

# Riding the Wave: Uplifting Labor Organizations Through Immigration Reform

Jayesh M. Rathod\*

*In recent years, labor unions in the United States have embraced the immigrants' rights movement, cognizant that the very future of organized labor depends on its ability to attract immigrant workers and integrate them into union ranks. At the same time, the immigrants' rights movement has been lauded for its successful organizing models, often drawing upon the vitality and ingenuity of immigrant-based worker centers, which themselves have emerged as alternatives to traditional labor unions. And while the labor and immigrants' rights movements have engaged in some fruitful collaborations, their mutual support has failed to radically reshape the trajectory of either cause.*

*In this Article, I argue that the ongoing legislative debates around immigration reform provide a unique opportunity to reimagine and revitalize traditional organized labor and to strengthen newer, immigrant-centered worker organizations. In my view, this can be accomplished by positioning unions and worker organizations as key actors in immigration processes (for both temporary and permanent immigration) and in any likely legalization initiative. Their specific roles might include sponsoring or indirectly supporting certain visa applications, facilitating the portability of employment-related visas from one employer to another, offering training opportunities to meet immigration requirements, assisting with legalization applications, leading immigrant integration initiatives, and more.*

*Apart from the instrumental objective of attracting immigrants to the ranks of unions and worker organizations, this set of proposals will*

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\* Associate Professor of Law, American University Washington College of Law (WCL). Thanks to Larry Cohen, Ronald D. Collins, Lance Compa, Betty Hung, Stephen Lee, Rachel Micah-Jones, Chris Newman, and Anita Sinha for their input on this Article, and to WCL students Benjamin Allen, Gabriela Baca, Drew Lavine, and Jeff Matus for exceptional research assistance. I also thank Catherine Fisk and Sameer Ashar of the University of California, Irvine School of Law, for inviting me to participate in the February 2013 symposium where this Article was initially presented. Finally, I extend my thanks to Joseph Roth of the *UC Irvine Law Review* for his helpful suggestions and careful editing. All errors are mine alone.

*position these institutions as sites where the virtues of leadership, democratic participation, and civic engagement can be forged in new Americans. Indeed, these virtues coincide with the founding values of most U.S. labor unions; to the extent some unions have strayed from these values, the proposals provide an external imperative to reorient and rebrand unions as core civil society institutions. Moreover, immigrant worker centers have already become known for their focus on leadership development, democratic decision making, and civic education, and are therefore uniquely positioned to play this role. This convergence of utilitarian and transcendent objectives, in the current sociopolitical moment, justifies a special position for unions and worker organizations in the U.S. immigration system.*

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## INTRODUCTION

Over the last decade, many have signaled the importance of greater collaboration between organized labor and the immigrants' rights movement in the United States.<sup>1</sup> As unions continued to experience a decline in membership across all sectors of the economy, labor leaders discerned the importance of organizing Latino and other immigrant workers.<sup>2</sup> These workers, who constitute a significant portion of the domestic labor pool and a growing percentage of the overall population,<sup>3</sup> offer the promise of revitalizing a struggling cause. Indeed, the success of immigrant-centered worker organizing, through both worker centers and traditional unions, has drawn labor leaders even closer to the immigrants' rights movement.<sup>4</sup> These partnerships have been structured to generate reciprocal benefits: unions would have access to a new swath of members and leaders, while the immigrants' rights movement could benefit from the political legitimacy, mobilizing power, and strategic acumen of organized labor.<sup>5</sup>

There is little doubt that the labor movement and the immigrants' rights movement have engaged in fruitful collaborations in recent years. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) has deepened its involvement in immigrants' rights and immigration law issues, cultivating relationships and supporting efforts around the country. In August 2006, the AFL-CIO entered into a national partnership agreement with the National Day Laborer Organizing Network,<sup>6</sup> paving the way for closer collaborations with worker centers around the country.<sup>7</sup> Additionally, in 2009,

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1. See, e.g., IMMANUEL NESS, IMMIGRANTS, UNIONS, AND THE NEW U.S. LABOR MARKET 4 (2005).

2. See *id.* at 4–5, 23 (describing the nature of unions' organizing efforts among immigrants and the challenges unions face in certain industries).

3. See Audrey Singer, *Immigrant Workers in the U.S. Labor Force*, BROOKINGS INSTITUTION (Mar. 15, 2012), [http://www.brookings.edu/~media/research/files/papers/2012/3/15%20immigrant%20workers%20singer/0315\\_immigrant\\_workers\\_singer.pdf](http://www.brookings.edu/~media/research/files/papers/2012/3/15%20immigrant%20workers%20singer/0315_immigrant_workers_singer.pdf) (noting that immigrants are a growing part of the U.S. labor force, and that their representation in the workforce outpaces their overall presence in the population as a whole).

4. One recent (and successful) collaboration between organized labor and community-based immigrant groups is the carwash workers' campaign in Southern California. See generally Alana Semuels, *Union Forges a New Alliance with Carwash Workers*, L.A. TIMES, Feb. 22, 2012, at B1 (describing efforts to organize carwash workers and the support provided by established labor unions). This initiative is commonly referred to as the CLEAN (Community Labor Environmental Action Network) Carwash Campaign. *The CLEAN Carwash Campaign*, CLEAN CARWASH CAMPAIGN, [http://cleancarwashla.org/?page\\_id=508](http://cleancarwashla.org/?page_id=508) (last visited July 1, 2013).

5. See generally Semuels, *supra* note 4.

6. Press Release, AFL-CIO, AFL-CIO and NDLON, Largest Organization of Worker Centers, Enter Watershed Agreement to Improve Conditions for Working Families (Aug. 9, 2006), available at <http://www.aflcio.org/Press-Room/Press-Releases/AFL-CIO-and-NDLON-Largest-Organization-of-Worker>. The partnership agreement contemplated collaborations on initiatives at the state and local levels, advocacy for comprehensive immigration reform, and more. *Id.*

7. See Victor Narro, *¡Si Se Puede! Immigrant Workers and the Transformation of the Los Angeles Labor and Worker Center Movements*, 1 L.A. PUB. INT. L.J. 65, 98–105 (2009) (describing several collaborations

AFL-CIO President Richard Trumka appointed Ana Avendaño to the position of Assistant to the President for Immigration and Community Action, signaling a high-level institutional commitment to the cause of immigrants' rights.<sup>8</sup> And notably, as this Article explores, many unions—historically hostile to people of color and immigrants—have openly supported the call for comprehensive immigration reform from 2006 to the present.<sup>9</sup>

While these partnerships have both symbolic and practical benefits, and reflect important points of convergence, the overall trajectories of the two movements have unquestionably diverged. Organized labor has faced numerous setbacks, including legislative disappointments and a legal-regulatory framework that often frustrates organizing efforts and invites employer meddling.<sup>10</sup> The reasons for this decline are complex, but include, in significant part, a concerted attack on collective bargaining rights by certain employers and associations.<sup>11</sup> As part of this struggle, labor unions are now battling unfavorable legislative measures in states once considered hospitable to organized labor.<sup>12</sup> These attacks have been coupled with the increasing use of contingent workers, independent contractors, and subcontracting schemes, likewise designed to diminish the legal and financial responsibilities of employers.<sup>13</sup> Others have attributed the decline in unions to propagation of the pejorative “big labor” narrative (of bureaucratic,

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between unions and worker centers); Jayesh M. Rathod, *The AFL-CIO — NDLOA Agreement: Five Proposals for Advancing the Partnership*, 14 HUM. RTS. BRIEF 8, 8–12 (2007).

8. Press Release, AFL-CIO, AFL-CIO President Richard Trumka Announces New Staff Appointments (Oct. 19, 2009) (on file with author).

9. See Steven Greenhouse, *Business and Labor United: Working Together to Alter Immigration Laws*, N.Y. TIMES, Feb. 8, 2013, at B1 (describing recent collaborative efforts between union and business leaders); Rachel L. Swarns, *Chamber and 2 Unions Forge Alliance on Immigration Bill*, N.Y. TIMES, Jan. 19, 2006, at A17 (describing positions taken by the Laborers' International Union of North America and the Service Employees International Union, and highlighting the AFL-CIO's dissenting view on guest worker programs).

10. See Wilma B. Liebman, *The Revival of American Labor Law*, 34 WASH. U. J.L. & POL'Y 291, 291–93, 298 (2010) (recounting the widely held view “that American law does not effectively protect workers' right to organize,” arguing that the “National Labor Relations Board . . . has made little sustained effort to adjust its legal doctrines to preserve worker protections in an increasingly ruthless, competitive economy,” and expressing uncertainty about the future of labor law reform legislation). Indeed, many of the articles stemming from this symposium offer solutions for amending U.S. labor law to create a more level playing field between employers, on the one hand, and workers and their representatives, on the other.

11. Memorandum from Lewis F. Powell, Jr., to Eugene B. Sydnor, Jr., Chairman, Education Committee, U.S. Chamber of Commerce (Aug. 23, 1971), available at <http://law.wlu.edu/deptimages/Powell%20Archives/PowellMemorandumTypescript.pdf> (written shortly before Powell was named to the U.S. Supreme Court by President Nixon).

12. See, e.g., Monica Davey, *Limits on Unions Pass in Michigan, Once a Mainstay*, N.Y. TIMES, Dec. 12, 2012, at A1.

13. See, e.g., *The Growth of the Exploited, Contingent Workforce*, AM. RTS. WORK (2012), [http://www.jwj.org/wp-content/uploads/2013/12/120731contingentworkforce\\_final.pdf](http://www.jwj.org/wp-content/uploads/2013/12/120731contingentworkforce_final.pdf) (describing the expansion of the contingent workforce, including “temps, independent contractors, . . . and other nontraditional work roles,” and explaining that “[m]any contingent workers are excluded from minimum wage, health and safety, and discrimination laws that would protect them at work”).

corrupt, overly powerful unions) and perhaps even some miscalculations on the part of labor leaders.<sup>14</sup> Regardless of the precise set of causes, public opinion about unions—undoubtedly weighed down by unfavorable stereotypes—stands to be improved.<sup>15</sup>

By contrast, the immigrants' rights movement has experienced a gradual upward ascent, fueled by robust organizing efforts and rapidly changing demographics.<sup>16</sup> Indeed, the movement has modeled how sustained grassroots organizing can come to fruition and yield tangible results.<sup>17</sup> The late 1990s saw a spate of unfavorable legislation for immigrants, fueling criminal narratives and limiting judicial discretion and review;<sup>18</sup> the 9/11 attacks added yet another dimension to the nation's preoccupation with the foreign born.<sup>19</sup> Amidst these developments, the millions of unauthorized migrants who had entered the United States from the late 1980s to the early 2000s began to demand a voice, backed by family members and other allies with lawful status.<sup>20</sup> Strands of a social movement emerged, leading to calls for immigration reform in Congress.<sup>21</sup> Despite many setbacks—including multiple failed efforts in Congress, and vehemently anti-immigrant enactments at the state and local levels—the movement for

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14. John Godard, *The Exceptional Decline of the American Labor Movement*, 63 *INDUS. & LAB. REL. REV.* 82, 94–96, 100 (2009).

15. See Steven Greenhouse, *A Challenge for Unions in Public Opinion*, *ECONOMIX BLOG* (Sept. 2, 2011, 11:07 AM), <http://economix.blogs.nytimes.com/2011/09/02/a-challenge-for-unions-in-public-opinion> (reporting on a Gallup poll that showed only a “slim majority” of Americans support unions).

16. See, e.g., MARY GIOVAGNOLI, *AM. IMMIGRATION COUNCIL, OVERHAULING IMMIGRATION LAW: A BRIEF HISTORY AND BASIC PRINCIPLES OF REFORM 3–4* (2013), available at <http://www.immigrationpolicy.org/sites/default/files/docs/perspectivescirprimerwe111213.pdf> (listing the factors that have led to the current focus on immigration reform, including demographic changes and immigrant activism).

17. See, e.g., Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 *HARV. C.R.-C.L. L. REV.* 99, 135 (2007) (describing the power of grassroots organizing in propelling the movement forward).

18. See, e.g., *Illegal Immigration Reform & Immigrant Responsibility Act of 1996 (IIRIRA)*, Pub. L. No. 104-208, Div. C, 110 Stat. 3009-546 (codified as amended in scattered sections of 8 U.S.C. and 18 U.S.C.); *Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)*, Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of the U.S. Code). The passage of these two laws in 1996 heralded a curtailment of judicial discretion, expansion of criminal removal grounds, imposition of the three- and ten-year bars, increased detention of asylees, and elimination of judicial review. See U.S. Representative Zoe Lofgren, *A Decade of Radical Change in Immigration Law: An Inside Perspective*, 16 *STAN. L. & POL'Y REV.* 349, 355–77 (2005).

19. See Sam Dolnick, *A Post-9/11 Registration Effort Ends, but Not Its Effects*, *N.Y. TIMES*, May 31, 2011, at A18 (describing the ongoing effects of a controversial U.S. government program, informally known as “special registration,” which was enacted after 9/11, and which required male nationals of certain countries to register with authorities).

20. See GIOVAGNOLI, *supra* note 16, at 2–3 (noting the presence of an estimated eleven million unauthorized immigrants in the United States, many with U.S. citizen and lawful permanent resident family members); Rose Cuison Villazor, *The Undocumented Closet*, 92 *N.C. L. REV.* 1, 1 (2013) (describing the growing visibility of “undocumented Americans”).

21. See Johnson & Hing, *supra* note 17, at 102–04 (detailing the relatively rapid growth of an immigrants' rights movement, focused on congressional activity in 2006).

immigrants' rights chugs forward.<sup>22</sup> In the current political moment, immigrants' rights advocates are engaged in a battle once again for comprehensive immigration reform.<sup>23</sup> As of the writing of this Article, the U.S. Senate had passed a draft immigration reform bill, following many weeks of debate and negotiation.<sup>24</sup> While the legislation faces a very uncertain trajectory in the House of Representatives, the political winds may allow for the passage of *some* kind of reform bill in the near future. Once again, unions are fully supportive of the current calls for reform, and have been intimately involved in the negotiations.<sup>25</sup>

This Article offers a vision for how organized labor and other worker organizing efforts can leverage the sociopolitical forces that are buoying the immigrants' rights movement. Specifically, I advance a set of radical proposals that would situate unions and worker organizations within different immigration processes. These proposals serve both instrumental and more transcendent ends. To the extent that unions and worker organizations are seen as gatekeepers to important immigration benefits, they will necessarily emerge as important social institutions in the minds of immigrants. Affiliation with these groups will allow immigrants to achieve economic security, through stable employment and income, along with stability in their immigration status—goals that often predominate in immigrant communities. While such a proposal might seem grossly instrumental, it also offers an opportunity to rebrand unions and other worker organizations with a different set of values—values that are critical for the smooth integration of new immigrants and for the overall functioning of a polity. These groups are uniquely positioned to carry out these functions given their history and structure.<sup>26</sup>

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22. Rachel Weiner, *How Immigration Reform Failed, Over and Over*, WASH. POST (Jan. 30, 2013, 1:15 PM), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/01/30/how-immigration-reform-failed-over-and-over> (chronicling failed immigration reform efforts from 1996 to the present). Several states and localities have adopted anti-immigrant laws and ordinances, covering issues ranging from employment to housing to education to subfederal immigration enforcement. *See* IMMIGRATION POLICY CTR., AM. IMMIGRATION COUNCIL, A Q & A GUIDE TO STATE IMMIGRATION LAWS 4 (2012), available at [http://www.immigrationpolicy.org/sites/default/files/docs/State\\_Guide\\_to\\_Immigration\\_Laws\\_Updated\\_021612.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/State_Guide_to_Immigration_Laws_Updated_021612.pdf) (summarizing state-level laws that have been enacted, especially in the wake of Arizona's SB1070).

23. *E.g.*, Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (2013).

24. *Id.*

25. Beth Reinhard, *Why Labor Has Learned to Love Immigration Reform*, NAT'L J. (Jan. 31, 2013), <http://www.nationaljournal.com/politics/why-labor-has-learned-to-love-immigration-reform-20130131> (describing labor unions' strong support for, and involvement with, the 2013 immigration reform discussions); *see also* Greenhouse, *supra* note 9.

26. As described more fully below, my proposal follows in the tradition of Jennifer Gordon's seminal work on transnational labor citizenship. Jennifer Gordon, *Transnational Labor Citizenship*, 80 S. CAL. L. REV. 503 (2007). Instead of focusing on a universal model, this Article proposes reforms that can be implemented within the existing framework of U.S. immigration law. This Article also follows in the spirit of others who have encouraged rethinking the relationship between immigration law and workplace law. *See, e.g.*, Ruben J. Garcia, *Ghost Workers in an Interconnected World: Going Beyond the Dichotomies of Domestic Immigration and Labor Laws*, 36 U. MICH. J.L. REFORM 737, 759–65 (2003) (offering specific reforms to labor and immigration law, to improve conditions for workers); Kati L.

This Article opens with a brief overview of existing immigration processes and discusses the role that unions currently play in U.S. immigration law. I then turn to my proposals, examining how unions and other worker organizations might be interposed in existing laws relating to permanent and temporary immigration, as well as in an expanded U nonimmigrant visa program, immigrant integration efforts, and any legalization initiative. Finally, I advance a broad set of justifications for positioning unions and worker organizations in this way, focusing on these entities' ability to foster leadership development, democratic decision making, and civic engagement.

## I. IMMIGRATION PROCESSES AND THE CURRENT ROLE OF UNIONS

Any attempt to summarize the existing U.S. immigration system will inevitably omit important nuances. That said, the pathways to immigration into the United States could broadly be divided into two categories: opportunities for permanent immigration, in the form of lawful permanent residence;<sup>27</sup> and opportunities for short-term immigration through an alphabet soup of temporary visas. Permanent immigration can be achieved through certain family relationships, employment- or investment-related credentials, or participation in the diversity visa program (colloquially known as the “visa lottery”).<sup>28</sup> Individuals may travel to the United States on temporary visas for specified purposes, such as tourism, business visits, temporary employment, cultural exchanges, and many more.<sup>29</sup> Many of these options include rigorous preconditions; several of the employment-related visas, for example, require “labor certification,” which involves showing that the immigrant’s admission will not displace U.S. workers or otherwise affect wages and working conditions.<sup>30</sup> In addition to these broad pathways, the United States allows for the admission of refugees and permits individuals to seek asylum once in the United States.<sup>31</sup> A range of other special

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Griffith & Tamara L. Lee, *Immigration Advocacy as Labor Advocacy*, 33 BERKELEY J. EMP. & LAB. L. 73, 89–108 (2012) (emphasizing that different forms of immigration advocacy are also protected activities under the National Labor Relations Act).

27. See generally 8 U.S.C. § 1153 (2012) (describing the allocation of permanent, or immigrant, visas).

28. *Id.* § 1153(c). Note that the comprehensive immigration reform bill that passed the U.S. Senate in June 2013 proposes eliminating the diversity visa program. S. 744, § 2303. Additionally, through a process called adjustment of status, noncitizens may convert from a temporary immigration status to lawful permanent resident status. See generally 8 U.S.C. § 1255.

29. See generally *id.* § 1101(a)(15) (describing the basic contours of various nonimmigrant visa categories).

30. *Id.* § 1182(a)(5). Specifically, through the labor certification process, the employer and putative sponsor of foreign workers must establish, to the satisfaction of the government, that “there are not sufficient workers who are able, willing, qualified . . . and available” in the United States at the appropriate time and place, and that employing foreign workers “will not adversely affect the wages and working conditions of workers in the United States similarly employed.” *Id.* § 1182(a)(5)(A)(i).

31. See generally *id.* §§ 1157–58 (outlining basic procedures for refugee admissions and asylum applications).

programs and one-time acts of Congress allows for different categories of noncitizens to obtain temporary or permanent status.<sup>32</sup>

Unions already play a role in the existing U.S. immigration system. Naturally, unions have been a vigorous defender of the U.S. labor force and have challenged the issuance of visas when they unfairly displace U.S. workers.<sup>33</sup> Indeed, unions have consistently played a monitoring role with respect to immigration policy and the enforcement and interpretation of provisions that relate to U.S. workers.<sup>34</sup> Additionally, although these provisions receive relatively little attention, unions have a formal role in our immigration system and are written into the key statutes and accompanying regulations.<sup>35</sup> These instances can be broadly classified into three categories: provisions that are designed to protect the interests of U.S. labor organizations and their members; provisions designed to protect the rights of noncitizens to join labor organizations, if they choose, and to prohibit retaliation; and provisions that position unions and community groups as resources for legalization processes. Each of these categories is described in the subsections that follow.

#### *A. Existing Provisions That Protect U.S. Labor Organizations and Their Members*

In existing immigration laws and regulations, unions are most often mentioned in the context of protecting U.S. workers.<sup>36</sup> This can be seen vis-à-vis nonimmigrant (temporary) work visas that affect the entertainment and maritime industries. As described more fully below, unions are also mentioned as a resource for the recruitment of U.S. workers and as a general consultative authority on matters relating to wages and working conditions.

Several provisions of the Immigration & Nationality Act (INA) require consultation with unions and management organizations in the entertainment industry before the government issues temporary visas to artists, performers, and related personnel. For example, the O-1B visa is issued to “individuals with an extraordinary ability in the arts or extraordinary achievement in motion picture or television industry.”<sup>37</sup> The INA specifies that before approving O-1B visa

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32. See, e.g., *id.* § 1254a (granting temporary status and work authorization to nationals of certain countries, as designated by the Secretary of Homeland Security); Nicaraguan and Central American Relief Act (NACARA), Pub. L. No. 105-100, 111 Stat. 2193 (1997) (creating a pathway to permanent residence for certain Central American nationals who had entered the United States in the 1980s).

33. See, e.g., *Int'l Union of Bricklayers & Allied Craftsmen v. Meese*, 761 F.2d 798, 799–800 (D.C. Cir. 1985) (discussing a suit brought by unions regarding the B-1 (temporary business visitor) visa category, and arguing that visas were improperly issued to foreign workers).

34. See, e.g., *id.*

35. See, e.g., 8 U.S.C. § 1184(e)(3)(A).

36. E.g., *id.*

37. *O-1 Visa, Individuals with Extraordinary Ability*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/working-united-states/temporary-workers/o-1-individuals-extraordinary-ability-or-achievement/o-1-visa-individuals-extraordinary-ability-or-achievement> (last updated Mar. 16, 2011).

petitions for “aliens seeking entry for a motion picture or television production, . . . the appropriate union representing the alien’s occupational peers and a management organization in the area of the alien’s ability” must be consulted.<sup>38</sup> The O-2 visa category is for individuals who will assist the O-1 visa holder; for the O-2 visa, the statute similarly requires consultation with “a labor organization and a management organization in the area of the alien’s ability.”<sup>39</sup> In both instances, the opinion proffered by the union or management organization “shall only be advisory.”<sup>40</sup> The statutory provisions for the P-2 visa, for artists or entertainers entering as part of reciprocal exchange programs,<sup>41</sup> likewise requires consultation with “labor organizations representing artists and entertainers in the United States” before approving petitions for that category.<sup>42</sup> In practice, applicants request an advisory letter or a “no objection” letter from the relevant union, such as from the American Federation of Musicians or from the Screen Actor Guild and the American Federation of Television and Radio Artists, and then submit that letter with their application materials.<sup>43</sup>

Maritime unions also have some dedicated provisions in U.S. immigration law, somewhat similar to the provisions relating to the entertainment industry. As a general matter, 8 U.S.C. § 1288 protects the work done by unionized longshore workers by clarifying that the D-1 crew member visas are not to be issued for longshore work, with some exceptions.<sup>44</sup> One exception is for longshore work in the state of Alaska, where the use of foreign crew members is permitted after certain steps are taken.<sup>45</sup> Specifically, the employer must submit an attestation to the Secretary of Labor that the employer has made a request for U.S. longshore workers and will employ those who are available.<sup>46</sup> The employer must also provide notice of the attestation to “labor organizations which have been recognized as exclusive bargaining representatives of United States longshore workers within the meaning of the National Labor Relations Act.”<sup>47</sup> In practice, this provision allows the relevant union(s) to verify the employer’s efforts to recruit U.S. workers. Other provisions address the particulars of collective bargaining agreements and documentation to be provided by unions.<sup>48</sup>

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38. 8 U.S.C. § 1184(c)(3)(A).

39. *Id.* § 1184(c)(3)(B).

40. *Id.* § 1184(c)(3)(B)(i).

41. *Id.* § 1101(a)(15)(P)(ii).

42. *Id.* § 1184(c)(4)(E).

43. See, e.g., *O-1 and P Visa Forms and Letters*, SAG-AFTRA, <http://www.sagaftra.org/union-info/o-1-visa-letters/o-1-and-p-visa-forms-and-letters> (last visited July 1, 2013); *Visa Questions and Answers*, AM. FED’N MUSICIANS, <http://www.afm.org/departments/touring-travel-theatre-booking-immigration/visa-questions-and-answers> (last visited July 1, 2013).

44. 8 U.S.C. § 1288(a).

45. See generally *id.* § 1288(d)(1).

46. *Id.* § 1288(d)(1)(A)–(B).

47. *Id.* § 1288(d)(1)(D)(i); see also 20 C.F.R. § 655.500(a)(iv) (2014).

48. One clause, for example, clarifies how U.S. workers are to be requested when two or more companies have signed a joint collective bargaining agreement with a sole labor organization. 8 U.S.C.

Unions and labor organizations are also noted in the context of temporary guest workers and in the predicate step of recruiting U.S. workers. For example, when an employer seeks temporary workers to perform nonagricultural work under the H-2B visa program, the employer, working in collaboration with the state workforce agency (SWA), must first attempt to recruit U.S. workers for the particular job and locality.<sup>49</sup> When that “occupation or industry is traditionally or customarily unionized,” the SWA must circulate the job order (essentially, a job announcement) to the central office of the state federation of labor and to the offices of local unions that represent workers in the same or similar job classifications.<sup>50</sup> Similarly, in the H-2A program for temporary agricultural workers, the employer must make assurances that it has cooperated in the active recruitment of U.S. workers by, *inter alia*, contacting labor organizations.<sup>51</sup>

Although the above-mentioned provisions are more directive about the role of unions, at times, the regulations frame their involvement in a softer way. For example, when the government engages in external consultations for the purpose of determining wages and working conditions for Guam labor certifications, opinions must be solicited from a range of groups, including “unions and management.”<sup>52</sup>

### *B. Existing Provisions That Protect the Right to Organize and Prohibit Retaliation*

Some immigration provisions explicitly protect immigrant workers’ right to organize. One such statutory provision is the section relating to the H-1C visa category, which allows foreign nurses who are sponsored by a facility to work temporarily in the United States.<sup>53</sup> The law specifies that the sponsoring facility “shall not interfere with the right of the nonimmigrant to join or organize a union.”<sup>54</sup> Related provisions are designed to prevent employers from importing overseas workers to disrupt domestic organizing. For example, in seeking to employ H-1C nurses, the employer must also attest that there is “not a strike or lockout at the facility” and that employment of the foreign workers “is not intended or designed to influence an election for a bargaining representative for

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§ 1288(d)(1)(A)(i). Additionally, when an employer chooses to rely on the “prevailing practice” exception to employ alien crewmen for longshore work, regulations require an affidavit from a local stevedore or union representative regarding the ability of alien crewmen to perform work under applicable bargaining agreements. 8 C.F.R. § 258.2(b)(2)(i) (2014).

49. *See generally* 20 C.F.R. § 655.33(b).

50. *Id.* § 655.33(b)(5).

51. *Id.* § 655.203(d)(4).

52. 8 C.F.R. § 214.2(h)(6)(v)(E)(1).

53. 8 U.S.C. § 1101(a)(15)(H)(1)(c).

54. 8 U.S.C. § 1182(m)(5)(C); *see also* 20 C.F.R. § 655.1115(a) (“A facility which has filed a petition for H-1C nurses is . . . prohibited from interfering with the right of the nonimmigrant to join or organize a union.”).

[registered nurses] at the facility.”<sup>55</sup> If a strike or lockout does occur, the facility must notify the Department of Labor.<sup>56</sup>

In the context of seasonal nonagricultural workers under the H-2B program, recently updated regulations prohibit an employer from engaging in retaliation after a worker has sought assistance from a worker organization or legal service provider. Specifically, the regulation states that the “employer . . . will not intimidate, threaten, restrain, coerce, blacklist, discharge or in any manner . . . discriminate against, any person who has . . . [c]onsulted with a workers’ center, community organization, labor union, legal assistance program, or an attorney” regarding that person’s rights as an H-2B worker and prohibited conduct by employers.<sup>57</sup>

*C. Existing Provisions That Position Unions as a Resource  
for Application and Legalization Processes*

The immigration laws have also positioned labor organizations as a potential resource of benefit to immigrants and their communities. For example, the Immigration Reform and Control Act of 1986 (IRCA) included an amnesty provision for Special Agricultural Workers (the “SAW” amnesty).<sup>58</sup> In enacting this provision, Congress saw fit to designate organizations that could receive applications for lawful permanent residence and then forward those applications to the U.S. government.<sup>59</sup> Congress specified that the Attorney General “shall designate qualified voluntary organizations and other qualified State, local, community, *farm labor organizations*, and associations of agricultural employers.”<sup>60</sup> To apply for legalization under the SAW provision, one needed to show agricultural employment of a specified duration—a requirement that could be met with documentation or records provided by unions or collective bargaining organizations.<sup>61</sup> Similar to these SAW provisions, in the context of applications under IRCA’s general legalization provision, the regulations specified that unions could provide evidence of continuous residence in the United States.<sup>62</sup> Although the IRCA legalization programs were time limited, similar language appears in the

55. 20 C.F.R. § 655.1110(d)(5). A similar attestation is required for employers seeking to sponsor workers for H-1B visas, a visa category for professionals in specialty occupations. *See id.* § 655.733(a)(2); 8 C.F.R. § 214.2(h)(17) (describing the effects of a strike on H visa holders). Note that similar provisions appear in the reform bill that passed the U.S. Senate. *See generally* Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (2013).

56. *See* 20 C.F.R. § 655.1115(b) (indicating that the Employment and Training Administration of the Department of Labor “may consult with the union at the facility or other appropriate entities”).

57. *Id.* § 655.20(n).

58. *Cf.* 8 C.F.R. § 210.3(a) (amnesty for agricultural employees).

59. *See* 8 U.S.C. § 1160(b)(2).

60. *Id.* § 1160(b)(2)(A) (emphasis added).

61. 8 C.F.R. § 210.3(c)(3). The provision also allows union-issued documents to be used to establish proof of residence in the United States. *Id.* § 210.3(c)(4).

62. *See* 8 C.F.R. § 245a.2(d)(3)(v).

context of benefits and programs that still operate today. These include temporary protected status<sup>63</sup> and applications for a certificate of citizenship for a child.<sup>64</sup>

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These provisions offer some insight into the role that unions and other worker organizations might play in a reformed immigration statute. Certainly, their expertise on workplace matters could justify some role in employment-related provisions. Additionally, there would be little reason to exclude unions from facilitating legalization applications and providing necessary evidence. As described below, however, I envision a more robust role for unions and worker organizations, consistent with my view that they are important social institutions where critical habits and values can be forged in new Americans. Section II below describes my specific proposals for a deeper integration of unions and worker organizations into the U.S. immigration system.

## II. PROPOSALS FOR FURTHER INTEGRATING UNIONS AND WORKER ORGANIZATIONS INTO IMMIGRATION LAWS AND REGULATIONS

Unions and other worker organizations can be given a much more prominent role in U.S. immigration processes. Below, I describe a set of proposals that relates broadly to (a) permanent immigration to the United States, (b) temporary immigration to the United States, (c) a legalization initiative that is likely to be part of a comprehensive immigration reform package, (d) expansion of the U nonimmigrant visa category, and (e) proposed immigrant integration initiatives. These proposals stem from an ambitious vision regarding structured collaborations between the immigrants' rights and workers' rights movements.

In offering these proposals, I make occasional reference to the immigration reform legislation recently considered by the U.S. Congress. Unsurprisingly, the few mentions of unions and worker organizations in the bill that passed the Senate in June 2013 are modest in nature.<sup>65</sup> Even if the proposals below are not included in a comprehensive immigration reform bill that is approved by Congress and the President, such proposals can be addressed at the agency level through changes to regulations. Indeed, for many of my proposals, regulatory change may be the more politically palatable approach, given the current dynamics in Washington.

### *A. Reforms Relating to Permanent Immigration to the United States*

As noted above, permanent immigration to the United States occurs primarily through three pathways: family-based immigrant visas, employment-

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63. See 8 C.F.R. § 1244.9(a)(2)(v).

64. See 8 C.F.R. § 322.3(b)(1)(vii) (showing that attestations by unions may be submitted to establish the physical presence requirement for the U.S. citizen parent or grandparent).

65. *E.g.*, Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. §§ 2102 (in the proposed language for a new INA § 245C(b)(3)(B)(ii)(IV)), 4404(b) (in the amended language for 8 U.S.C. § 1184(c)(3)).

based immigrant visas, and permanent residence obtained through the visa lottery. Unions and worker organizations may be fruitfully interposed into both employment- and family-based processes, so as to facilitate immigration, heighten the profile of unions and worker organizations, and solidify relationships of trust between unions and immigrant workers.<sup>66</sup>

Some of these proposals follow in the spirit of Jennifer Gordon's vision for transnational labor citizenship, which would link permission to enter a country with membership in a transnational worker organization where certain rights, benefits, and services are portable.<sup>67</sup> My proposals, while different in approach, content, and scope, share a similar vision—of reimagining the relationship between workers' rights organizations and the migration process. In the subsections that follow, I offer suggestions for giving unions and other worker organizations a more prominent role in employment- and family-based immigration processes.

### 1. *Employment-Based Immigrant Visas*

The employment-based immigration scheme allows for the most robust involvement of unions. Currently, employment-based immigrant visas are divided into five categories.<sup>68</sup> The first preference category sets aside visas for aliens of “extraordinary ability”;<sup>69</sup> given the presumptively superior credentials of these individuals, a job offer from a U.S. employer is not required.<sup>70</sup> Nor must these noncitizens obtain labor certification, a relatively costly and time-consuming process that, as noted above, evidences the lack of harm to U.S. workers.<sup>71</sup> The second and third preference categories for employment-based visas, however, presumptively require both a job offer and a labor certification.<sup>72</sup> Subdivisions of these categories allow for the immigration of aliens of “exceptional ability,” “members of the professions holding advanced degrees,” “skilled workers,” “professionals,” and a small number of “other workers.”<sup>73</sup> As described below, for these categories of workers, unions could be positioned to take a more active role in helping to meet the job offer requirement, vis-à-vis the labor certification requirement, or in satisfying other eligibility requirements.

#### *a. Provision of Job Offer*

For industries that are the focus of union or worker center organizing, and

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66. Since recent discussions in Congress reflect an inclination to eliminate the visa lottery, I do not include any proposals relating to that program. *See supra* note 28.

67. Gordon, *supra* note 26, at 504.

68. *See* 8 U.S.C. § 1153(b)(1)–(5).

69. *Id.* § 1153(b)(1)(A). This first preference category also includes “outstanding professors and researchers” as well as “certain multinational executives and managers.” *Id.* § 1153(b)(1)(B)–(C).

70. 8 C.F.R. § 204.5(h)(5) (2014).

71. *Id.*

72. *Id.* §§ 204.5(k)(1), 204.5(k)(4), 204.5(l)(1), 204.5(l)(3).

73. 8 U.S.C. § 1153(b)(2)–(3).

that are replenished by permanent, employment-based immigrants, unions or worker centers themselves could provide a job offer, and in effect, become the worker's sponsor. Under existing regulations, "[a]ny United States employer desiring and intending to employ an alien" may file a petition on behalf of that worker, for those classifications that require a job offer.<sup>74</sup> Perhaps most simply, unions could work with unionized employers and strategically pursue the hiring of foreign workers. Collective bargaining agreements could include language that contemplates this possibility. A more novel approach would involve amending the relevant regulations to allow a local union to submit a visa petition for a worker, absent a job offer from a specific employer. This could be structured in various ways. In the building trades, for example, where some unions operate a hiring hall, unions could make a commitment to place a worker with a signatory contractor within a specified period of time. A similar commitment could be made by local unions that have collective bargaining agreements with multiple employers in the same industry. For each of these approaches, the unions would need to work closely with the employers to carefully structure the collective bargaining agreements.<sup>75</sup>

Given the possibility that the worker may lack income in the short run, the union could make a commitment to ensure the worker's financial stability in the United States for a fixed period of time.<sup>76</sup> Additionally, to the extent the unions would be sponsoring workers who live overseas, the unions would need to develop relationships across borders, and perhaps even participate in worker recruitment efforts. In light of the growing calls for more oversight of foreign labor recruitment,<sup>77</sup> unions could model a best practice for that recruitment—one that telegraphs worker dignity and fairness from the recruitment process through the worker's integration into the U.S. workforce. The Senate's immigration bill contains important provisions that protect workers in the context of foreign labor recruitment and that regulate the activity of recruiters.<sup>78</sup> These provisions, whether or not they become law, could be used as a benchmark in the future.

Another approach to the job offer requirement, focused on worker centers,

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74. 8 C.F.R. § 204.5(c).

75. This model is most appropriate for trade unions, where members typically join a union and then obtain work through a hiring hall. In my view, the model could be adopted to other unions through the use of creative contract language. For example, a collective bargaining agreement could provide that a certain number or percentage of new hires over the life of the contract would be made through this process.

76. A similar requirement already exists in the context of family-sponsored immigration and in some employment-based cases. *See infra* Section II.A.2.

77. *See, e.g.*, INT'L LABOR RECRUITMENT WORKING GRP., THE AMERICAN DREAM UP FOR SALE: A BLUEPRINT FOR ENDING INTERNATIONAL LABOR RECRUITMENT ABUSE (2013), available at <http://fairlaborrecruitment.files.wordpress.com/2013/01/final-e-version-ilrwg-report.pdf>.

78. *See generally* Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. §§ 3601–3605 (2013) (requiring foreign labor contractors to register with the Department of Labor and provide disclosures to workers, and prohibiting discrimination in recruitment or the assessment of recruitment fees).

would allow worker cooperatives to sponsor foreign workers for employment-based visas. For this approach to be viable, the regulations regarding employer sponsors should be clarified to explicitly include cooperative entities. Such a change might be of use to employ domestic workers since a significant number of the petitions filed on behalf of “other workers” are for domestic worker positions.<sup>79</sup> Domestic workers have been the focus of robust organizing efforts in the United States, and some worker centers have organized these workers into collectives.<sup>80</sup> These collectives could potentially sponsor such workers for permanent residence, provided the workers meet the other requirements.

### *b. Labor Certification Requirement*

The labor certification requirement is a significant hurdle for most employment-based immigrants; here, too, unions and worker centers are poised to play a more active role. Specifically, worker organizations might be empowered to waive the labor certification requirement under certain circumstances.

Currently, the labor certification process is administered by the U.S. Department of Labor (DOL), which oversees a multiple-step process involving employers and local workforce agencies. Typically, the employer will first request from the DOL the prevailing wage for the job that the employer seeks to fill with the foreign worker. The prevailing wage, defined as “the average wage paid to similarly employed workers in a specific occupation in the area of intended employment,” is calculated by the DOL.<sup>81</sup> Using the prevailing wage information, the employer must advertise the opening both in newspapers serving the area and with the state workforce agency in the state of intended employment.<sup>82</sup> The purpose of these recruitment efforts is to attract U.S. workers who might be interested in the position. Assuming no suitable U.S. workers apply for the position, the next step is to file the labor certification application with the DOL; if the DOL approves it, the employer can file the visa petition with U.S. Citizenship and Immigration Services.<sup>83</sup> In short, labor certification is a cumbersome and costly process for employers.

Since unions are already perceived (and indeed, positioned) as protectors of

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79. See 8 U.S.C. § 1153(b)(3)(A)–(B) (2012).

80. Carlos Perez de Alejo & Kim Penna, *Building a New Economy in Texas*, COOPERATION TEX. (June 14, 2012, 3:45 PM), <http://cooperationtexas.coop/2012/06/building-a-new-economy-in-texas> (describing the creation of Dahlia Green Cleaning Services, a worker cooperative for eco-friendly cleaning services and the result of a partnership between the Workers Defense Project (an Austin-based worker center) and Cooperation Texas (a nonprofit that promotes worker cooperatives)).

81. *Prevailing Wages (PERM, H-2B, H-1B, H-1B1 and E3)*, U.S. DEPARTMENT LAB. EMP. & TRAINING ADMIN., <http://www.foreignlaborcert.doleta.gov/pwcreens.cfm> (last visited Nov. 30, 2013). Prevailing wages are searchable through the Foreign Labor Certification Data Center’s Online Wage Library. *Online Wage Library - FLC Wage Search Wizard*, FOREIGN LAB. CERTIFICATION DATA CENTER, <http://www.flcdcenter.com/OESWizardStart.aspx> (last visited Oct. 1, 2013).

82. See 20 C.F.R. §§ 655.33(b), 655.41–655.42 (2014).

83. *Frequently Asked Questions (FAQs)*, U.S. DEPARTMENT LAB., <http://webapps.dol.gov/dolfaq/go-dol-faq.aspx?faqid=308> (last visited Sept. 30, 2013).

the U.S. workforce, one possibility is to delegate authority to unions or worker organizations to waive the labor certification requirement for certain industries and localities. As indicated above, our current immigration laws already grant a similar type of authority to unions in the context of D, O, and P visas.<sup>84</sup> This delegation could be structured in multiple ways. For example, the decision could be delegated to a prominent union or worker organization if the group represents a particular percentage of workers in a certain industry and area. Alternatively, the decision could be referred to a body comprised of representatives from different unions and other stakeholder groups. One way to systematize the process would be to allow unions, worker organizations, or some collective body to add additional occupations to Schedule A. The Schedule A list, maintained by the U.S. Department of Labor, lists a small number of professions for which labor certification is not required.<sup>85</sup>

A complementary approach could be derived from the existing “national interest” waiver, which waives the requirement of a job offer and of labor certification for second-preference, employment-based immigrants.<sup>86</sup> In order to qualify for the waiver, the applicant must (1) seek employment in an area of substantial intrinsic merit, (2) demonstrate that her employment will benefit the nation, and not just a local area, and (3) establish that she will serve the national interest to a substantially greater degree than an available U.S. worker would.<sup>87</sup> This test could be adapted for use by unions or other entities charged with a waiver decision. In particular, a job offer could be required, and the waiver would apply only to the labor certification. Moreover, one or more of the prongs could be tweaked for this different purpose. Naturally, to avoid overpoliticization or grossly self-interested behavior, the waiver decisions could be reviewable by the DOL.

How does the exercise of a waiver authority by unions or worker organizations benefit these same entities in the long run? Traditionally, they have advocated for the opposite—namely, stricter enforcement of the labor certification requirement.<sup>88</sup> In terms of relationships with immigrants and immigrant rights groups, the waiver would be an important symbolic gesture, reflecting a desire to eschew some of the exclusionist history of the past and to embrace the inclusion of foreign-born workers. Practically speaking, exercise of the waiver would allow unions and worker centers to build bridges with workers whom unions will ultimately want to organize here in the United States. Unions

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84. See *supra* Section I.A.

85. Currently, the occupations on the list include nurses and physical therapists. 20 C.F.R. § 656.5.

86. 8 U.S.C. § 1153(b)(2)(B) (2012).

87. N.Y. State Dep’t of Transp., 22 I & N Dec. 215, 217–18 (B.I.A. 1998) (interim decision).

88. See, e.g., *Me. State Bldg. & Constr. Trades Council v. U.S. Dep’t of Labor*, 359 F.3d 14, 16 (1st Cir. 2004) (regarding litigation brought by unions, challenging the process used to calculate prevailing wage rates for labor certification purposes).

can look strategically at industries that have potential worker shortfalls and that are the focus of organizing efforts. Of course, a waiver would not be granted in those industries where there truly are sufficient U.S. workers who are willing to perform the work, and where there is a strong foothold by the union or worker organization.

*c. Meeting Other Eligibility Requirements*

A third opportunity, apart from the job offer and labor certification requirements, relates to educational credentials. Many unions in the United States offer formal training programs through apprenticeship classes or other opportunities. At the same time, some of the employment-based visa categories require specific educational credentials or work experience among would-be immigrants. For example, the third-preference, employment-based visa category allows for the immigration of “skilled workers” with at least two years of training or work experience.<sup>89</sup> The regulations that interpret that statutory requirement could be amended to state explicitly that union apprenticeship training (and similar vocational training by worker centers) would satisfy the requirement. At a minimum, such a fix would benefit workers who are already in the United States and can apply for permanent residence. Alternatively, unions could strive for a fix that would allow workers to enter conditionally, so that they could satisfy the educational requirement with the help of unions, and then have that condition lifted to allow workers to remain in the United States indefinitely.

*2. Family-Based Immigrant Visas*

Apart from the employment-based visa process, the family-based visas provide another avenue to strengthen ties between immigrants and unions or other worker organizations. Most family-based, permanent visa options require the beneficiary (the intending immigrant) to obtain an affidavit of support from the petitioner (the immigrant’s “sponsor”) and, if necessary, from another individual.<sup>90</sup> Under current regulations, the affidavit of support must be executed by an individual; businesses or other entities may not step into that role.<sup>91</sup> Since the affidavit of support is structured as a contract and technically is enforceable, it is logical that the U.S. government would seek to limit who can sign; indeed, collecting against a corporate or business entity might prove challenging. Given the DOL’s close financial oversight of unions, however, an exception could be created that would allow them to sponsor intending immigrants, while satisfying

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89. 8 U.S.C. § 1153(b)(3); 8 C.F.R. § 204.5(l)(2) (2014).

90. See 8 C.F.R. § 213a.2(b)(1). See generally U.S. CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP’T OF HOMELAND SEC., OMB NO. 1615-0075, AFFIDAVIT OF SUPPORT UNDER SECTION 213A OF THE ACT (2013), available at <http://www.uscis.gov/files/form/i-864.pdf>.

91. See 8 C.F.R. § 213a.2(c); U.S. CITIZENSHIP & IMMIGRATION SERVS., U.S. DEP’T OF HOMELAND SEC., OMB NO. 1615-0075, INSTRUCTIONS FOR AFFIDAVIT OF SUPPORT UNDER SECTION 213A OF THE ACT (2013), available at <http://www.uscis.gov/files/form/i-864instr.pdf>.

the concern that underlies the affidavit requirement. An alternate work-around would be to have certain union or worker center leaders execute the affidavit of support in an individual capacity with a parallel understanding (perhaps formalized in writing) that the organization as a whole is supporting the worker.

This sponsorship possibility would offer a concrete way for unions to demonstrate support for immigrant members who seek to petition for their family members. It could also serve as an incentive for immigrants already in the United States to affiliate with a union or worker organization. Finally, it would create goodwill between these organizations and the intending immigrant, addressing any negative associations that the immigrant may have about unions. These associations may stem from experiences with unions in the immigrant's country of origin<sup>92</sup> or from the unfavorable stereotypes that plague unions among some immigrants here in the United States.

### *B. Reforms Relating to Temporary Immigration to the United States*

Another opportunity to uplift labor organizations exists in the infrastructure for temporary immigration to the United States. Historically, unions and other worker organizations have been wary of temporary employment visas, and for good reason—employers have often opted for foreign labor to cut costs by offering lower wages and no benefits.<sup>93</sup> One of the most troublesome aspects of the temporary work visas—from the perspective of both workers and their advocates—is the fact that the immigrants are tied to one employer. For example, immigrants entering the United States for several months at a time on H-2A (for temporary agricultural work) or H-2B (for temporary nonagricultural work) visas cannot switch employers if they experience mistreatment in the workplace or if the terms and conditions they were promised are not realized.<sup>94</sup> This lack of visa “portability” is one of the core concerns of guest worker advocates.

The immigration reform bill that passed the U.S. Senate in June 2013 specifically addresses the issue of portability in the context of various temporary work visas.<sup>95</sup> The bill contemplates portability for recipients of a new type of agricultural worker visa,<sup>96</sup> beneficiaries of employment-based green card

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92. *E.g.*, BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011: COLOMBIA, 44–51 (2012), *available at* <http://www.state.gov/documents/organization/186712.pdf> (describing widespread retaliation and violence against trade unionists in Colombia).

93. *See* AM. UNIV. WASH. COLL. OF LAW & CENTRO DE LOS DERECHOS DEL MIGRANTE, INC., PICKED APART: THE HIDDEN STRUGGLES OF MIGRANT WORKER WOMEN IN THE MARYLAND CRAB INDUSTRY 9 (2010), *available at* [http://www.wcl.american.edu/clinical/documents/20100714\\_auwel\\_jhrle\\_picked\\_apart.pdf](http://www.wcl.american.edu/clinical/documents/20100714_auwel_jhrle_picked_apart.pdf) (describing the shift towards the use of guest workers in Maryland's crab industry).

94. *See* Kati L. Griffith, *U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law*, 31 COMP. LAB. L. & POL'Y J. 125, 135 (2009).

95. *See, e.g.*, Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. §§ 2232, 4237, 4404, 4701–03 (2013).

96. *Id.* § 2232.

applications that are pending for significant lengths of time,<sup>97</sup> H-1B and O-1 visa holders,<sup>98</sup> and recipients of a W nonimmigrant visa, a new proposed visa category for unskilled workers.<sup>99</sup> The legislation also calls for the creation of a new Bureau of Immigration and Labor Market Research, which would administer key features of the W nonimmigrant visa and generally monitor employment-related immigration to the United States.<sup>100</sup> Prospective employers of W visa holders would be required to register with the U.S. government, and visa holders would be able to switch from one registered employer to another.<sup>101</sup>

Although the blueprint for the W visa is a significant advancement, unions and other worker organizations could also help facilitate portability. Under the existing legal regime, visa portability is not possible, arguably because the visa is premised on the specific employer's showing that workers are needed and also that U.S. workers will not be adversely affected. For a worker to change employers, she would have to reinitiate that entire clearance process with another employer. Worker organizations, however, could be positioned to serve as hubs for the transfer of nonimmigrant visas. A worker's ability to transfer jobs while on a temporary work visa would be conditioned on membership in the organization or union. Given the unions' knowledge and expertise regarding the local employment market, they would be in a position to verify that the new job placement(s) would satisfy the conditions that are usually attached to the temporary visas. If the W visa is ultimately enacted, this proposal could be structured as a "fast track" for portability or merged somehow into the employer registration process.

Additional concerns must be addressed for this proposal to work. First, under the existing body of U.S. labor law, many unions acquire members through organizing campaigns, after which voluntary recognition or a representation election occurs and members of the bargaining unit are then encouraged to formally join the union.<sup>102</sup> Under this proposal, unions would have to expand use of a simpler membership model. Additionally, unions would have to sift through the maze of right-to-work and other laws that might be implicated. For these reasons, worker centers and other emerging sites of organizing may prove to be more effective hubs for the visa portability. A final concern relates to the duration of membership in the union. If the goal is to sustain membership for the long term, the organizational hubs would have to impose a minimum time period for membership, or otherwise incentivize the immigrants to remain in the union.

One might also assume that the hubs (whether unions or other worker

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97. *Id.* § 4237.

98. *See id.* § 4404.

99. *See id.* § 4701.

100. *Id.*

101. *Id.* § 4703.

102. *See* Jack Fiorito et al., *National Union Effectiveness in Organizing: Measures and Influences*, 48 INDUS. & LAB. REL. REV. 613, 614–15 (1995).

organizations) would want to place workers at worksites that are already unionized. According to this logic, the organization would want to continue to extract dues from workers and have a formal relationship with the employer should workplace concerns arise. The proposal, however, invites consideration of alternate models of worker representation that are not premised on collective bargaining agreements. While unionized placements would be optimal, the worker organizations could also embrace a more informal (and ad hoc) role, limited to ensuring that the basic terms of the contract are being met and that the worker's rights under applicable workplace laws are being respected. In this way, the worker organizations would also cure the deficit in legal representation that exists among many temporary guest workers.<sup>103</sup> Many of these workers are ineligible for representation by federally funded legal services entities.<sup>104</sup>

A wholly different approach involving temporary workers would be for unions and worker organizations to serve as the *sponsors* for those workers. As with most permanent, employment-based immigration, immigrants who come to the United States for temporary work must be sponsored by an employer.<sup>105</sup> Unions, acting as a proxy for the employers (or groups of employers), could be authorized to submit the petitions for the foreign workers. Again, this would allow unions to cultivate a relationship with the workers from the very beginning of their employment experience in the United States. It would also eliminate some (but certainly not all) of the formidable challenges that accompany organizing temporary workers in the United States.

Although not precisely the same model, the North Carolina Growers' Association (NCGA) and the Farm Labor Organizing Committee (FLOC) undertook a similar collaboration with respect to H-2A guest workers.<sup>106</sup> Under the terms of the contract between the parties, NCGA agreed to abide by common terms of collective bargaining agreements, including seniority, a just cause standard for firing, and a grievance procedure.<sup>107</sup> Additionally, FLOC was given an oversight role vis-à-vis recruitment of workers in Mexico.<sup>108</sup> FLOC opened an office in Monterrey, Mexico, to facilitate its organizing efforts and to assist members who had returned to their home communities.<sup>109</sup>

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103. See Jayesh M. Rathod, *A Season of Change: Reforming the H-2B Guest Worker Program*, 45 CLEARINGHOUSE REV. 20, 27 (2011) (noting that most H-2B guest workers are not entitled to federally funded legal services, and highlighting the geographic isolation of many guest workers, which further limits their ability to obtain representation).

104. See Griffith, *supra* note 94, at 157.

105. E.g., *Temporary (Nonimmigrant) Workers*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/uscis-tags/unassigned/temporary-nonimmigrant-workers> (last updated Apr. 23, 2011) ("Employers must generally file a petition with USCIS to legally hire a nonimmigrant as a temporary worker.").

106. Griffith, *supra* note 94, at 156.

107. Gordon, *supra* note 26, at 574–75.

108. *Id.* at 575.

109. *Id.* at 575–76; see also Steven Greenhouse, *North Carolina Growers' Group Signs Union Contract for Mexican Workers*, N.Y. TIMES, Sept. 17, 2004, at A16, available at <http://www.nytimes.com/>

*C. Reforms Linked to Legalization*

Given the turbulent legislative debates in Washington, it is uncertain whether an immigration reform bill, if ultimately enacted, would include some form of legalization of the undocumented. In its June 2013 bill, the U.S. Senate outlined requirements that undocumented persons must meet over the course of a ten-year-plus path from provisional status to lawful permanent residence.<sup>110</sup> These requirements include a specified period of residence in the United States; absence of a significant criminal record; payment of taxes, fees, and a penalty; maintenance of steady employment or income while in provisional status; and some proficiency in the English language, *inter alia*.<sup>111</sup> Although it has not been named as an explicit requirement, to the extent these forms of relief are discretionary, the adjudicator may also consider whether the applicant is a person of good character and whether she has been a positive presence in the community.<sup>112</sup> Similar requirements are already on the books for many forms of immigration relief.<sup>113</sup>

What would be the role of unions and worker organizations in a legalization effort? At a minimum, such organizations could be trained to process and submit applications as was done under the SAW amnesty program of the 1980s. (The Senate bill does provide that applications for farm worker legalization can be submitted to a “qualified designated entity,” including farm labor organizations.<sup>114</sup>) Beyond that, worker organizations could provide evidence of duration of stay in the United States or of regular employment, through membership or other internal records. In fact, the reform bill approved by the U.S. Senate in June 2013 expressly contemplates this possibility for proving employment.<sup>115</sup> Some analysts have criticized the employment requirements for legalization;<sup>116</sup> if these requirements are relaxed to allow for volunteer work or other types of community engagement, unions or labor organizations could provide an infrastructure for such opportunities and could issue proof of participation. Similarly, if some minimal educational requirement is instituted, participation in union training programs could be deemed to satisfy that requirement.

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2004/09/17/national/17labor.html (describing the origins of the contract and its key provisions, including the creation of a hiring hall in Mexico).

110. See Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. §§ 2101–02 (2013).

111. *Id.*

112. *Cf. id.* § 2555 (referencing good moral character requirement for naturalization applications).

113. See, e.g., 8 U.S.C. § 1229b(a) (2012).

114. S. 744, § 2202(5)(A).

115. *Id.* § 2102 (clarifying that an applicant may rely on “records of a labor union, day labor center, or organization that assists workers in employment” to satisfy employment or education criteria for adjustment of status from provisional immigrant to lawful permanent resident).

116. NAT'L IMMIGRATION LAW CTR., SUMMARY & ANALYSIS: BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT OF 2013, at 4 (2013), available at <http://www.nilc.org/s744summary1.html> (criticizing the employment requirement for legalization as one that “creates an unnecessary level of government red tape”).

Other possibilities exist, but are less palatable politically. For example, the fees for legalization applications or other requirements could be relaxed based on membership in a union or worker organization. This would require linking membership with some broader benefit to the worker or to society, as discussed in Section III *infra*.

#### *D. Reforms Linked to Expansion of the U Nonimmigrant Visa Category*

Proposed reforms to the U nonimmigrant visa category (U visa) provide another opportunity to affirmatively situate unions and worker organizations in immigration processes. Created in 2000 with the passage of the Victims of Trafficking and Violence Prevention Act,<sup>117</sup> the U visa is designed to encourage immigrant crime victims to come forward and to cooperate with law enforcement.<sup>118</sup> An individual is eligible to apply for a U visa if she (1) is the victim, in the United States, of one of several enumerated crimes and “has suffered substantial physical or mental abuse” as a result; (2) “possesses credible and reliable information” regarding the crime; and (3) demonstrates helpfulness in the investigation and prosecution of the crime.<sup>119</sup> As proof of this last criterion, an applicant must submit a signed certification, typically from a law enforcement agency involved in the investigation or prosecution.<sup>120</sup>

Following the enactment of the U visa regulations, the Equal Employment Opportunity Commission (EEOC) and the DOL have clarified their authority to issue certifications for certain crimes within their investigative authority. The EEOC will consider certification requests for crimes “related to the unlawful employment discrimination alleged in the charge or otherwise covered by the statutes the EEOC enforces.”<sup>121</sup> The Wage and Hour Division of the DOL will consider requests relating to five specific crimes: involuntary servitude, peonage, trafficking, obstruction of justice, and witness tampering.<sup>122</sup> These announcements signaled the government’s attentiveness to crimes committed against immigrants in the workplace, and the desire to extend the U visa to extreme forms of labor exploitation.

The Senate bill proposes to expand the U visa category to capture a broader range of mistreatment suffered by immigrants. Specifically, the legislation allows

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117. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a), 114 Stat. 1464, 1533–34 (codified as amended at 8 U.S.C. § 1101).

118. Leticia M. Saucedo, *A New “U”: Organizing Victims and Protecting Immigrant Workers*, 42 U. RICH. L. REV. 891, 907 (2008).

119. 8 C.F.R. § 214.14(b) (2014).

120. *Id.* § 214.14(a)(2), (c)(2)(i).

121. *EEOC Procedures: Requesting EEOC Certification for U Nonimmigrant Classification (U Visa) Petitions in EEOC Cases*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, [http://www.eeoc.gov/eeoc/foia/u\\_visa.cfm](http://www.eeoc.gov/eeoc/foia/u_visa.cfm) (last visited Nov. 1, 2013).

122. Press Release, U.S. Dep’t of Labor, U.S. Labor Department Announces Protocols for Certifying U Visa Applications (Apr. 28, 2011), available at <http://www.dol.gov/opa/media/press/whd/WHD20110619.htm>.

victims to pursue U visas when they have been the victim of “serious workplace abuse, exploitation, retaliation, or violation of whistleblower protections” that are “in violation of any Federal, State or local law.”<sup>123</sup> Consistent with this expansion, the provision indicates that a certification may be issued by “any Federal, State, or local governmental agency or judge investigating, prosecuting, or seeking civil remedies for any cause of action, whether criminal, civil, or administrative, arising from” one of the violations described above.<sup>124</sup> The legislation also provides for a stay of removal and work authorization for individuals who are eligible for or pursuing this form of relief.<sup>125</sup>

If enacted, the provision would offer a powerful remedy to countless immigrants who have experienced extreme forms of mistreatment in the workplace. Unions and other worker organizations are often at the forefront of detecting such violations and supporting workers as they pursue complaints with the appropriate bodies. There are several ways to systematize the role of unions and worker organizations under the new regime. While it is unlikely that the government would delegate the authority to issue certifications, it could delegate the authority to conduct nonbinding *prima facie* determinations to representatives of organizations with expertise in this area. Additionally, given the likelihood of a very high volume of applications, the Department of Homeland Security (DHS) could designate specific organizations to screen and process such applications, and ultimately forward those applications to the DHS. At a minimum, the DHS could offer a training that would allow non-attorney staff members at workers’ rights organizations to serve as the workers’ formal representatives on these applications.<sup>126</sup> Each of these proposals would formalize the role of these organizations in the U visa process, arguably to the benefit of all parties involved.

#### *E. Unions, Worker Organizations, and Immigrant Integration Initiatives*

Unions and worker organizations can also be interwoven into the immigrant integration initiatives proposed in the Senate bill. The Senate bill proposes (1) creating a Task Force on New Americans comprised of key government officials; (2) rebranding the Office of Citizenship within the United States Citizenship and Immigration Services as an “Office of Citizenship and New Americans” and expanding its duties; and (3) creating the United States Citizenship Foundation,

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123. See Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. § 3201(a)(5) (2013).

124. *Id.* § 3201(a)(1)(C).

125. *Id.* § 3201(c).

126. Under existing regulations, applications for immigration benefits may be submitted by an attorney (either in the United States or outside of the United States) and by accredited representatives. 8 C.F.R. § 103.2(a)(3) (2014). This accreditation process is managed by the Executive Office for Immigration Review and could be adopted or expanded for the purposes described in this Article. See generally 8 C.F.R. § 292.1(a)(4); *Recognition & Accreditation (R&A) Program*, U.S. DEPARTMENT JUST., EXECUTIVE OFF. FOR IMMIGR. REV., <http://www.justice.gov/eoir/ra.htm> (last updated Sept. 2013).

which would pursue grant making and collaborations between the government and civil society.<sup>127</sup>

At a minimum, union and worker center leaders could be invited to participate in the Task Force along with other civil society representatives. The Task Force is charged with addressing issues relating to education, workforce training, health care policy, and more<sup>128</sup>—issues about which unions and worker organizations have experience and expertise. The integration provisions also contemplate the creation of New Immigrant Councils, which serve as liaisons to local communities to further immigrant integration, and which could likewise include representatives of labor organizations.<sup>129</sup> These organizations could also be invited to participate in the directorate of the United States Citizenship Foundation.<sup>130</sup>

### III. WHY UNIONS AND WORKER ORGANIZATIONS?

While unions and worker organizations could certainly benefit from greater integration with immigration processes, a question naturally emerges: why should *these* groups—and not any other entity, including private corporations or employer associations—be positioned in this way? What is the political case for giving special dispensation to unions and worker centers, particularly at a time when they are coming under attack across the country?

The answer may emerge by naming the values that underlie our immigration requirements and mapping these values onto the work of unions and worker organizations. Although unions and worker organizations are most commonly framed as working class champions that can offer economic security to workers, they also serve a more fundamental role in developing an active and engaged populace. Unions and worker centers are sites where leadership development, democratic decision making, and civic engagement can all be cultivated. Though scholars may debate the specific virtues that are most valuable among immigrants, there is little doubt that greater involvement with one's community and government and the exercise of leadership are worthy attributes. Indeed, the reform bill that passed the U.S. Senate actively promotes immigrant integration, which is defined, in part, as: “join[ing] the mainstream of civic life by engaging and sharing ownership in [one’s] local community, the United States, and the principles of the Constitution;” “attain[ing] financial self-sufficiency and upward economic mobility[.]” and participation in one’s community.<sup>131</sup>

Unions and worker organizations, as civil society organizations, offer a space where these optimal virtues can be incubated and strengthened, while

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127. See S. 744, §§ 2511, 2521–23, 2531–34.

128. *Id.* § 2524.

129. See *id.* § 2538(d).

130. The Senate bill simply states that the directors should be from “national community-based organizations that promote and assist permanent residents with naturalization.” *Id.* § 2535(a)(3).

131. *Id.* § 2501(4)(A)–(C).

concomitantly undertaking important social functions.<sup>132</sup> Civil society organizations allow persons to challenge established political and economic interests, while also serving as a model for democratic action, a voice for individuals, and a vehicle for conflict resolution and problem solving.<sup>133</sup> Barbara Fick describes unions as the “archetypal civil society organization” with the following characteristics: “democratic representation, demographic representation, . . . breadth of concerns, and [optimal] placement within society.”<sup>134</sup> By creating the space where these attributes can be cultivated, unions and worker organizations can contribute to the positive social formation of new Americans.

Certainly, some of the immigrants arriving in the United States via the proposals described above will already possess these virtues. Moreover, some will be drawn to unions and worker organizations due to personal experiences or a commitment to solidarity with other workers. As Stephen Lee has written, this type of solidarity—particularly when it is displayed across immigration status lines—is indicative of certain bonds, which, in turn, “suggest the capacity and desire to integrate into society.”<sup>135</sup> According to Lee, screening for this attribute is one basis upon which to allocate the benefits of “membership” in our society.<sup>136</sup>

While some immigrants may develop these bonds of solidarity through their experiences in the workplace, affiliation with unions and worker organizations potentially allows *all* workers to cultivate the above-mentioned skills and attributes of an engaged populace—skills and attributes that likewise further immigrant integration. In furtherance of that premise, I briefly describe below how unions and worker organizations foment democratic decision making, critical thinking skills, civic engagement, and leadership development.

#### A. Democratic Decision Making

Nearly all trade unions in the United States are built around a democratic structure where members elect officers at all levels and guide the decision making and work of the unions.<sup>137</sup> It is noteworthy that federal law, namely the Labor Management Reporting and Disclosure Act,<sup>138</sup> compels aspects of this democratic structure by requiring the regular election of local and national officers by the union membership. Indeed, one could argue that there are few other civil society

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132. Thomas C. Kohler, *Civic Virtue at Work: Unions as Seedbeds of the Civic Virtues*, 36 B.C. L. REV. 279, 281 (1995) (“[A]nyone interested in the sources of character and citizenship in American society must pay attention to those institutions that can serve to inculcate, sustain and enhance the civic virtues in the workplace. Chief among such institutions are trade unions and the practice of collective bargaining.”).

133. Barbara J. Fick, *Not Just Collective Bargaining: The Role of Trade Unions in Creating and Maintaining a Democratic Society*, 12 WORKINGUSA 249, 250 (2009).

134. *Id.* at 249.

135. Stephen Lee, *Screening for Solidarity*, 80 U. CHI. L. REV. 225, 241–42 (2013).

136. *Id.* at 234, 238.

137. Fick, *supra* note 133, at 254.

138. 29 U.S.C. § 481(a)–(b) (2012).

organizations in which members can have such a direct, decision-making role. Moreover, these democratic processes are occurring in unions that are increasingly diverse demographically, paralleling the diversification occurring in U.S. society.<sup>139</sup>

Some have fairly criticized unions, arguing that bureaucratic structures of governance have supplanted popular decision making and that the democratic processes that remain are more symbolic in nature.<sup>140</sup> Union leaders and scholars continue to debate the best internal operating structure of unions, the pros and cons of top-down versus more participatory models of governance, and the relationship between this choice and the future vitality of organized labor.<sup>141</sup> To the extent unions have moved away from more democratic practices of the past, their role vis-à-vis new Americans might compel a shift back to more inclusive styles of governance. And at least some research shows that democratic unions create more participation, loyalty, and member satisfaction.<sup>142</sup> Workers who are made part of a decision-making process are more likely to continue participating and, therefore, are more likely to be satisfied.<sup>143</sup> In short, democratic decision making is a core strength of unions (whether latent or realized) and should figure prominently in unions' self-conception and vision for the future.

Worker centers have also emerged as sites for immigrant leaders to engage in democratic decision making.<sup>144</sup> Many worker centers have adopted collective decision-making structures in which workers are actively involved in large and small decisions about how the worker center operates.<sup>145</sup> Consistent with similar dynamics in unions, the democratic, participatory process in worker centers "foster[s] individual dignity and long-term commitment."<sup>146</sup> Some worker centers have also incubated worker cooperatives,<sup>147</sup> which themselves are sites for democratic decision making.<sup>148</sup> As a member of a cooperative, a worker-member can participate in a truly democratic structure where his or her vote is equal to everyone else's.<sup>149</sup> Participation in the cooperative can also help develop

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139. Fick, *supra* note 133, at 255–56.

140. See generally John R. Coleman, *The Compulsive Pressures of Democracy in Unionism*, 61 AM. J. SOC. 519 (1956).

141. See Peter Fairbrother et al., *Unions Facing the Future: Questions and Possibilities*, 31 LAB. STUD. J. 31, 33–35 (2007).

142. See Kevin T. Leicht, *Unions, Plants, Jobs, and Workers: An Analysis of Union Satisfaction and Participation*, 30 SOC. Q. 331, 345 (1989).

143. See *id.* at 346.

144. See Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream*, 50 N.Y.L. SCH. L. REV. 417, 428, 445–46 (2005–2006).

145. *Id.* at 442–43, 445–46.

146. Chesa Boudin & Rebecca Scholtz, *Strategic Options for Development of a Worker Center*, 13 HARV. LATINO L. REV. 91, 105 (2010).

147. Perez de Alejo & Penna, *supra* note 80.

148. See Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 472–78 (2001).

149. *Id.* at 474.

leadership skills, and the cooperative can spawn further collective action for social change.<sup>150</sup>

What is the relevance of the democratization of the work sphere—whether through unions or worker centers—for the overall project of democratic governance at the societal level? Jennifer Gordon has written about the concept of “labor citizenship” and how it serves as a cradle for political citizenship.<sup>151</sup> As noted above, union members are called upon to make a range of democratic decisions from electing a shop steward to ratifying a contract to resolving day-to-day concerns in the workplace.<sup>152</sup> Unions can grow in strength as members see how the decisions made can affect their daily lives.<sup>153</sup> As Gordon notes, this form of “industrial democracy” is often analogized to democracy at the level of the nation-state.<sup>154</sup> The experience of witnessing the effect of popular decision making on one’s work life will create an incentive, in at least some workers, to similarly engage in the broader democratic project in their communities and in society at large.<sup>155</sup> In this manner, unions and worker centers can provide a foundational democratic experience for immigrants, and incentivize similar deliberative engagement in other spheres of their lives.

### B. Critical Thinking Skills and Civic Engagement

Immigrant-based worker centers have become known for their popular education teaching methods, which are used to educate workers about the law, their rights, and other aspects of civic life in the United States.<sup>156</sup> Apart from their informational value, these pedagogical approaches are designed to develop critical thinking skills in workers.<sup>157</sup> Workers are encouraged to develop their own views and to consider how existing laws and systems might be changed.<sup>158</sup> Along these lines, many unions currently pursue educational initiatives among their members, advocating continuing education and negotiating professional development assistance for the benefit of members.<sup>159</sup> In addition to these more traditional

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150. *Id.* at 475.

151. Gordon, *supra* note 26, at 526–28.

152. *Id.* at 522.

153. *See id.*

154. *Id.* at 512.

155. *See* Julie Yates Rivchin, *Building Power Among Low-Wage Immigrant Workers: Some Legal Considerations for Organizing Structures and Strategies*, 28 N.Y.U. REV. L. & SOC. CHANGE 397, 429–30 (2004).

156. *See* Fine, *supra* note 144, at 428, 446.

157. *See id.* at 428.

158. *See id.* at 446–47.

159. *See, e.g.*, Collective Bargaining Agreement Between the Washington-Baltimore Newspaper Guild Local 32035 TNG-CWA and CASA de Maryland, at art. 27 (July 1, 2011), available at <http://www.wbng.org/contracts/casa2011-2014.pdf> (allowing employees to seek reimbursement of up to \$1000 per year for specified professional development courses); *Training and New Opportunity*, LiUNA! LABORERS’ INT’L UNION N. AM., <http://www.liuna.org/training> (last visited Nov. 11, 2013) (noting that LiUNA! members have free “access to the best continuing education programs in North America”).

approaches to education, unions have long embraced—and in some cases, pioneered—the popular education methods now used in worker centers.<sup>160</sup>

As a complement to their education efforts, unions and worker organizations also encourage members to take action and engage with civic and political processes. Members are urged to participate in campaign work, informal legislative advocacy, demonstrations, and more.<sup>161</sup> Through these activities, unions and worker organizations build upon the project of democratic decision making, and directly engage immigrant members in external efforts that have an impact on their lives. Moreover, members are able to participate in a meaningful way precisely because of the knowledge gleaned from the aforementioned educational initiatives. These activities endow workers with valuable skills and experiences and also deepen their sense of connection to their communities.<sup>162</sup>

### C. Leadership Development

Both unions and worker centers provide multiple opportunities for leadership development, equipping immigrants with a critical skill set that is transferrable to other aspects of civic life.<sup>163</sup> Unions, because of their democratic structure, offer many opportunities for asserting leadership, from shop steward positions to local officer positions to staff and higher office positions within the unions. Additionally, union members are often encouraged to participate in union programs focused on organizing, communications, legislative and political advocacy, and more.<sup>164</sup> Through these programs, members develop knowledge and experience, allowing them to have greater mobility within the union.

Worker centers are also promoting leadership through intentional operational choices. Janice Fine, for example, has written eloquently about the emergence of worker centers in the United States and has noted the opportunities they provide for worker empowerment and leadership development.<sup>165</sup> She notes

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160. See generally John Hurst, *Popular Education, Labor, and Social Change*, in TEACHING FOR CHANGE: POPULAR EDUCATION AND THE LABOR MOVEMENT 9 (Linda Delp et al. eds., 2002). Indeed, some have argued that increasing the use of participatory education might contribute to the revitalization of more “bureaucratic” unions. See Kim Voss & Rachel Sherman, *Breaking the Iron Law of Oligarchy: Union Revitalization in the American Labor Movement*, 106 AM. J. SOC. 303, 344 (2000).

161. See, e.g., Fine, *supra* note 144, at 433–41.

162. Jennifer Gordon & R.A. Lenhardt, *Rethinking Work and Citizenship*, 55 UCLA L. REV. 1161, 1218 (2008) (“The more migrants participate politically through unions, worker centers, and marches, the deeper their sense of belonging becomes.”).

163. See, e.g., Rivchin, *supra* note 155, at 429 (describing the New York Civic Participation Project, and concluding that “leadership and activism can translate between the community and the workplace”).

164. See, e.g., *Organizing Institute*, AFL-CIO, <http://www.aflcio.org/Get-Involved/Become-a-Union-Organizer/Organizing-Institute> (last visited Nov. 1, 2013) (describing opportunities for union members to participate in union organizing trainings); *Steelworkers Training Programs*, UNITED STEELWORKERS, <http://www.usw.org/resources/training> (last visited Nov. 1, 2013) (describing training modules designed to improve the communication abilities of local members).

165. Fine, *supra* note 144, at 419, 442; see also Victor Narro, *Impacting Next Wave Organizing: Creative Campaign Strategies of the Los Angeles Worker Centers*, 50 N.Y.L. SCH. L. REV. 465, 469 (2005–

that most worker centers routinely involve workers in the operation of the centers and make use of volunteers drawn from the ranks of low-wage immigrant workers.<sup>166</sup> Beyond mere volunteer opportunities, the centers intentionally develop leadership skills in workers so that they can ultimately guide the work of the centers.<sup>167</sup> Apart from the internal operations of the worker centers, the leadership development efforts help workers promote structural change in the systems that affect their day-to-day lives.<sup>168</sup>

Some worker centers have adopted formal leadership development curricula.<sup>169</sup> Workers are trained to “represent themselves before the media, public officials, and employers, to recruit and lead other workers, and to choose issues and develop campaigns.”<sup>170</sup> Often, this experience is cultivated in the context of organizing efforts. Drawing upon examples from Los Angeles, Victor Narro has described how women worker leaders from the Garment Worker Center developed a range of skills through their involvement in an antisweatshop campaign.<sup>171</sup> And although worker centers certainly deserve credit for creating these leadership opportunities, unions have also positioned immigrant workers in key leadership roles. For example, during the Justice for Janitors campaign led by the Service Employees International Union, immigrant workers stepped into leadership positions, fomenting a sense of ownership over the campaigns.<sup>172</sup>

For many worker centers, these leadership development efforts involve the creation of leadership bodies comprised of workers<sup>173</sup> or the integration of workers into existing governance structures, such as a Board of Directors or Board of Advisors. In writing about the Workplace Project in Long Island, New York, for example, Jennifer Gordon describes how the organization’s Board of Directors and several of its committees are elected from an all-worker membership.<sup>174</sup>

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2006) (noting the “systematic implementation of leadership and campaign development programs” at worker centers in the United States).

166. Fine, *supra* note 144, at 445.

167. *Id.* at 428.

168. See generally Rebecca J. Livengood, *Organizing for Structural Change: The Potential and Promise of Worker Centers*, 48 HARV. C.R.-C.L. L. REV. 325 (2013) (outlining strategies for how worker centers can help workers build the political and economic power needed to bring about change).

169. E.g., Narro, *supra* note 165, at 509–10 (describing a leadership development school developed by the Multi-Ethnic Immigrant Worker Organizing Network, or MIWON).

170. Fine, *supra* note 144, at 445–46.

171. Narro, *supra* note 165, at 481.

172. Ruth Milkman & Kent Wong, *Organizing Immigrant Workers: Case Studies from Southern California*, in REKINDLING THE MOVEMENT: LABOR’S QUEST FOR RELEVANCE IN THE TWENTY-FIRST CENTURY 99, 127 (Lowell Turner et al. eds., 2001).

173. See Fine, *supra* note 144, at 454.

174. Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 430 (1995).

## CONCLUSION

This is a pivotal moment in the history of the U.S. labor movement and in the growth of the immigrants' rights movement. In recent years, both movements have found multiple opportunities for collaboration and have identified shared goals and challenges. Labor leaders have recognized the importance of embracing immigrants to ensure the vitality of their own cause. For this reason, many labor leaders have supported the call for immigration reform, citing the long-term benefits that will flow to U.S. workers.

With this Article, I seek to encourage labor and immigrants' rights leaders to think more radically about how their collaborations could be structured. While some of the proposals presented might face political challenges, they serve as malleable models from which other ideas can be crafted. And although these proposals serve instrumental and political ends for unions and worker organizations, they also provide an opportunity for these groups to broaden the narrative about their core purpose, expanding beyond economic protection to include a wider set of habits and values, which are essential for healthy democracies.