Stratum 1, giving us a total of 50 MSAs.

The sample was selected through a systematic random sampling process whereby all MSAs were put on a list, a random-number table was used to generate a starting place, and MSAs were selected according to a selection rate. To determine the selection rate, we divided the total number of MSAs within each stratum by the number of MSAs that were going to be selected from that stratum.<sup>7</sup> Thus if we selected a random number (12) we start at MSA number 12 and select every  $n$ th (selection rate) MSA moving down the list.<sup>8</sup>

In order to ensure probability of selection proportional to population size, we listed each MSA as many times as it is divisible by the smallest MSA. Thus, the total population of each MSA is divided by the total population of the smallest MSA within the same stratum. Then, depending on the number of times the MSA is divisible by this number, it was repeated in the list.

This selection gave us a total of 48 MSAs (two of the “mega” MSAs were repeated). Once we implemented the scouting exercise, we identified 13 MSAs that did

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<sup>6</sup> These categories were chosen on the basis of median figures for both variables (e.g., small population and Latino population).

<sup>7</sup> If, for example, the total listing (including the repeated listings) was 300 and we expected to draw 30 MSAs from that strata, the  $n^{\text{th}}$  selection rate would be  $300/30 = \text{every } 10^{\text{th}}$  MSA on the list was selected into the sample, after choosing a random starting point.

<sup>8</sup> Within each list, regions were listed in a “serpentine” fashion where we start from the Northeast and work our way to the Midwest, South, Southeast, and West in order to make the systematic random selection yield a more geographically representative sample.

not have a day-labor population. Thus, we were left with 35 MSAs that were confirmed having a day-labor population. In order to collect data on a representative number of worker centers, we included another 11 MSAs with worker centers but that were not selected as part of the random sample. The site count information from the randomly sampled MSAs was used to make the national estimate of day labor for all areas exclusive of the area represented by the supplemental group of 11 MSAs. The MSA day labor count for these 11 MSAs was added to the national day labor estimate based on randomly sampled MSAs to produce the total national day labor estimate.

Due to budget restrictions and time constraints we were unable to survey at all of the identified day-labor hiring sites in the 46 MSAs. Keeping with these limitations, we elected to visit all known sites except for some sites in Los Angeles, New York and Orange County. We used several criteria to select sites in these locations. These criteria included the location of the site in the greater metropolitan area and the number of workers (size) at the site and whether or not the site identified was informal or a worker center. Our goal was to obtain a geographically diverse number of hiring sites in all the 264 sites in the 46 MSAs throughout the United States.

A total of 2,660 surveys were completed. The majority of the interviews were administered in Spanish and all were conducted face to face. The survey was undertaken during a continuous seven-week period (the last week of June to mid-August 2004). Each interview included more than 100 questions including charts. The survey took about 35 minutes to complete. Participation in the survey was voluntary and respondents were given \$10 for answering our questionnaire.

### **Estimate of the Day-Labor Population in the United States**

The number of persons included in the survey in each site is assumed to be less than 100 percent of the day-labor population accessing the day-labor market. The model developed assumes:

1. an individual does not use more than one site to access the market on a given day.
2. workers may secure multiple-day assignments and therefore might not return to the hiring site every day.
3. the number of workers observed in the survey count likely *underestimates* the day-labor population, because it only includes day laborers who were seeking employment at the time of the survey or were excluded for other reasons.
4. the number of sites identified are the only sites in each of the selected metropolitan areas, thus the estimates offer at best a lower bound since it is very likely that survey researchers missed a number of hiring sites because those sites were unknown to the day laborers interviewed and the key informants contacted during the site identification phase of the study.

Estimating a day-labor population relies on several simplifying assumptions. For most sites, we had counts prior to the day of the survey and during the day of the survey. First, we assume that if a worker was at the site when the interview was conducted that the worker did not work that day. We had a few surveys that were not completed because workers obtained work while interviewing them, but these surveys were excluded from the analysis. There is no data for the number of workers at four sites because the “counter” was unable to take a count of the site (the site might have been too big, the police may have disrupted the site, or some other problem was encountered) or the sheet was lost.

The total number of workers at the sites was 39,452, as indicated (Table D). It is important to note the variability of the site sizes. The number of workers at any given site is an overall indication of the labor pool of day laborers in the area.

**Table D. Observed Average Number of Day Laborers at the Sites**

Size of Site	Number of Sites	Average Workers at site	Total Number of Workers
Small Site	129	16	9,273
Medium Site	86	35	14,181
Large Site	39	66	12,620
Mega Site	6	116	3,378
Others Identified	4	N/A	N/A
<b>Total</b>	<b>264</b>	<b>33</b>	<b>39,452</b>

Source: National Day Labor Survey, 2004.

To estimate the total population of day laborers in the United States we assume that for any given site, there are workers seeking work at the site when the interviews were conducted and workers that have secured worked for that day, and therefore are not observed at the site. The total day-labor population for site  $j$  is then the sum of those observed at the site ( $ODL_j$ ) and those not observed ( $NDL_j$ ) when the interviews were conducted:

$$TDL_j = ODL_j + NDL_j$$

The  $ODL_j$  is equal to those counted at the sites during the interviews, adjusted for the sampling stratification, or 39,452.  $NDL_j$  is simply a function of the probability of not being at the site the day the interviews were conducted. To estimate this number, we used known parameters from the day laborers interviewed at the sites. We define  $NDL_j$  as the inverse of the average days looking for work ( $DLW_j$ ) in a typical week for workers at site  $j$ , minus the average days employed in a typical week ( $DWW_j$ ), divided by the average days looking for work in a typical week:

$$NDL_j = 1/[DLW_j - DWW_j] / DLW_j$$

These two coefficients are estimated from the survey data for each SMA.

The Total Day Labor estimate is adjusted with these site-specific parameters, then summed to produce an estimate for each MSA within each of the four population strata. The sum of MSA counts within each stratum is then inflated by the ratio of population in the sampled strata to the total strata population in order to estimate the number of day laborers in the entire set of MSAs (sampled and unsampled) within each stratum. These strata level counts are summed across the four sampling strata plus the counts for the 11 supplemental MSAs to produce the total estimate of day laborers for the nation.

Thus, based on these parameters, the day-labor population in the United States is estimated to be 117,647. Given the restrictive assumptions explained above, this figure is likely to underestimate the total day laborer population in the United States.

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## **EXHIBIT 7**

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am New York

## Law makes it illegal to picket at mayor's house

BY MITCHELL FREEDMAN

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May 30, 2007

After nearly two months of picketing by anti-day laborer protesters in front of the village mayor's house, the Southampton Village Board yesterday adopted a local law making it illegal to demonstrate at a private home on any residential street in the village.

"I'm open game, my family is not," said a frustrated Mayor Mark Epley, adding that his family had been harassed and intimidated by the protests.

The local law, which passed 4-1 at a special village board hearing, calls for fines of up to \$1,000 and up to 15 days in jail for anyone who targets the owner of a house and pickets in front of it or in front of the homes immediately on either side.

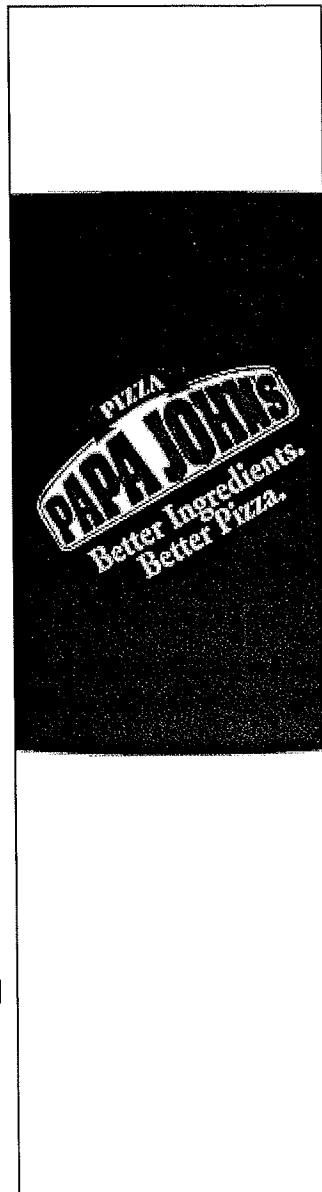
The village attorney said similar laws have been found to be constitutional.

"The practice of targeted residential picketing on a public street before or about a particular dwelling inherently and offensively intrudes on the privacy of a home and ... may harass and intimidate the occupants of the targeted home ... " the local law states.

Epley has been the target of picketing since he proposed allowing day laborers to gather in a village-owned park across from a 7-Eleven store.

That open-air hiring spot - there were no buildings, only a circular dirt driveway that allowed potential employers to not stop in the street - was closed after neighbors obtained a court injunction. The case is pending in State Supreme Court.

The idea of a blanket ban on demonstrations in the village's residential neighborhoods is of major concern to Donna Lieberman, an attorney for the New York chapter of the American Civil Liberties Union.



"The First Amendment protects all speech, whatever the message ... it's very dangerous when government tries to promulgate rules to silence an entity whose message is unpopular or for the convenience ... of any individual," she said.

Lieberman said the proposed ban would "run afoul of the fundamental guarantee of free expression," but the village could limit the time, place or manner of picketing. She added the board could adopt resolutions that limit the size of a crowd on a narrow street for safety issues, or that restrict the use of bullhorns or other loudspeakers.

"There can be limitations on how close a group can be, or how long they can be there," she said. "The most important thing is that they can convey their message."

For the past seven weeks, protesters - usually 15 to 30 people - have been picketing Epley's house. They also picket in front of Village Hall and at the 7-Eleven on Aldrich Lane.

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## **EXHIBIT 8**

# Protesters Win One, Lose One

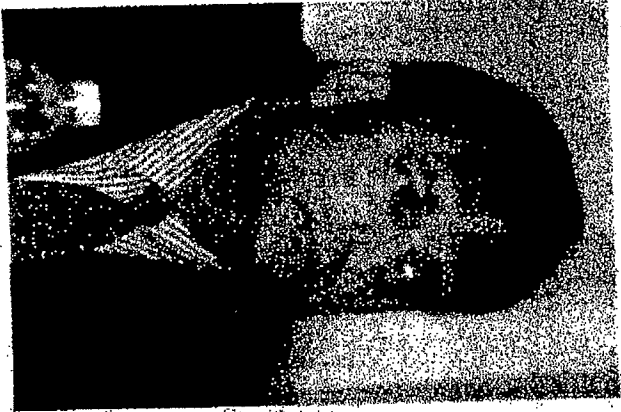
## New law bans protests targeting a single residence

By Jennifer Davis  
Southampton Village enacted a law on Tuesday prohibiting any group or individual from targeting a specific house when picketing in residential areas.

The local law, which passed with a 4-1 vote by the Village Board at a special meeting on Tuesday at Village Hall, comes after anti-illegal immigration groups of about 15 to 30 people have picketed outside Village Mayor Mark Epley's house every Saturday for the last two months to protest his decision to move forward with a hitting site at Aldrich Lane.

Under the new law, protesters are still allowed to picket in residential areas if they keep moving. Protesters will not be allowed to limit their picketing to in front of houses next to the house they are targeting. The legislation calls for fines of up to \$1,000 and jail sentences of up to 15 days for offenders.

The law was put on the fast track after an altercation on May 12 at the Epley residence between Mayor Epley's son, Nick, a senior at Southampton High School, and



Southampton Village Mayor Mark Epley.

one of the protesters, Brian Russell. At a May 22 board meeting, Mayor Epley introduced the legislation and played a video recorded by Mr. Russell that showed Nick waiting to be let in the front door of his home as about 25 men and women on

See PROTEST, Page A9

## Settlement clears the way for dissent in July 4 parade

By Jennifer Davis  
A federal judge approved a settlement last week allowing anti-war protesters to march in the Southampton Village Fourth of July parade again this year.

The compromise resolves a lawsuit filed last summer after the village's parade commission tried to censor political speech and propaganda during the event and barred the protesters from marching while carrying anti-war signs. A last-minute court order filed on the eve of the holiday weekend allowed the veterans to participate last year. To ensure that they would be allowed to march in future parades, protesters filed a lawsuit in the U.S. District Court in Central Islip, citing protection of their First Amendment right to freedom of speech.

A formal agreement between protesters and the village was reached on May 21. The deal allows for any person who

marched last year and was a part of the lawsuit to be allowed to march again this year and have the freedom to carry signs. In addition, "any person, organization or group seeking to march in the July 4, 2007, parade may apply to do so."

### The settlement resolves the lawsuit filed last summer.

Last week's agreement, approved by U.S. District Court Judge Joseph Bianco, also included a provision requiring the village to draft and adopt a policy allowing any individual or group to march in the parade. These final parade regulations will also be subject to review by the court. The ruling affects only the Fourth of July parade but can be used as precedent for other parades if similar situations arise elsewhere in the state. According to Mayor Mark Epley, the village agreed to let the protesters par-

See PARADE Page A9

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5/31/07

## **EXHIBIT 9**

## Chapter 254: PEDDLING AND SOLICITING

[HISTORY: Adopted by the Town Board of the Town of Southampton 7-27-1982; amended in its entirety 7-13-2004 by L.L. No. 24-2004. Subsequent amendments noted where applicable.]

### GENERAL REFERENCES

Littering and handbills — See Ch. 211.

Noise — See Ch. 235.

### § 254-1. Title.

This chapter shall be known as the "Peddlers and Solicitors Law."

### § 254-2. Definitions; word usage.

A. The following definitions shall govern the interpretation of this chapter unless otherwise expressly defined herein:

**FACILITY-USE AGREEMENT** — As defined in § 111-3D.

**LICENSE** — The license issued to a peddler which also may include the right to use a vehicle if proper application is made.

**PEDDLER** — Includes any person, whether a resident of the Town of Southampton or not, traveling by foot, wagon, automotive vehicle or any type of conveyance from place to place, from house to house or from street to street and offering for sale goods, wares, merchandise or provisions of any kind or description, offering and exposing the same for sale or making sales and delivering articles to purchasers or who shall sell or offer the same for sale, and further provided that one who solicits orders as a separate design to evade the provisions of this chapter shall be deemed a peddler subject to this chapter. The word "peddler" shall include the words "hawker" and "huckster."

**PERSON** — Any natural person, partnership, association, corporate or other legal entity.

**REGISTER** — To supply to the Clerk of the Town of Southampton the name and address of said organization, together with the dates that said organization will engage in peddling activities within the Town of Southampton.

**TOWN** — Includes all areas within the Town of Southampton exclusive of areas wholly within any incorporated village.

B. Words used in the singular shall include the plural and vice versa. The word "shall" is always mandatory.

### § 254-3. License required.

It shall be unlawful for any person to engage in the business of peddler as defined in § 254-2 of this chapter within the corporate limits of the Town of Southampton without first obtaining a license as provided herein.

### § 254-4. Application and fee. [Amended 5-10-2005 by L.L. No. 19-2005]

A. Applicants for a license under this chapter must file with the Town Clerk a sworn application, in writing, in duplicate, on a form to be furnished by the Town Clerk, which application shall give the following information:

- (1) The name, address and telephone number of the applicant.
- (2) The applicant's place of residence for the past five years.
- (3) The applicant's business or employer for the past five years.
- (4) The applicant's age, height, weight, color of eyes, color of hair and place of birth.
- (5) Two full-face photographs of the applicant taken within 30 days of the application and measuring 1 1/2 inches by 1 1/2 inches.
- (6) Whether or not the applicant has ever been convicted of a felony, misdemeanor or violation of any municipal ordinance or local law, except traffic violations, and, if so, the date, court, ordinance violated and sentence of the court.
- (7) Whether the applicant has been previously licensed in any occupation and, if so, when, where and for what period, and any revocation and the reason for said revocation.
- (8) The name and address of the person, firm or corporation the applicant represents or is employed by.
- (9) The particular business, trade or occupation for which the license is requested.

- (10) The manner or means of conveyance in which said business or trade or occupation shall be conducted.
- (11) If the application is for a license to handle food in any form, the applicant shall submit a valid permit issued by the Suffolk County Health Department indicating compliance with the provisions of the Suffolk County Public Health Ordinance.
- (12) If the applicant requires the use of weighing and/or measuring devices, such application shall be accompanied by a certificate from the County Sealer of Weights and Measures certifying that all weighing and measuring devices to be used by the applicant have been examined and approved.
- (13) If the application involves the use of a vehicle, proof of a valid New York State motor vehicle registration for the vehicle to be used.
- (14) If the application involves the use of a vehicle, proof that the applicant holds a valid New York State driver's license.
- (15) Proof that the applicant holds a New York State sales tax identification number.
- (16) In the event that any other license or permit shall be required by any other governmental agency in connection with the applicant's business, the same shall be produced by the applicant, and the Town Clerk shall duly note the same.
- (17) Any additional information the Town Clerk shall deem necessary for the purpose of administering the provisions of this chapter.
- (18) Any change in circumstances with regard to the information provided in the application or on the license shall be reported to the Town Clerk within 30 days.
- (19) All statements contained in the application shall be notarized and executed as declarations made under the penalty of perjury.

B. Applicants shall also submit:

- (1) Fingerprints. Unless specifically waived by the Town Clerk upon a showing of facts which, in the discretion of the Town Clerk, warrant the waiving of said requirement, the applicant shall arrange for an appointment with the Department of Public Safety for appropriate fingerprinting, and such completed fingerprint card shall thereafter be forwarded to the New York State Division of Criminal Justice Services (DCJS) for a full search. In connection with such fingerprinting requirement:
  - (a) The application shall be accompanied by an appropriate fee, the amount and payment instrument to be determined by the Town Clerk, pursuant to the requirements of, and payable to, the New York State Division of Criminal Justice Services, which amount shall be in addition to the processing fees stated herein, for such investigation of the applicant as is deemed necessary or advisable for the protection of the public good and welfare.
  - (b) The New York State Division of Criminal Justice Services will return such criminal history record information as may exist in its files or a statement that no such relevant information exists, such record to be filed with the Town Clerk. The Town Clerk shall review any information disseminated by the Division of Criminal Justice Services.
  - (c) The Town Clerk may waive the requirement for new fingerprints for each renewal period, unless the license issued under the provisions of this chapter has lapsed for a period of time in excess of one year.

C. The Town Clerk shall refer the application to the Department of Public Safety, excluding any fingerprint information, for review with regard to the fitness or desirability of the applicant. The Town Clerk shall not forward any criminal history record information to the Department of Public Safety.

**§ 254-5. Review of application; hearing: records.**

- A. If the application should disclose that the applicant has been convicted of a felony, misdemeanor or other criminal offense, or that the applicant is otherwise unfit or undesirable on moral grounds, the Town Clerk shall apply the standards enumerated in Article 23-A of the Correction Law of the State of New York in considering the issuance or denial of a license. The Town Clerk shall notify the applicant if the application is denied.
- B. If the application should disclose that it does not meet any of the substantive provisions of this chapter, the Town Clerk shall notify the applicant that his application is disapproved, and no license will be issued on the application.
- C. Where the Town Clerk refuses a license, an applicant may apply to the Town Board. After a public hearing, the Town Board may grant or refuse said license by resolution.
- D. The Town Clerk shall keep a record of all licenses issued.

**§ 254-6. Fees; issuance of license.**

- A. The fee for each peddler's license for each person proposing to peddle, whether on foot or from a licensed vehicle, shall be set, and changed as needed, by resolution of the Southampton Town Board. A copy of the fee schedule is on file with the Town Clerk's office.
- B. The fee for each registered vehicle to be used for peddling purposes shall be set, and changed as needed, by resolution of the Southampton Town Board. A copy of the fee schedule is on file with the Town Clerk's office.
- C. The annual fee herein provided for shall be assessed on a calendar-year basis, and all licenses shall expire on the 31st day of December immediately following the date of issuance. There shall be no reduction in fees for fractional parts of the year.
- D. Upon approval of an application, the Town Clerk shall endorse on the application his or her approval and, upon payment of the prescribed fees, issue a license to the applicant. The license shall contain the following information:
  - (1) The signature of the Town Clerk and the Town Seal.
  - (2) The name, address and have affixed thereto a photograph of the licensee.
  - (3) The type of license issued.
  - (4) A description of the goods to be sold.
  - (5) Where a license is issued for the sale of goods other than food products, such license shall be stamped "not valid for food sale."
  - (6) The date of issuance of the license.
  - (7) The date of expiration of the license.
  - (8) The license number and other identifying description of any vehicle used by the licensee.

**§ 254-7. Vehicle license card.**

For each vehicle licensed under this chapter, the Town Clerk shall issue a license card which shall bear the word "peddler," the number of the license and the calendar year for which such license is issued in figures plainly discernible. Said license card shall be attached to the lower right-hand corner of the windshield of each vehicle and shall be kept clear and readable at all times.

**§ 254-8. Display of license.**

Every peddler licensed under this chapter shall have his license in his immediate possession at all times when peddling and shall display the same upon demand of any person.

**§ 254-9. Nontransferability of license.**

No license or license card issued under the provisions of this chapter may be transferred from one person to another person or from one vehicle to another vehicle.

**§ 254-10. Regulations.**

- A. Loudspeakers and noisemaking devices. No peddler, or any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound-making device upon any street, avenue, alley, park or other public place within the Town for the purpose of attracting attention to any item of any kind or description which the licensee proposes to sell.
- B. Restricted and prohibited locations.
  - (1) No person may peddle or solicit in any congested place or area when or where such activity may impede, endanger or inconvenience the public or add to the congestion of such place or area. For the purposes of this section, the judgment of any peace officer, code enforcement officer of the Town of Southampton or police officer, exercised in good faith, shall be deemed conclusive as to the existence of congestion and as to whether the public is impeded, endangered or inconvenienced.
  - (2) In the interest of public safety and due to traffic hazards caused by stopping of motor vehicles and traffic congestion on certain roads in the Town of Southampton, no person shall park any vehicle, cart, wagon or trailer upon any of the following roads, roadway right-of-way, or any portion of a lot immediately adjacent to said road:

(a) From May 15 to September 15:

[1] (Reserved)

(b) All year:

[1] County Road 39: from the intersection of Sunrise Highway (State Route 27) to County Road 39A.

[2] County Road 39A: from the intersection of County Road 39 to Montauk Highway (State Route 27).

[3] Montauk Highway (State Route 27): from the intersection of County Road 39A to the eastern boundary of Southampton Town at Wainscott. [See also § 254-10B(3) herein].

(3) No peddler shall occupy any part of a state highway for the purpose of peddling for so long as the same is governed and regulated by state law [Vehicle and Traffic Law, § 1157, Subdivision (c), and § 1800].

(4) It shall be unlawful for any person to peddle within 500 feet of any property on which a church, schoolhouse or schoolgrounds are located.

(5) It shall be unlawful for any person to peddle within Town-owned parks and recreation areas unless said individual has been issued a license by or has entered into a facility-use agreement with the Town of Southampton Department of Parks and Recreation.

C. Use of signs and displays.

(1) It shall be lawful for peddlers to use signs which are painted on or attached to a peddler's vehicle, provided that the same do not exceed the dimensions of the vehicle on which they are placed. Such permitted signs shall be exempt from the provisions of the sign regulations of the Town Code, §§ 330-85 through 330-91. The use of movable, portable and freestanding signs by peddlers is prohibited.

(2) No peddler shall display merchandise or goods for sale other than on his person in or on the vehicle licensed pursuant to this section.

(3) Only one awning and/or umbrella which is mounted on a vehicle licensed pursuant to this section is permitted per vehicle.

D. Size, placement and removal of vehicles. No vehicle, cart, wagon or trailer or combination thereof which exceeds 28 feet in total length shall be used by any peddler.

E. Stationary sales prohibited. It shall be unlawful for any person engaged in peddling, whether or not a vehicle is used to peddle, to stand or remain stationary at any location for more than 30 minutes. For the purposes of this subsection, a "location" shall be all locations within a radius of 1,500 feet of the site at which a peddler (or vehicle) is actually situated. For the purposes of this chapter, the judgment of any peace officer, code enforcement officer of the Town of Southampton or police officer, exercised in good faith, shall be deemed conclusive. This subsection shall not apply to individuals exempted by § 254-11B of this chapter.

F. It shall be unlawful for any person to enter upon private or public property for the purpose of peddling before sunrise of any day or after sunset of any day.

**§ 254-11. Exemptions. [Amended 5-10-2005 by L.L. No. 19-2005]**

A. The provisions of § 254-6A and B of this chapter shall not apply to any honorably discharged veteran of the Armed Services of the United States who has obtained a veteran's license from the Suffolk County Clerk to hawk, peddle, vend or solicit trade in pursuance of law. Where a duly licensed veteran uses a vehicle in his trade, one such vehicle shall be included without fee in the cost of the peddler's license issued to such veteran. Each additional vehicle used by such veteran must be licensed pursuant to this section, and no exemption shall apply with respect to the additional vehicle license fee provided in § 254-6B of this chapter. Where a peddler's license or vehicle license is issued to a licensed veteran, the Town Clerk shall issue a licensed vehicle license card similar to that prescribed in §§ 254-6D and 254-7 with the addition of the word "veteran" on the license or decal. A vehicle license decal will and shall be issued only if the vehicle is registered in the name of and operated by the veteran.

B. The following shall be exempt from the provisions of this chapter:

(1) Charitable or other tax exempt organizations or persons in accordance with the provisions of § 401 of the Internal Revenue Code and/or § 1116 of the New York State Tax Law. All such organizations shall first register with the Town Clerk prior to conducting any peddling activities within the Town of Southampton.

(2) Persons engaged in the distribution of a newspaper published at stated intervals for the purpose of conveying news to its subscribers, buyers or readers.

(3) Any person who keeps, maintains or operates a store, market, shop or similar permanent place of business

and who operates, runs or uses a cart, wagon, truck or other vehicle for the purpose of making delivery of goods, wares, merchandise or provisions bought or ordered at such place of business or any person solely engaged in the business of delivering such goods, wares, merchandise or provisions for or on behalf of one or more such permanent place of business.

(4) Persons maintaining a regular scheduled delivery route for the delivery of goods which had been previously ordered.

(5) Persons peddling meats, fish, fruit and farm produce, raised or produced by them.

C. The exemptions provided herein shall not be construed as an exemption from any state law which regulates the activities enumerated in this section.

#### **§ 254-12. Revocation of license; notice.**

A. Licenses issued under the provisions of this chapter may be revoked by the Town Board of the Town of Southampton, by resolution, after notice and hearing for any of the following causes:

(1) Fraud, misrepresentation or false statement contained in the application for license.

(2) Fraud, misrepresentation or false statement made in the course of carrying on his business as a peddler.

(3) Any violation of this chapter.

(4) Conviction of a felony or a misdemeanor, which misdemeanor, in the judgment of the Town Board, renders the applicant unfit or undesirable under the standards of Article 23-A of the Correction Law of the State of New York.

(5) Conducting the business of peddling in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(6) Upon the recommendation of the Suffolk County Department of Health that the sale of food or food products or other edibles is being conducted under sanitary conditions or that there is a violation of law, regulation, code or ordinance cited by the Suffolk County Department of Health.

B. Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for the hearing.

#### **§ 254-13. (Reserved)**

#### **§ 254-14. Penalties for offenses.**

A first violation of this chapter, which is hereby declared to be an offense, shall be punishable by a fine of not less than \$150 nor more than \$350, or imprisonment for a period not to exceed 15 days, or both. A second conviction shall be punishable by a fine of not less than \$350 nor more than \$500, or imprisonment for a period not to exceed 15 days, or both. A third conviction shall be punishable by a fine of not less than \$500 nor more than \$750, or imprisonment for a period not to exceed 15 days, or both. Each day's continued violation shall constitute a separate additional offense.

## **EXHIBIT 10**



U.S. Immigration  
and Customs  
Enforcement

Protecting National Security and Upholding Public Safety

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## Partners

### Basic Pilot Program

DHS's Basic Pilot Program is administered by U.S. Citizenship and Immigration Services (USCIS). Employers utilize this employee authorization verification program to verify newly hired employees. The Internet-based system is available in all 50 states and is free to employers. It provides an automated link to Social Security Administration database and immigration records. For more information on this program and other USCIS verification programs, visit the USCIS Web site: <https://www.vis-dhs.com/EmployerRegistration/>

Last Modified: Monday, June 25, 2007 Tuesday, June 6, 2006