Undocumented and Working: Reconciling the Disconnect Between U.S. Immigration Policy and Employment Benefits Available to Undocumented Workers

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Introduction

The United States is a nation of immigrants and a nation of laws. Early in our nation’s history, large waves of immigrants into the United States met substantial resistance which ultimately led to the passage of a series of laws aimed at curbing immigration. More recently, in the wake of terrorist attacks, a renewed awareness of the danger of unmonitored and unauthorized immigration has emerged. Today, securing the United States’ borders and regulating immigration is a national security concern that commands the attention of

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   In the decade before September 11, 2001, border security—encompassing travel, entry and immigration—was not seen as a national security matter . . . . The immigration system as a whole was widely viewed as increasingly dysfunctional and badly in need of reform. In national security circles, however, only smuggling of weapons of mass destruction carried weight, not the entry of terrorists who might use such weapons . . . .

Id.
reformers in Congress and advocates on all sides of the political spectrum.  

The borders of the United States remain porous and the immigration system fails to adequately monitor migrants. Currently, an estimated 11–12 million undocumented individuals live in the United States. As of March 2004, an estimated 6.3 million undocumented immigrants worked illegally in the United States, constituting an estimated 4.3% of the civilian labor force at that time. The very existence of an illegal workforce of this magnitude brings with it serious policy implications for federal legislators—who must address immigration concerns—and state legislatures—which must address accompanying employment issues. Employers must then grapple with the implementation of such laws, which often have contradictory messages and do not adequately meet the domestic labor needs of employers.

Employment law in the United States developed to benefit legal United States workers, but the changing demographic of the American workforce has left state legislatures and state courts struggling to determine how to apply state labor laws to undocumented immigrants. Although employment law is generally considered within the purview of the states, the "[p]ower to regulate immigration is un-

7. The term "undocumented immigrant" used throughout this Comment refers to individuals who are not authorized to live in the United States, either because they entered the country illegally or overstayed their visa.
9. The term "legal United States worker" used throughout this Comment applies to both citizens and legal aliens authorized to work in the United States.
11. For example, in Steven L. Willborn et al., Employment Law Cases and Materials (Matthew Bender & Co. eds., 2002), the authors note that due to the Supreme Court's early twentieth-century interpretation of the Commerce Clause, Congress was limited in its ability to pass comprehensive federal workers' compensation legislation. Id. at 900.
questionably exclusively a federal power." The nexus between employment and immigration law, particularly in the area of workers' compensation benefits currently provided to undocumented immigrant workers, generates contradicting messages regarding our nation's immigration policies. In order to eliminate this conflict, Congress should enact comprehensive immigration reform legislation that expressly precludes states from providing workers' compensation benefits to undocumented immigrants.

Federal comprehensive immigration reform legislation is needed to address the current undocumented population and enhance border security. Congress can address these issues by providing a path to earned citizenship and creating new temporary worker programs for future migrants. Such reform is essential to address the current undocumented population, meet the labor needs of United States businesses, and improve national security.

The purpose of this Comment is to explore the issue of workers' compensation benefits provided to undocumented workers. Several states now expressly include undocumented workers in the definition of "worker," for the purposes of workers' compensation. Many

("[H]ence [ ] workers' compensation statutes dealing with most private-sector employees had to be enacted at the state level.").

14. Id. "Between 2002 and 2012, according to the Bureau of Labor Statistics, the U.S. economy is expected to create some 56 million new jobs, half of which will require no more than a high school education. More than 75 million baby boomers will retire in that period. And declining native-born fertility rates will be approaching replacement level." Id.
15. Id. National border security remains an important issue in the United States: Not only is such reform the only way to restore the rule of law; it is also one of the best ways to improve border security. As one veteran Border Patrol agent in Arizona put it, "What if another 9/11 happens, and it happens on my watch? What if the bastards come across here in Arizona and I don't catch them because I'm so busy chasing your next busboy or my next gardener that I don't have time to do my real job—catching terrorists?" The government needs to take the busboys and the gardeners out of the equation by giving them a legal way to enter the country, so that the Border Patrol can focus on the smugglers and the terrorists who pose a genuine threat.

Id. The justification for comprehensive immigration reform legislation, its scope, and necessary components beyond workers' compensation benefits are outside the scope of this Comment.

16. In 2000, for example, the State of Virginia amended its Workers' Compensation Act to include undocumented immigrants, defining an "employee" as "[e]very person, including aliens and minors, in the service of another under any contract of hire or apprenticeship, written or implied, whether lawfully or unlawfully employed." Va. Code Ann. § 65.2-101 (2007); see also ARIZ. REV. STAT. ANN. § 23-901(5)(b) (1995); COLO. REV. STAT.
courts in states that lack such explicit definitions have interpreted their respective state workers' compensation statutes to apply to all workers, whether documented or undocumented.\(^1\) Other state courts have determined that while some workers' compensation benefits—such as reimbursement for medical expenses—should be made available to undocumented workers, other workers' compensation benefits—such as vocational rehabilitation—should not be available.\(^2\) Only one state has explicitly excluded undocumented workers from workers' compensation coverage altogether.\(^3\)

Part I of this Comment introduces the Immigration Reform and Control Act of 1986,\(^4\) which serves as the backbone for the United States' policy on employment of undocumented immigrants. In addition, Part I outlines the fundamentals of state workers' compensation law and the availability of workers' compensation to undocumented immigrants generally. Part II analyzes the United States Supreme Court decision in Hoffman Plastic Compounds, Inc. v. National Labor Relations Board.\(^5\) In Hoffman, the Court held that employers providing backpay as a remedy for illegal firing under the National Labor Relations Act to undocumented immigrant workers conflicts with federal immigration policy.\(^6\) Part II also explores Hoffman as applied to undocumented immigrants' workers' compensation benefits and argues that given the parallels between workers' compensation and backpay,


\(^3\) 19 Wyoming is currently the only state that statutorily excludes undocumented immigrants from coverage under its state workers' compensation scheme. See Wyo. Stat. Ann. § 27-14-102(a)(vii) (2007). According to the statute: "[e]mployee" means . . . aliens authorized to work by the United States department of justice, office of citizenship and immigration services, and aliens whom the employer reasonably believes, at the date of hire and the date of injury based upon documentation in the employer's possession, to be authorized to work by the United States department of justice, office of citizenship and immigration services.

\(^4\) Id.


\(^7\) 22. Id. at 140, 143-44.
in the absence of congressional action, state courts should adopt the Supreme Court's reasoning in *Hoffman* and apply it to the context of workers' compensation. Part III of this Comment proposes that as a component of comprehensive immigration reform legislation, Congress should enact legislation expressly stating that federal law prohibits states from providing workers' compensation benefits to undocumented immigrants.

I. Background

In order to analyze the application of workers' compensation benefits to undocumented immigrants, two primary statutory schemes must be considered: the federal immigration laws and state workers' compensation statutes. This section analyzes the federal Immigration Reform and Control Act\(^2\) ("IRCA"), which serves as the cornerstone of federal immigration policy regarding employment of undocumented immigrants.\(^2\) This section also discusses the general framework of state workers' compensation programs and the current availability of workers' compensation benefits to undocumented immigrants.

A. The Immigration Reform and Control Act of 1986

President Reagan signed the IRCA into law in November 1986, when a record level of undocumented workers—estimated at 3.1 million—worked in the United States.\(^2\) Congress sought to achieve its goal to end illegal immigration by providing a one-time amnesty, or regularization of status to the existing undocumented population, while establishing employer sanctions to make it harder for employers to hire or employ undocumented workers in the future.\(^2\) In doing so,

\(^2\) *Hoffman*, 535 U.S. at 147 ("Congress enacted IRCA, a comprehensive scheme prohibiting the employment of illegal aliens in the United States.").
\(^2\) Id. at 2–4; see also President Ronald Reagan, Statement on the Signing of the Immigration Reform and Control Act of 1986 (Nov. 6, 1986) (on file with the Reagan archives at the University of Texas), available at http://www.reagan.utexas.edu/archives/speeches/1986/110686b.htm. President Reagan stated: The employer sanctions program is the keystone and major element. It will remove the incentive for illegal immigration by eliminating the job opportunities, which draw illegal aliens here. We have consistently supported a legalization program which is both generous to the alien and fair to the countless thousands of people throughout the world who seek legally to come to America. The legaliza-
the "IRCA 'forcefully' made combating the employment of illegal aliens central to '[t]he policy of immigration law.'"27

The IRCA passed because Congress believed that the principal reason for illegal migration to the United States was the availability of jobs.28 Therefore, the IRCA focuses on enforcement at the workplace.29 For example, despite the fact that over 2.7 million previously undocumented immigrants legalized their status through the IRCA—constituting the majority of the undocumented30 population to receive permanent residency in the United States as a result of the IRCA31—the law explicitly states that it is illegal to knowingly hire and employ an undocumented worker. According to the House Report accompanying the IRCA, it was enacted to "close the back door on illegal immigration so that the front door on legal immigration may remain open."32 Furthermore, the House Report states that "[t]he principal means of closing the back door, or curtailing future illegal immigration, is through employer sanctions."33 The Act holds employers accountable for hiring undocumented workers by establishing a system of employment verification.34 This system requires employers to verify the identity and work eligibility of each potential employee

27. Hoffmann, 535 U.S. at 147.
28. H.R. REP. No. 99-682(I), at 45–46 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5650 ("Employment is the magnet that attracts aliens here illegally or, in the case of non-immigrants, leads them to accept employment in violation of their status.").
29. Id. at 46 ("Employers will be deterred by the penalties in this legislation from hiring unauthorized aliens and this, in turn, will deter aliens from entering illegally or violating their status in the search of employment.").
30. The IRCA defines an undocumented immigrant, or an "unauthorized alien," as an alien who is not "lawfully admitted for permanent residence, or . . . authorized to be so employed." 8 U.S.C. § 1324a(h)(3) (2000).
31. See Cooper & O'Neil, supra note 25, at 3.
33. Id.
34. Id. at 47 ("Since most undocumented aliens enter this country to find jobs, the Committee believes it is essential to require employers to share the responsibility to address this serious problem.").
prior to hiring\textsuperscript{35} and employees whose identification cannot be verified cannot be legally hired.\textsuperscript{36}

Under the IRCA framework, an employer who knowingly hires undocumented workers or fails to comply with the employment verification system is liable for civil penalties\textsuperscript{37} and criminal sanctions.\textsuperscript{38} The IRCA also establishes stiff civil and criminal penalties on immigrants who attempt to circumvent the employment verification system by providing false identification to an employer.\textsuperscript{39}

Since the enactment of the IRCA, Congress has passed additional measures to further secure the borders of the United States.\textsuperscript{40} By formally stating that it is illegal to knowingly hire undocumented workers, the IRCA solidified this prohibition as the nation's principal policy with respect to illegal immigration.\textsuperscript{41}

B. Workers' Compensation

1. An Overview of Workers' Compensation Systems

Workers' compensation emerged late in the Industrial Revolution, after a period of "increasing industrial injuries and decreasing remedies,"\textsuperscript{42} as a means for employees to recover compensation for work-related injuries.\textsuperscript{43} The no-fault system provides workers with a means of obtaining compensation for injuries, including those for which they are unlikely to recover through litigation, while providing


\textsuperscript{36} 8 U.S.C. § 1324a(a)(1).

\textsuperscript{37} 8 U.S.C. § 1324a(e)(4)(A) (c) (civil penalties range from $250 to $10,000).

\textsuperscript{38} 8 U.S.C. § 1324a(f)(1) (criminal penalties include fines of up to $3,000 and six months in prison).

\textsuperscript{39} 8 U.S.C. §§ 1324a(e)–(f).


\textsuperscript{42} ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS COMPENSATION § 2.07 (2007).

\textsuperscript{43} Id. § 1–1 ("Workers' compensation is a mechanism for providing cash-wage benefits and medical care to victims of work-connected injuries, and for placing the cost of these injuries ultimately on the consumer, through the medium of insurance, whose premiums are passed on in the cost of the product.").
employers with the benefit of limited liability. Injuries sustained at work, particularly in the industrial sectors, are inevitable, and the cost of such injuries should not be shouldered entirely by the injured worker and his or her family. Generally, benefits include “cash-wage benefits, usually around one-half to two-thirds of the employee’s average weekly wage, and hospital, medical and rehabilitation expenses.”

Similar to a tort system, the “operative mechanism [of workers’ compensation] is unilateral employer liability, with no contribution by the employee or the state.” However, “unlike tort, the right to benefits and amount of benefits are based largely on a social theory of providing support and preventing destitution, rather than settling accounts between two individuals according to their personal deserts or blame.” In contrast to the tort system, workers’ compensation “does not pretend to restore to the claimant what he or she has lost; it gives claimant a sum which, added to his or her remaining earning ability, if any, will presumably enable claimant to exist without being a burden to others.”

Under most state systems, employers are required to obtain some form of insurance to cover themselves for their employees’ work-related injuries. Though the financing of workers’ compensation varies from state to state, employers typically purchase insurance through a private insurance company, purchase state insurance, or self-insure to cover themselves for workers’ compensation injuries. Depending on the extent of the injury, benefits paid out to injured workers may include health care for covered injuries, disability benefits for temporary, partial, or permanent disabilities, or death benefits. Wage-

44. Willborn et al., supra note 11, at 900. Furthermore: 
Workers’ compensation is fundamentally different from strict tort liability in its basic test of liability, which is work connection rather than fault; in its underlying philosophy of social protection rather than righting a wrong; in the nature of the injuries compensated; in the elements of damage; in the defenses available; in the amount of compensation; in the ownership of the award; and in the significance of insurance.

Larson & Larson, supra note 42, § 1.01.

45. Willborn et al., supra note 11, at 893–94.

46. Larson & Larson, supra note 42, § 1.01.

47. Id. § 1.02.

48. Id.

49. Id. § 1.03[5].

50. Generally, “the employer is required to secure its liability through private insurance, state-fund insurance in some states, or ‘self-insurance.’” Id. § 1.01.

51. Willborn et al., supra note 11, at 906.

52. Id. at 903–04.

53. Id. at 904–06.
loss benefits are typically “one-half to two-thirds of the employee’s average weekly wage,” although most states also set a maximum payable per week. Most states provide a maximum and a minimum dollar amount for benefits available under the system.

Unless an employee is covered by a federal act such as the Federal Employees’ Compensation Act or the Longshore and Harbor Workers’ Compensation Act, individual state laws govern workers’ compensation for most non-federal workers. In all, an estimated 97% of employees are covered, although the proportion of workers covered varies significantly among the states. Some states require employers to cover all employees who are eligible for coverage, while Texas makes workers’ compensation entirely optional for employers. Groups that are commonly not covered by workers’ compensation include domestic employees, agricultural workers, employees of small companies, and “casual workers.”

There are certain conditions an employee must meet to be qualified for workers’ compensation benefits. As a threshold issue, a worker must be an employee; independent contractors are not qualified for workers’ compensation benefits. A majority of states adopt a four-part test to determine which employee injuries may be covered under state workers’ compensation programs. In most states, an employee must have suffered an accidental personal injury arising out of, and in

54. Larson & Larson, supra note 42, § 1.01.
55. Id. § 1.03[5].
56. See id. States frequently tie the weekly maximum to a sliding scale based on the state’s average weekly wage earned, while other states tie the maximum to cost of living adjustments. Id.
59. See Willborn et al., supra note 11, at 900.
60. Id.
61. Larson & Larson, supra note 42, § 2.08. In Vermont, 100 percent of employees are covered, whereas in Texas and Louisiana approximately 72 percent of employees are covered. Id.
62. Willborn et al., supra note 11, at 903.
63. Domestic employees are excluded in approximately half of the states and may obtain only limited coverage in other states. Larson & Larson, supra note 42, § 2.08.
64. Id.
65. Id. § 1.01.
66. Willborn et al., supra note 11, at 903.
the course of, employment or an occupational disease. Many states list occupational diseases that are covered under individual programs, however, recovery is often limited subject to statutes of limitations. The requirement that the injury “arise out of employment” includes only those injuries that are job-related. Additionally, the “in the course of employment” requirement typically includes only those injuries that occur at an employee’s place of employment.

States vary on when and how initial workers’ compensation payments are made. Some states require employers to pay benefits immediately, while others require payment only upon finalization of a compensation agreement between the employer and employee. In most states, however, this process is administered by a state workers’ compensation agency that mediates any disputes between a worker-claimant and the employer’s insurance company.

Across the country, state workers’ compensation commissions or insurance companies index the rates employers pay for workers’ compensation insurance based upon data regarding employee injuries at similar companies in the same sector. In the case of some larger employers, the workers’ compensation premiums are determined through experience rating. Through experience rating, employers are assigned a general classification based on their industry and vary depending on the state’s experience in paying benefits for the particular employer classification. Larger firms may pay based on their own experience, relative to other employers in their same classification. This process provides an incentive to larger employers and entire sectors to improve workplace safety in order to reduce their workers’ compensation insurance premiums.

67. Id.
68. Id. at 903–04. It is worth noting that “some courts have interpreted the general category of occupational diseases to only cover those diseases that are peculiar to or characteristic of the occupation of the employee seeking coverage.” Id. at 904.
69. Id. at 903.
70. Id.
71. Id. at 907.
72. Id.
73. Id. at 907–08.
74. Id. at 907.
75. Id.
76. Id.
77. Id.
2. Undocumented Immigrant Workers' Access to Workers’ Compensation Benefits

Legal foreign workers, those authorized to work in the United States, are constitutionally required to be treated as a United States worker for the purposes of workers’ compensation. The Supreme Court subjects state laws making classifications based on alienage to a strict scrutiny test, whereby states must demonstrate that the classification meets a compelling state interest. Unlike states, the Supreme Court evaluates federal classifications based on alienage on a lower level of scrutiny than state classifications. In some cases, however, the Constitution does not afford the same protection to undocumented immigrant workers that it provides to legal aliens. This Comment argues that states should exclude undocumented workers from workers' compensation because providing such benefits to undocumented workers contravenes federal immigration policy under the IRCA.

Currently, however, states take different approaches on the availability of workers' compensation benefits for undocumented immigrants. Some states, such as North Carolina and Virginia, expressly include undocumented immigrants in their workers' compensation statutes. These states cover aliens under a statute, whether they are legally authorized to work or not. Some states, such as Michigan, include the term “alien” in their statute, without specifying whether the statute covers both legal and illegal aliens. In Michigan, courts have interpreted the term “alien” in the statute to cover both legal

78. Larson & Larson, supra note 42, § 66.03.

79. See Graham v. Richardson, 403 U.S. 365, 372-73 (1971) (holding that state statutes that deny resident aliens access to welfare benefits violate the Equal Protection Clause of the Fourteenth Amendment).

80. See Mathews v. Diaz, 426 U.S. 67, 87 (1976) (holding that a federal law restricting Medicare benefits to legal permanent resident aliens who reside in the United States for a minimum of five years does not violate the Due Process Clause of the Fifth Amendment).

81. Id.


and illegal workers. Still, in other states, such as Maryland, Connecticut, and New Jersey, workers’ compensation statutes are completely silent on the application of the statute to undocumented workers and courts have interpreted their respective workers’ compensation statutes to include undocumented immigrants.

Prior to a 2000 amendment to its statute, the Virginia Supreme Court held that Virginia’s workers’ compensation statute excluded undocumented immigrants, despite the fact that the statute was silent on the inclusion of undocumented immigrants in the program. In reaching its decision in *Granados v. Windson Development Corp.*, the Virginia Supreme Court relied on the fact that an undocumented worker-claimant was an illegal alien barred from employment under IRCA. The court stated that he “was not in the service of [the employer] under any contract of hire” and was therefore “not eligible to receive compensation benefits as an ‘employee’ under the Act because the purported contract of hire was void and unenforceable.” However, in response to the *Granados* decision, the Virginia state legislature amended the workers’ compensation statute to expressly include undocumented immigrants.

In contrast, Wyoming expressly excludes undocumented immigrants from its workers’ compensation system. Wyoming’s statute states that for the purposes of state workers’ compensation, an “employee” includes “aliens authorized to work by the United States [D]epartment of [J]ustice . . . and aliens whom the employer reasonably believes, at the date of hire and the date of injury based upon documentation in the employer’s possession, to be authorized to work by the United States [D]epartment of [J]ustice.” In *Felix v. Wyoming Workers’ Safety and Compensation Division*, the Wyoming Supreme

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88. Id.

89. Id. at 293.

90. Id.

91. Id.


95. 986 P.2d 161 (Wyo. 1999).
Court held that this statutory definition—linking an alien's eligibility as an "employee," for the purposes of workers' compensation, to the alien's authorization by the Department of Justice to work in the United States—barred undocumented immigrants from receiving workers' compensation.\(^\text{96}\)

States are split on what type of workers' compensation benefits may be afforded to undocumented immigrants. Unlike medical coverage and wage-loss compensation, recent Nevada and California decisions demonstrate that courts are more skeptical about rewarding vocational rehabilitation benefits to undocumented immigrants after a workplace injury.\(^\text{97}\) For example, in *Tarango v. State Industrial Insurance System,*\(^\text{98}\) the Supreme Court of Nevada held that the IRCA prohibits an employer from providing vocational rehabilitation services to undocumented immigrants.\(^\text{99}\) The court reasoned that vocational rehabilitation services are designed to return the injured employee to the workplace, which would be illegal given the prohibition against hiring undocumented workers.\(^\text{100}\) The court further concluded that "because of the federal government's plenary power in the area of alienage, any legislation created by Congress—such as the IRCA—preempts Nevada's workers' compensation laws as those laws have an effect on aliens in [Nevada]."\(^\text{101}\)

A California court of appeal took a similar position in *Del Taco v. Workers' Compensation Appeals Board,*\(^\text{102}\) holding that "an injured employee is not entitled to vocational rehabilitation benefits where the employee is unable to return to work solely because of immigration status."\(^\text{103}\) In *Del Taco,* the employer appealed a decision of the Workers' Compensation Appeals Board that required it to provide vocational rehabilitation services in Mexico to a former employee who had been injured but was undocumented.\(^\text{104}\) The court noted that "[s]imple fairness dictates that Del Taco should not be penalized for obeying the law and [the] worker should not be rewarded for disobeying the law."\(^\text{105}\) Similar to the court in *Tarango,* the court in *Del

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96. *Id.*
98. 25 P.3d 175.
99. *Id.* at 183.
100. *Id.* at 180.
101. *Id.* at 179.
102. 79 Cal. App. 4th 1437.
103. *Id.* at 1439 (emphasis added).
104. *Id.* at 1441.
105. *Id.* at 1442.
Taco only applied this logic to vocational rehabilitation and not to other workers' compensation benefits, such as medical coverage or temporary disability payments, which it found were covered by California's workers' compensation statute.  

In contrast, the Court of Appeals of North Carolina found in Gayton v. Gage Carolina Metals Inc. that vocational rehabilitation services could be lawfully provided to undocumented workers under North Carolina's workers' compensation statute. In that case, the employer provided the injured worker with medical coverage for injuries sustained at work and later hired a specialist to re-train the worker when his doctor concluded that he could not return to his previous work. When the specialist attempted to help the worker obtain temporary employment, it was discovered that the worker was undocumented and his original employer attempted to discontinue the vocational rehabilitation services; however, the request to discontinue services was denied by the North Carolina Industrial Commission. The employer argued that requiring companies to provide vocational rehabilitation services contravened the IRCA; however, the Court of Appeals of North Carolina disagreed, holding that there are types of vocational rehabilitation that would not contravene federal immigration law.

Workers' compensation statutes and judicial interpretation of state statutes are far from uniform. Of great concern is the disconnect between some state policies and the national goal of discouraging illegal immigration as outlined in the IRCA. The disparity of state workers' compensation laws among states and with federal immigration policy is problematic for employers, national immigration policy, and the security of the United States. The varied state approaches on undocumented immigrant workers' compensation benefits demands a federal clarification and preemption of the IRCA framework.

106. Id. at 1439, 1441.
108. Id. at 873–74.
109. Id. at 871–72.
110. Id. at 872.
111. Id. at 872–73.
II. Hoffman and Its Implications for Workers’ Compensation

The United States Supreme Court’s decision in Hoffman Plastic Compounds, Inc. v. National Labor Relations Board113 provides a useful analogy with which to examine the disconnect between federal immigration policies and the decision of some states to provide workers’ compensation benefits to undocumented immigrants. The Court’s decision in Hoffman clarified that employers providing backpay to undocumented immigrants conflicted with federal immigration policy under the IRCA.114 Through this decision, the Court arguably provides the necessary clarification: federal law under the IRCA preempts states’ ability to provide workers’ compensation to undocumented immigrants.


On March 27, 2002, the Supreme Court decided Hoffman Plastic Compounds, Inc. v. National Labor Relations Board,115 holding that the National Labor Relations Board’s decision to award undocumented immigrant workers backpay for improper termination was “foreclosed by federal immigration policy, as expressed by Congress in the Immigration Reform and Control Act of 1986 (IRCA).”116

In that case, the employer laid off several employees as retribution for their participation in union activities.117 Several years later the National Labor Relations Board (“Board”) concluded that the layoff was unlawful under the National Labor Relations Act (“NLRA”),118 which prohibits employers from terminating employees in retribution for legal union organizing activities.119 At a hearing on the case, members of the Board discovered that one of the fired employees was an undocumented worker.120 The Board concluded that although the firing was unlawful, the Board could not award backpay or reinstate the undocumented employee because doing so would conflict with federal immigration policies under the IRCA.121

114. Id. at 140, 151.
115. Id. at 137.
116. Id. at 140.
117. Id.
118. Id.
120. Hoffman, 535 U.S. at 141.
121. Id.
Four years later, however, the Board reversed itself, finding that "the most effective way to accommodate and further the immigration policies embodied in [the IRCA] is to provide the protections and remedies of the [NLRA] to undocumented workers in the same manner as to other employees." The District of Columbia Court of Appeals denied Hoffman’s petition for review, later reheard the case en banc, but again denied the petition and enforced the Board’s order.

In addressing whether backpay may be awarded to undocumented immigrants (the central issue in Hoffman), the Supreme Court overruled the Board’s decision and came to the opposite conclusion. The Court analyzed the IRCA and concluded that after its passage, it is now impossible for an undocumented alien to obtain employment in the United States without some party directly contravening explicit congressional policies. Either the undocumented alien tenders fraudulent identification, which subverts the cornerstone of IRCA’s enforcement mechanism, or the employer knowingly hires the undocumented alien in direct contradiction of its IRCA obligations.

The Court reasoned that awarding backpay to undocumented immigrants “would unduly trench upon explicit statutory prohibitions critical to federal immigration policy.” Further, the Court concluded that such awards to undocumented immigrants “would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations.”

Thus, the Court in Hoffman recognized that providing illegal workers with work-related benefits—including backpay—contravenes federal immigration policy.

B. The Impact of Hoffman on Workers’ Compensation Benefits for Undocumented Immigrants

Following the Hoffman decision, a number of commentators speculated on the impact it would have for undocumented immigrants'
access to remedies under laws other than the NLRA. Increasingly, employers and their insurance companies use *Hoffman* to argue that the decision precludes states from providing workers' compensation benefits. For instance, in *Design Kitchen and Baths v. Lagos* an employer and its insurance company used *Hoffman* to argue that an injured employee should not be covered under the state workers' compensation statute. The employer argued that because the employee was undocumented the medical benefits and lost wages that the worker sought "could not have legally earned at [the] job, which [itself] was borne of a fraudulent act." Therefore, the employer concluded that providing workers' compensation benefits to a worker who is undocumented runs counter to the IRCA under *Hoffman*.

Courts considering the issue have concluded that federal law does not preclude states from providing undocumented workers access to most workers' compensation benefits. In *Design Kitchen and Baths*, the Court of Appeals of Maryland first noted the case was different from *Hoffman* in several ways: it involved a workers' compensation claim, as opposed to a firing for union organizing; the employee in *Design Kitchen and Baths* had actually performed his duties when injured, whereas the employee in *Hoffman* was awarded backpay for never working; and finally, the employee in *Hoffman* used false identification in applying for his job, unlike the employee before the court, who simply left the space requesting his social security information blank. The court observed that state courts, which addressed the applicability of the IRCA to similar state workers' compensation statutes, similarly held that covering undocumented workers under state workers' compensation programs did not conflict with the IRCA. The court noted that the state courts which have considered the appli-
cation of Hoffman to the workers’ compensation context have rejected its application.\textsuperscript{136} Addressing the question of federal preemption of granting workers’ compensation to undocumented immigrants, the court outlined opinions by courts in other states that neither expressly nor impliedly preempt states’ ability to provide coverage for undocumented workers.\textsuperscript{137}

In Correa \textit{v. Waymouth Farms, Inc.},\textsuperscript{138} an employer, Waymouth Farms, challenged the Minnesota Workers’ Compensation Court of Appeals’ grant of temporary total disability benefits to an undocumented employee.\textsuperscript{139} Under the Minnesota workers’ compensation scheme, the “concept of temporary total disability is primarily dependent upon the employee’s ability to find and hold a job, not his physical condition.”\textsuperscript{140} Accordingly, Waymouth Farms pointed out that its former employee, Correa, could not make a diligent search for another job because the IRCA precluded him from working in the United States.\textsuperscript{141} Waymouth Farms therefore argued that the Workers’ Compensation Court of Appeals violated federal immigration policy under the IRCA when it provided Correa with temporary total disability benefits.\textsuperscript{142}

Unlike Design Kitchens and Baths, the undocumented employee in Correa had presented false identification to his employer, however, the Minnesota Supreme Court reached its holding under different reasoning than the court in Design Kitchens and Baths.\textsuperscript{143} The court concluded that because the IRCA, as written, “does not prohibit unauthorized aliens from receiving state workers’ compensation benefits,”\textsuperscript{144} it “was not intended to preclude the authority of states to award workers’ compensation benefits to unauthorized aliens.”\textsuperscript{145} Refusing to consider the policy considerations raised by Waymouth Farms, the court stated, “if policy considerations favor a different r-

\textsuperscript{136} Id. at 828.
\textsuperscript{137} Id. at 827–30.
\textsuperscript{138} 624 N.W.2d 324 (Minn. 2003).
\textsuperscript{139} Id. at 325.
\textsuperscript{140} Id. at 328.
\textsuperscript{141} Id. at 329.
\textsuperscript{142} Id. at 327.
\textsuperscript{143} See id. at 326.
\textsuperscript{144} Id. at 329.
\textsuperscript{145} Id.
suit, that determination is more properly left to the [L]egislature to make."

In his dissent from the Correa decision, Justice Gilbert disagreed with the majority and argued that the Hoffman decision should apply to the workers' compensation context. Observing that the majority's holding "ignore[d] important federal immigration requirements by creating a legal fiction of a diligent job search that is contrary to federal law," Gilbert noted that "[a] job search that can never result in legal employment fails to satisfy the Minnesota Worker's Compensation Act's diligent job search requirement." In this context, Gilbert argued, awarding Correa workers' compensation benefits "would reward him for remaining in the United States illegally and encourage him to violate the IRCA by finding further employment," which "'trivializes' the immigration laws."

Finally, and of particular interest, Gilbert pointed out that the "majority's holding elevates the rights of unauthorized aliens over those of documented employees," because "[u]nauthorized aliens released to return to work are unable to accept jobs that documented workers with similar injuries would be required to accept." Therefore, employers providing workers' compensation benefits to undocumented workers would be required to "pay benefits to unauthorized aliens that they would not have to pay to documented workers with similar injuries."

In Reinforced Earth Co. v. Workers' Compensation Appeal Board (Astudillo), a Pennsylvania Supreme Court case, an employer challenged a former employee's workers' compensation claim as a violation of public policy under the IRCA. In that case, the employee, like the employee in Hoffman, used false identification to procure his job, in violation of federal immigration laws under the IRCA. Because the Pennsylvania legislature enacted comprehensive workers' compensation legislation, the court refused to "consider an-

146. Id. at 331.
147. Id. at 332.
148. Id. at 331.
149. Id. at 332.
150. Id.
151. Id.
152. Id.
154. Id. at 104.
155. Id. at 101.
nouncing public policy with respect to the receipt of workers' compensation benefits by unauthorized aliens.\(^{156}\)

In his dissent, similar to Justice Gilbert's dissent in *Correa*, Justice Newman strenuously argued that the majority's "self-imposed caution ... is inappropriate in the present case, where Appellant bases its public policy argument on the clear Congressional mandate against employment of unauthorized aliens."\(^{157}\) He went on to state that the primary concern in the case is whether awarding workers' compensation benefits to undocumented immigrants runs "counter to federal immigration policy, to which Pennsylvania's legislative scheme should defer."\(^{158}\) After extensively discussing *Hoffman*, Justice Newman concluded that:

In effect, benefits under the [Pennsylvania workers' compensation statute] stand in the place of the employee's present earning power, which has been diminished by the work-related injury. An unauthorized alien, however, by operation of IRCA, has no legal earning power. Accordingly, I do not believe that the Pennsylvania General Assembly intended the absurd result of supplying social welfare benefits in the form of a wage and employment-benefit substitute to one whom federal law says could not lawfully obtain those wages and benefits in the first place.\(^ {159}\)

Although Justices Gilbert and Newman's line of argument, and that of a number of employers, has yet to succeed in the few state cases in which it has been attempted, it is consistent with the Supreme Court's reasoning in *Hoffman*. State courts appear unwilling to address the issue head-on and instead defer the policy question to the legislative branch or hastily dismiss *Hoffman* as inapplicable in the workers' compensation context, despite the fact that awarding workers' compensation to undocumented immigrants contradicts federal immigration policy under the IRCA.

C. An Appeal to State Courts: *Hoffman* Got it Right and State Courts Should Follow

It is the express policy of the United States that individuals who wish to migrate and work in this country must do so legally, through the "front door."\(^ {160}\) Accordingly, individuals who knowingly hire workers who are not legally authorized to work in the United States are

\(^{156}\) *Id.* at 105.

\(^{157}\) *Id.* at 109 (Newman, J., dissenting) (emphasis added).

\(^{158}\) *Id.* at 110 n.1.

\(^{159}\) *Id.* at 111.

subject to stiff civil and criminal sanctions.\textsuperscript{161} Similarly, persons who violate immigration laws and work illegally in the United States face significant penalties against future entry into and legal work authorization in the United States.\textsuperscript{162}

In support of these policies, the Supreme Court held in \textit{Hoffman} that requiring employers to provide undocumented workers with backpay violates federal immigration policy as expressed through the IRCA.\textsuperscript{163} For the very same reasons, providing undocumented immigrants with benefits under state workers' compensation statutes contradicts congressional intent and weakens the authority of federal immigration policies. In the absence of federal comprehensive immigration reform, it is upon state courts to follow the Supreme Court's decision in \textit{Hoffman}.

Since \textit{Hoffman} restricted backpay awards to individuals working in the United States in a \textit{legal} capacity, so too should cases where workers' compensation benefits are at issue. A significant portion of workers' compensation is the payment of a worker's wages, as compensation for time missed due to work-related injuries.\textsuperscript{164} When the government provides wage-loss benefits to undocumented immigrants, it compensates the undocumented worker for work that he or she would not have legally been able to perform prior to injury.

Medical expenses under workers' compensation remain an employment-based benefit. By extension, the same analysis should apply to work-loss benefits and backpay.

The availability of workers' compensation benefits to undocumented workers sends a mixed message to both employers and to undocumented immigrants. On one hand, the IRCA prohibits undocumented immigrants from working in the United States and prohibits employers from hiring them. By extending workers' compensation benefits to undocumented immigrants, however, states reward the violation of federal immigration laws, and in some instances place undocumented workers in a better position than legal workers. States that provide undocumented workers with wage-loss benefits, often tied to a worker's diligent job search,\textsuperscript{165} compensate undocu-

\begin{itemize}
\item \textsuperscript{162} \textit{See} Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 301, 110 Stat. 3009-546 (1996) (prohibiting aliens who previously violated United States immigration laws from re-entering the country for five or ten years, depending on the nature of the violation and whether it was a repeat immigration violation).
\item \textsuperscript{163} \textit{Hoffman}, 535 U.S. at 140.
\item \textsuperscript{164} \textit{See} LARSON \& LARSON, supra note 42, § 1.01.
\item \textsuperscript{165} Correa v. Waymouth Farms, Inc., 664 N.W.2d 324, 328 (Minn. 2003).
\end{itemize}
mented immigrants who cannot legally search for a new job but are instead rewarded for illegally remaining in the United States.

According to the Supreme Court, providing backpay to undocumented workers "not only trivializes the immigration laws, [but] also condones and encourages future violations." The inclusion of undocumented workers in state workers' compensation programs similarly trivializes the United States' immigration laws, while condoning and encouraging future violations. Additionally, providing access to workers' compensation benefits encourages the "successful evasion of apprehension by immigration authorities," because workers' compensation benefits provide a means by which undocumented workers may continue to live and work in the United States. Limiting the National Labor Relations Board's discretion by federal public policy was a primary concern of the Supreme Court in *Hoffman*.

States may, however, have an interest in requiring employers to provide workers' compensation benefits to undocumented workers. Despite the federal authority to craft and enforce immigration law and policy, states are forced to shoulder substantial uncompensated expenses due to the failures of federal immigration policies, including local law enforcement costs, education costs, and uncompensated health care provided to undocumented immigrants. The cost

167. *Id.* at 151.
168. *See Correa*, 664 N.W.2d at 332 (Gilbert, J., dissenting).
170. Because of this burden shouldered by states, Congress enacted the State Criminal Alien Assistance Program ("SCAAP"), which provides federal reimbursement for the cost of incarcerating undocumented aliens. *See 8 U.S.C. § 1231(i) (2000) (codifying SCAAP). However, the reimbursement program does not cover all of these expenses and states continue to pay for the majority of the cost.* *See KARMA ESTER, CONG. RESEARCH CTR. REPORT FOR CONG., IMMIGRATION: FREQUENTLY ASKED QUESTIONS ON THE STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP) 2 (2006), available at http://bibdaily.com/pdfs/CRS%20FAQ%20SCAAP%20RL33431%20May%202006.pdf.*
172. Under the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd (2000), emergency rooms must treat all patients who need care, regardless of their immigration status or their ability to pay. This burden has led to substantial uncompensated care for the treatment of undocumented immigrants in border states and
of uncompensated health care is a significant drain on states in which there is a large undocumented population.\textsuperscript{173}

Given the substantial costs related to undocumented immigrants already borne by states, it is not surprising that more states are choosing to cover undocumented immigrant workers under state workers' compensation programs. By requiring this coverage, states ensure that employers bear the burden of medical coverage for undocumented workers injured on the job,\textsuperscript{174} rather than hospitals and municipal governments, which pay for the uncompensated health care costs at public hospitals.\textsuperscript{175}

Despite states' financial interests in covering undocumented workers under workers' compensation programs, the economic and national security concerns at the heart of federal immigration laws demand consistency in all policies related to undocumented immigrants and illegal immigration, including availability of workers' compensation benefits to undocumented immigrants. As Congress works to craft broader immigration reform, state courts have a duty to adhere to the Supreme Court's decision in \textit{Hoffman}.

State courts interpreting statutes silent on the availability of workers' compensation benefits to undocumented workers should conclude that undocumented immigrants are not covered under state systems because similar to providing backpay to undocumented workers, providing workers' compensation coverage would contravene federal immigration policy. Similarly, in states that statutorily include all workers, whether legal or illegal, under workers' compensation programs, courts should conclude that by including undocumented workers, state laws conflict with federal immigration law under the IRCA and the Supreme Court's \textit{Hoffman} decision.

The states that disallow vocational rehabilitation benefits to undocumented immigrants should extend the same logic to all types of workers' compensation benefits. Maintaining a split among workers' compensation benefits within a state makes little sense and exacerbates the mixed messages to employers and undocumented immigrants.


\textsuperscript{174} Although employers are required to obtain the form of workers' compensation required by an individual state, the consumer ultimately bears the cost of such coverage, through the increased cost of goods. \textit{Willsborn et al.}, supra note 11, at 901.

\textsuperscript{175} See Lebedinski, supra note 172, at 154.
Given states’ interest in sharing the financial burden of illegal immigration, it is unlikely that many states or state courts will voluntarily follow the Supreme Court’s reasoning in *Hoffman* and bar undocumented immigrants from receiving workers’ compensation coverage under state systems. Due to the likely inaction of state courts, it is of greater importance that Congress speak clearly on this issue and enact legislation clarifying that undocumented immigrants are not eligible for workers’ compensation benefits.

III. Speaking with One Voice: The Need for Congressional Clarification of Employment-Based Benefits Provided to Undocumented Immigrant Workers

Although the administration of workers’ compensation benefits generally falls squarely within the jurisdiction of states, covering undocumented immigrants under workers’ compensation programs hinders federal immigration policy and should be expressly preempted by Congress. Comprehensive immigration reform legislation is of vital importance to the economy and to the security of the nation and will provide individual security to millions of undocumented immigrants currently living and working in the United States illegally. Such legislation should include: (1) a mechanism to regularize the current undocumented population; (2) new temporary worker programs that meet the demand for existing low-skilled labor currently filled by undocumented workers; and (3) increased enforcement provisions to combat employer abuses and further undocumented immigration. Nevertheless, it is imperative that when crafting comprehensive immigration reform legislation, Congress must expressly state that undocumented immigrants may not receive workers’ compensation benefits.

A. A Legislative Solution: The Need for Statutory Clarification at the Federal Level

Legislators in many states, particularly those strongly affected by illegal immigration, have begun to propose, and in some cases enact, a patchwork of measures aimed at discouraging illegal immigration.176


177. Recently, the Arizona legislature passed legislation, signed by the governor, that restricts public health services to legal residents. See H.R. 2448, 47th Leg. (Ariz. 2006)
Some of these measures would prohibit states from providing workers’ compensation benefits to undocumented immigrants. However, it is the federal government, not the states, which is entrusted with enacting federal immigration policies. A haphazard series of state-enacted, immigration-related legislation, in the absence of federal legislation providing a path to regularization of status coupled with clear enforcement provisions, could prove disastrous for undocumented immigrants. This is particularly true in the context of workers’ compensation.

In contrast, comprehensive reform would provide undocumented immigrants with a means of regularizing their status and thereby protect them from exploitation and abuse. In the absence of federal clarification, state measures, aimed at countering illegal immigration, could lead to further abuse of and greater uncertainty for undocumented immigrants because they would not be coupled with a regularization of status. Reform must take place at the federal level and must account for the potential pitfalls of excluding undocumented workers from workers’ compensation programs, including the exploitation of an already vulnerable class of workers.


179. In United States v. Hernandez-Guerrero, 147 F.3d 1075, 1076 (9th Cir. 1998), the Ninth Circuit stated: 

Article I of the United States Constitution contains no express reference to immigration among its enumeration of delegated powers; however, for more than a century, it has been universally acknowledged that Congress possesses authority over immigration policy as “an incident of sovereignty.” The Supreme Court has called Congress’s inherent immigration power “plenary.” This court has deemed it “sweeping.” Whatever the label, all agree that “over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.”

Id. (citations omitted).
1. Clarification of Federal Preemption of State Workers' Compensation Benefits Provided to Undocumented Workers

In order to achieve consistency in national immigration policy, within comprehensive immigration reform legislation, Congress should expressly state that undocumented immigrants who are not a part of a regularization program may not access state workers' compensation benefits. The legislation should treat workers in the process of legalizing their status and all temporary workers under new or existing visa programs the same as similarly situated United States workers. Such a modification reaffirms the importance of workers' compensation systems and puts new temporary workers and undocumented workers in the process of regularizing their status on the same playing field as United States workers. Further, such legislation ensures that the United States has a uniform workers' compensation policy for undocumented workers.

Despite the importance of sending a unified, clear message with respect to America's immigration policy and employment policies, it is also important to remain cognizant that immigrant workers generally, and undocumented workers in particular, remain among the most exploited and abused workers in the United States. Ideally, after enactment of comprehensive immigration reform, the undocumented population in the United States will vastly decrease. Nonetheless, it remains imperative that legislation provide adequate protections against abuse and exploitation of this vulnerable class of workers to

180. Under such a system, although they will not have access to workers' compensation, undocumented workers may pursue civil actions against their employers. Unlike workers' compensation, tort claims are likely to be limited to more serious injuries in which the employer bore some responsibility. Although undocumented immigrants may refrain from suing their employers under tort law for fear of deportation, such actions could be successful in ensuring worker recovery. Additionally, groups supporting immigrants and workers could assist undocumented workers in such suits, provide another check on employers, and help workers cover their health care costs.

181. A number of immigration reform proposals have clarified that, at a minimum, new temporary workers must be covered by workers' compensation, in the manner of other similarly situated United States workers. Some proposals have gone further and require that employers of new temporary workers provide these workers with workers' compensation coverage even if they would not otherwise be covered under state law. The proposals that contain this requirement generally require employers to cover workers at a level at or above that required by state workers' compensation laws.

counteract any potential negative consequences of excluding undocumented immigrants from workers' compensation programs.

2. Mandatory Reporting of All Workplace Injuries

Most states and the federal government require employers or their insurance companies to report all significant employee injuries. Congress should reiterate the importance of this requirement and encourage states to require reporting on all employers, regardless of whether workers are later discovered to be undocumented and therefore ineligible for compensation. Employers are barred from "knowingly" employing undocumented workers, however, Congress should affirmatively protect employers who report the injury of a worker later discovered to be undocumented.

A federal statute requiring employers to report employee injuries will promote safer workplaces generally—for all workers, documented and undocumented. Without such reporting requirements, unscrupulous employers have an incentive to hire undocumented workers in order to avoid the liability of a workers' compensation claim. Without such a requirement, undocumented immigrants may ultimately filter into the most dangerous jobs in the most dangerous industries, leading to more injuries and reducing the employer incentive to improve the safety of those jobs and industries.

Strong employer reporting requirements ensure that one of the goals of workers' compensation—promoting improvement of workplace safety—is not frustrated by excluding undocumented immigrants from coverage. Enhanced reporting ensures that state and federal labor enforcement divisions are on notice of potentially unsafe workplaces and may trigger workplace inspections for potential labor statutes, such as the Occupational Safety and Health Act ("OSHA"). Similarly, requiring that all employee injuries are reported to state workers' compensation agencies helps to ensure that United States workers are on an even playing field with undocumented workers. Such a requirement also disincentivizes employers from hiring individuals whom they suspect to be undocumented, because there would

183. See Cal. Code Regs. tit. 8, § 14005 (2002) (requiring all self-insured employers or insurance companies of non-self insured employers to report employee injuries to the California Division of Occupational Safety and Health); 33 U.S.C. § 930(a) (2000) (requiring employers to report employee injuries to the federal Department of Labor within ten days of an injury, under the terms of the Longshore and Harbor Workers' Compensation Act).
185. Larson & Larson, supra note 42, § 2.08.
be no benefit with respect to avoiding government oversight of potential workplace injuries. In order to add teeth to the reporting requirement, Congress should include strong sanctions for employers who fail to report workplace accidents.

3. **Enhanced Enforcement and Whistleblower Protections for United States Workers**

Undocumented workers are unlikely to voluntarily come forward and report injuries for fear of deportation. Within comprehensive immigration reform legislation, Congress should task the Department of Labor and Department of Homeland Security with monitoring the reporting of workplace injuries as part of their oversight authority with respect to implementing the new immigration reform laws. The injury reporting requirement would be audited by the Department of Labor and Department of Homeland Security. This program should focus on industries that: (1) historically employ large numbers of undocumented immigrants; (2) employ temporary foreign workers; and (3) are known to be the most dangerous, with the largest records of workplace injuries. This federal oversight will increase compliance with immigration and labor laws, and enable the government to sanction employers more effectively.

To improve the effectiveness of this enforcement mechanism, legal United States workers should be afforded whistleblower protection from non-compliant employers. Congress could model these protections after existing whistleblower provisions in the OSHA.187 Recent immigration reform proposals, including the Secure America and Orderly Immigration Act188 and the Security Through Regularized Immigration and a Vibrant Economy Act of 2007,189 include whistleblower protections as part of an immigration enforcement mechanism.190 Such provisions should be expanded to afford legal United States employees protection from non-compliant employers.

Without strong enforcement mechanisms, employers, particularly those in more dangerous fields, may be perversely encouraged to hire undocumented workers in the hope of avoiding increases in paying workers' compensation premiums from workers' injuries. Additionally, enhanced enforcement further promotes the safety of the work-

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190. Secure America and Orderly Immigration Act, S. 1033.
place. United States workers will have an incentive to report noncompliance because they will want to ensure the safety of their own workplace. This check on the system improves workplace safety for all workers and alleviates United States workers’ fear of displacement by unauthorized workers.

Conclusion

Given the damaging impact that providing workers’ compensation benefits to undocumented immigrants has to our national immigration policy and in the wake of the Supreme Court’s decision in Hoffman, Congress should explicitly clarify that states may not provide workers’ compensation benefits to undocumented immigrants. Federal government preemption, coupled with strong workplace enforcement, would provide a substantial deterrent to employers. Otherwise, employers may use undocumented labor to avoid liability under existing workers’ compensation and labor protection statutes. Finally, including a workers’ compensation prohibition for undocumented immigrants within a comprehensive immigration reform package may strengthen support for immigration reform.