Claiming Rights, Reclaiming Dignity: Examining the Legal Mobilization of Low-Wage Workers

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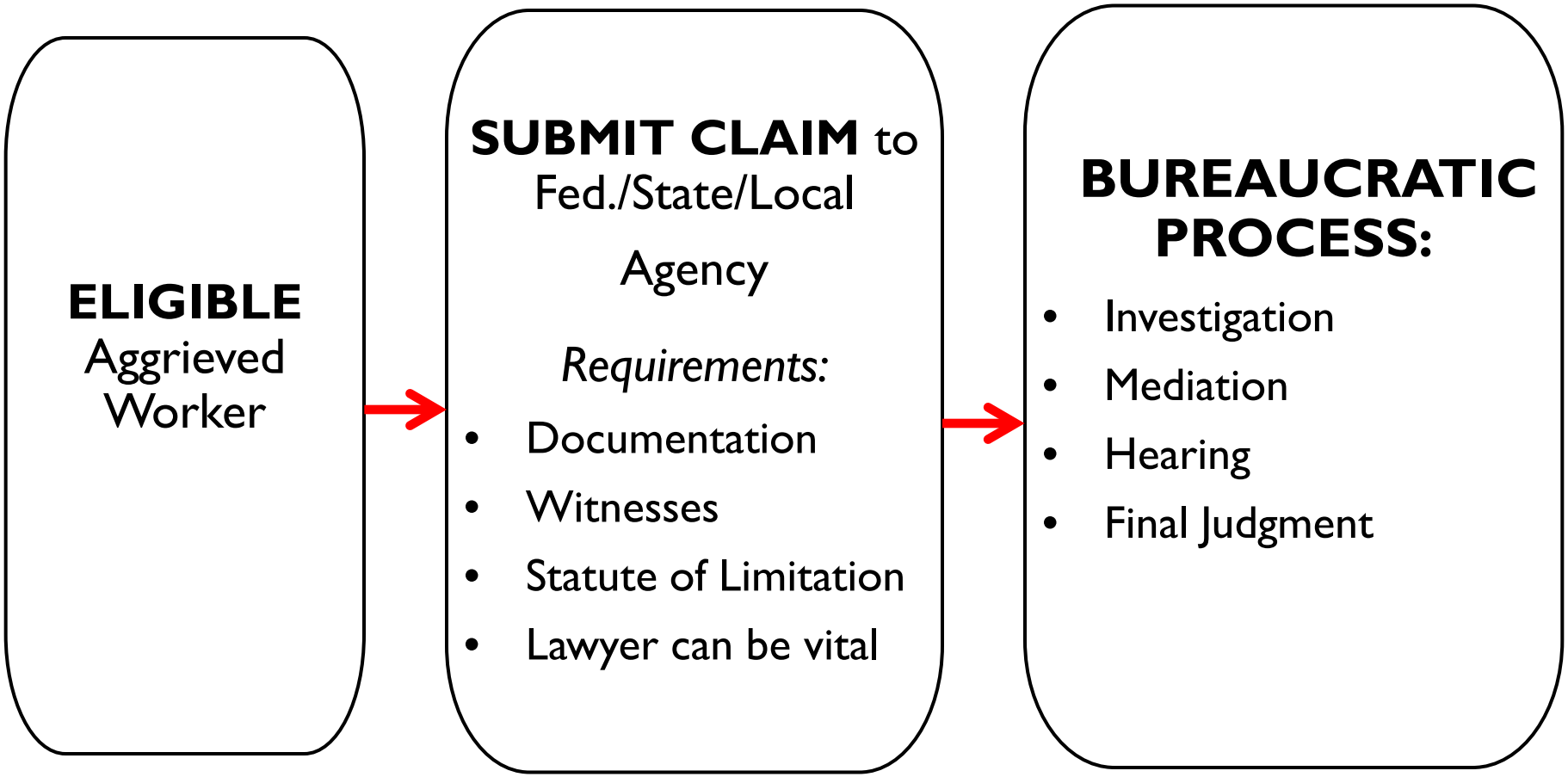
Abstract

This paper examines the claims-making experiences of a 453 low-wage workers in the San Francisco Bay Area. Findings reveal that workers in the construction industry, those paid in cash, the undocumented, and white workers, are more likely to experience wage theft. There is no discernible pattern for which type of worker is more likely to first try resolving their claim directly with their employer. However, amongst those who do, non-English speakers and restaurant workers are more likely to report receiving retaliatory threats. For those who avoid direct confrontation, undocumented workers are more likely to report fear as a major deterrent. Very low-educated workers and those who are still employed by their offending employer are less likely to have gone directly to a government agency for help. The paper ends with a brief discussion of key themes of challenges that persist throughout the life of a legal claim.

Standard Process of Filing A Claim



Labor Standards Enforcement Challenges

- Gaps in coverage of the law
- Claims-driven enforcement mechanisms
- Insufficient enforcement resources
- Tremendous backlog
- Weak penalties for employers
- Difficulty of protecting *marginal workers* like immigrants

Immigrant Labor in The United States

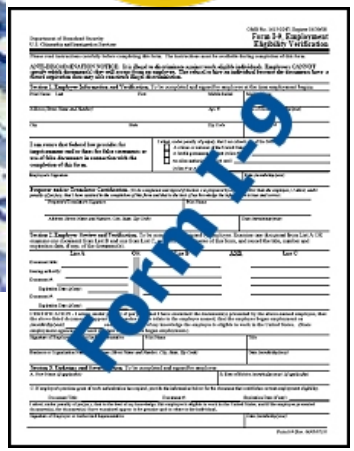
- 16% of private sector is FOREIGN-BORN
- 5.2% of private sector is UNDOCUMENTED
- Low rates of unionization
- High rates of occupational injuries, illnesses & fatalities
- Rampant wage theft

Paradox of the Undocumented Worker

DEPORTABLE ALIEN
Not Authorized to Work
Surveillance Target

E-Verify
U.S. Citizenship and Immigration Services

U.S. BORDER PATROL



PROTECTED WORKER
Vital Part of Labor Force
Outreach Target

OSHA® Podemos Ayudar

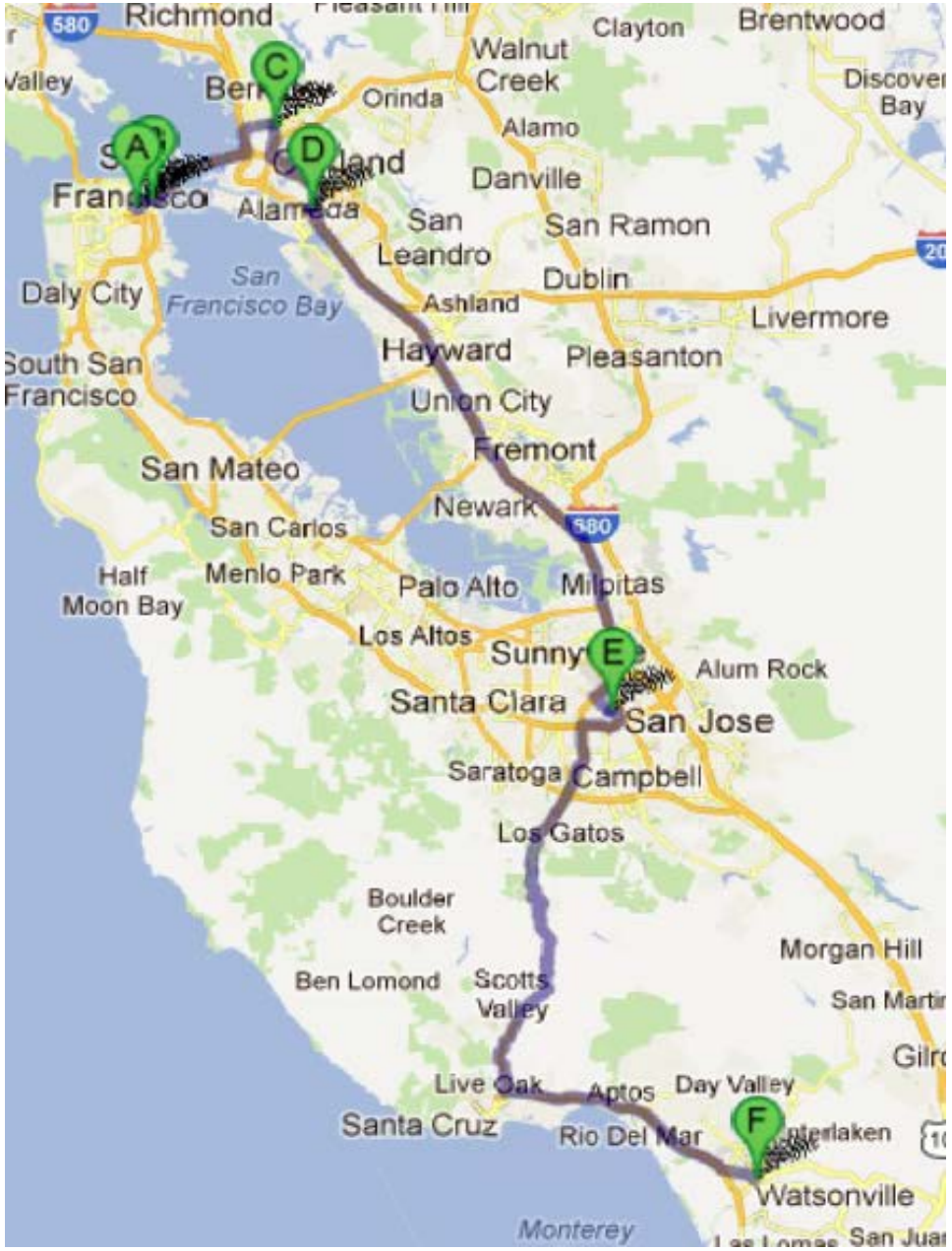
EEOC REAFFIRMS COMMITMENT TO PROTECTING UNDOCUMENTED WORKERS FROM DISCRIMINATION

Study Objectives

- ***How do labor and immigration law shapes workplace experiences?***
  - How does claims-making differ by legal status?
- ***How do workers gain knowledge about their rights?***
  - What role do bureaucratic brokers like workers' rights clinic play?
- ***What are the liabilities of "lawyering" ?***
  - How are rights on the books translated in practice?

Research Sites

	City	Workers' Rights Clinic
A	*San Francisco*	Hastings Law School
B	*San Francisco*	Golden Gate University
C	*Berkeley*	Boalt/East Bay Community Law Center
D	*Oakland*	Centro Legal de la Raza
E	*San Jose*	Santa Clara Law School
F	*Watsonville*	Watsonville Law Center



Demographic Profile of Region

(2005-2009 American Community Survey)

	San Francisco-Oakland-Fremont Metro		San Jose-Sunnyvale - Santa Clara Metro	
	N	%	N	%
HISPANIC/LATINO (of any race)	887,198	20.9%	486,202	27.1%
FOREIGN BORN	1,264,484	29.8%	655,016	36.5%
Naturalized U.S. citizen	680,959	53.9%	326,817	49.9%
Entered 2000 or later	320,551	25.4%	189,201	28.9%
LANGUAGE SPOKEN AT HOME				
English only	2,395,193	60.1%	826,717	49.7%
Spanish	642,952	16.1%	326, 651	19.6%
EDUCATIONAL ATTAINMENT				
Less than 9th grade	202,286	6.8%	91,854	7.7%
High school (or equivalent)	(X)	87.2%	(X)	86.0%
Percent bachelor's degree or higher	(X)	43.5%	(X)	44.5%
PERCENT UNEMPLOYED		7.7%		7.9%
INCOME				
Median household income (dollars)	75,707	(X)	86,286	(X)
Median family income (dollars)	91,458	(X)	99,794	(X)
Per capita income (dollars)	39,862	(X)	39,369	(X)

Survey Distribution

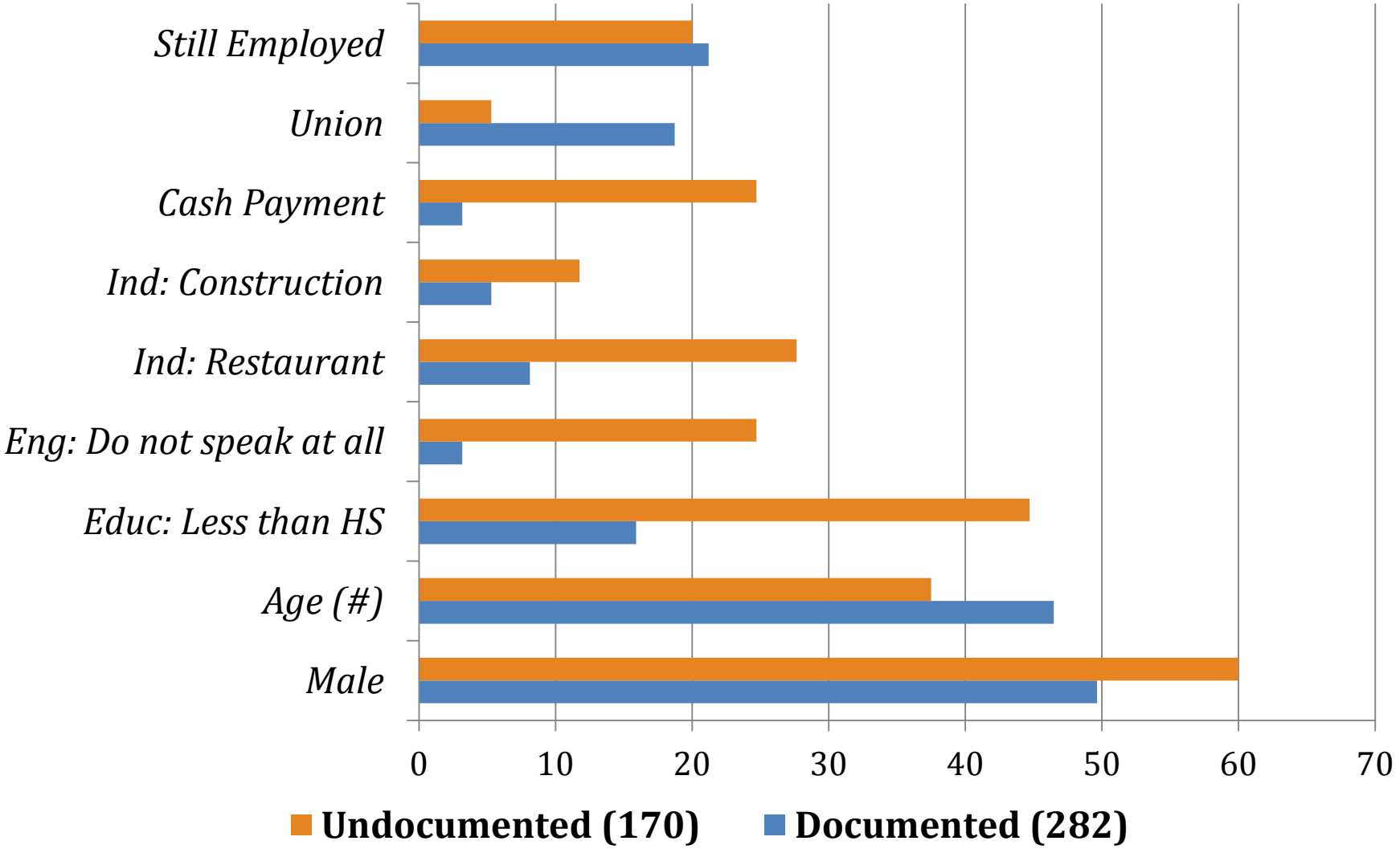
	Survey	FB	FB - NonCitz	FB – NonCitz - NonLPR	Male
San Jose	237	194	146	107	128
Oakland	61	58	51	42	32
San Francisco	97	51	24	9	56
Berkeley	58	28	21	12	26
SF – GGU	9	5	5	2	1
Watsonville	7	7	5	2	2
	469 (100%)	**343 (73%)**	**252 (54%)**	**174 (37%)**	**245 (52%)**

Racial Self-Identification
(not mutually exclusive)

	White	Black	Latino	API	Other
San Jose	13	5	191	20	8
Oakland	0	0	61	0	0
San Francisco	20	20	30	21	8
Berkeley	12	16	20	7	4
SF – GGU	2	2	4	2	0
Watsonville	0	0	7	0	1
	47 (10%)	**43 (9%)**	**313 (67%)**	**50 (11%)**	**21 (4%)**

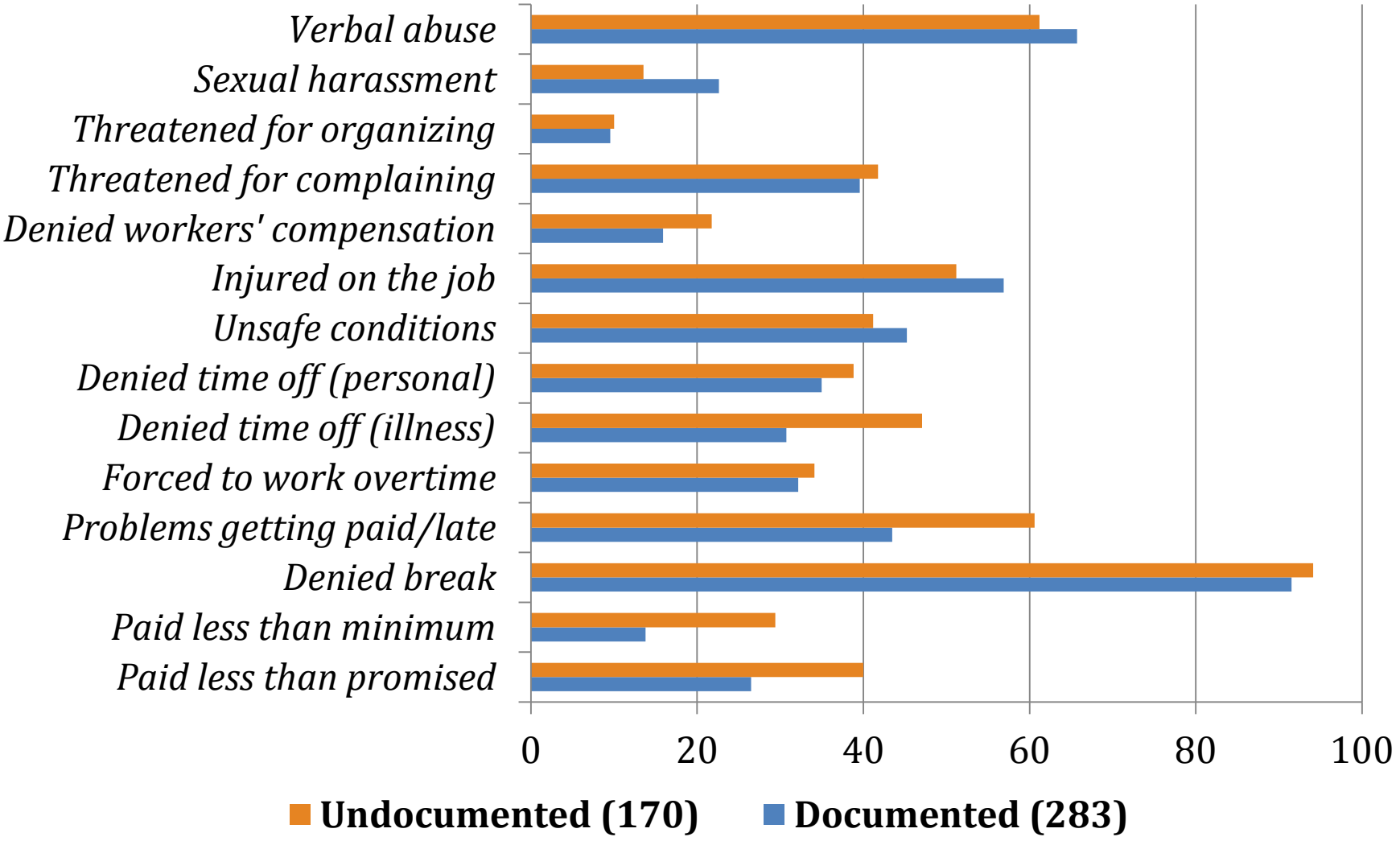
Key Sample Characteristics

All



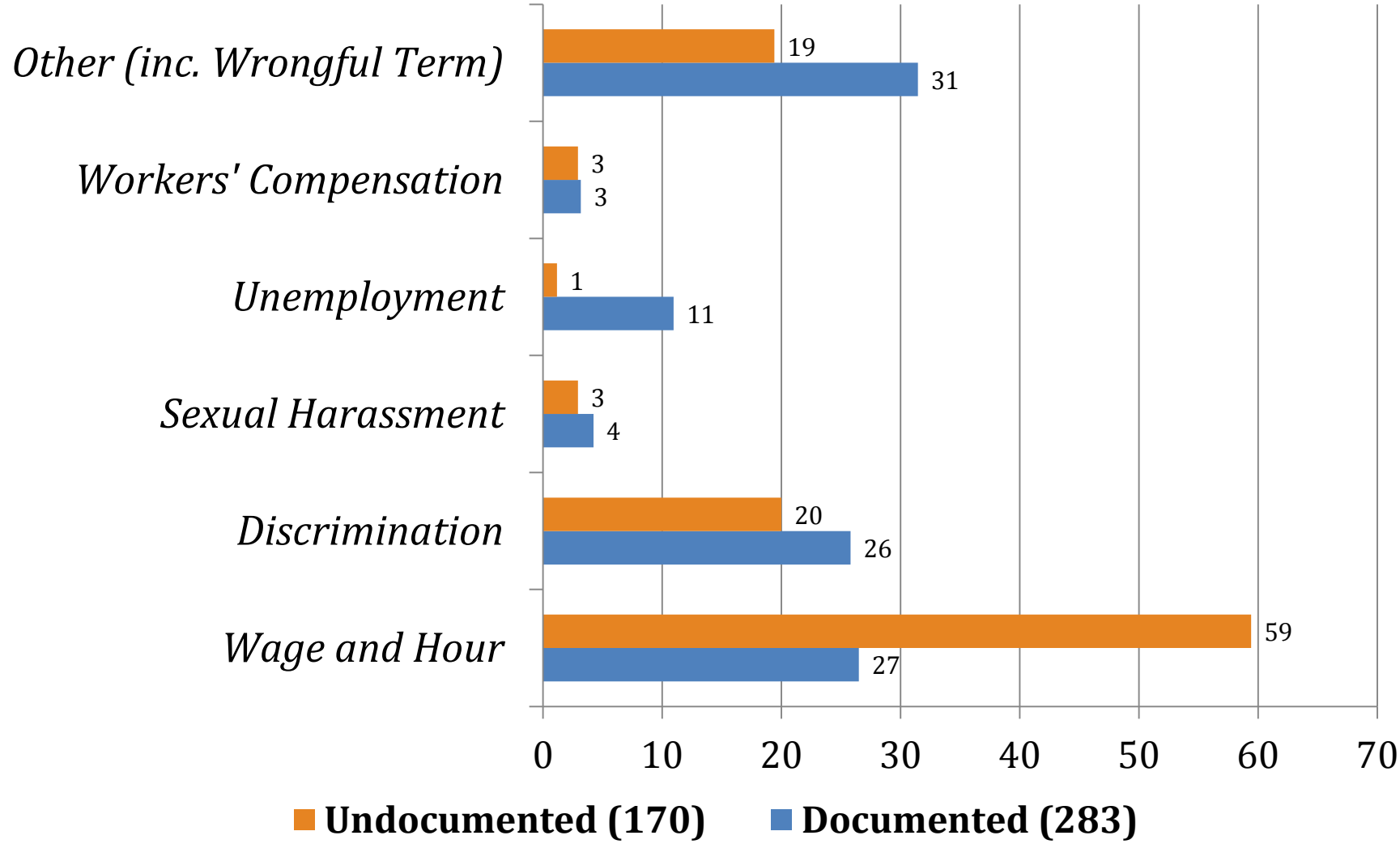
Have You Ever Experienced...

All



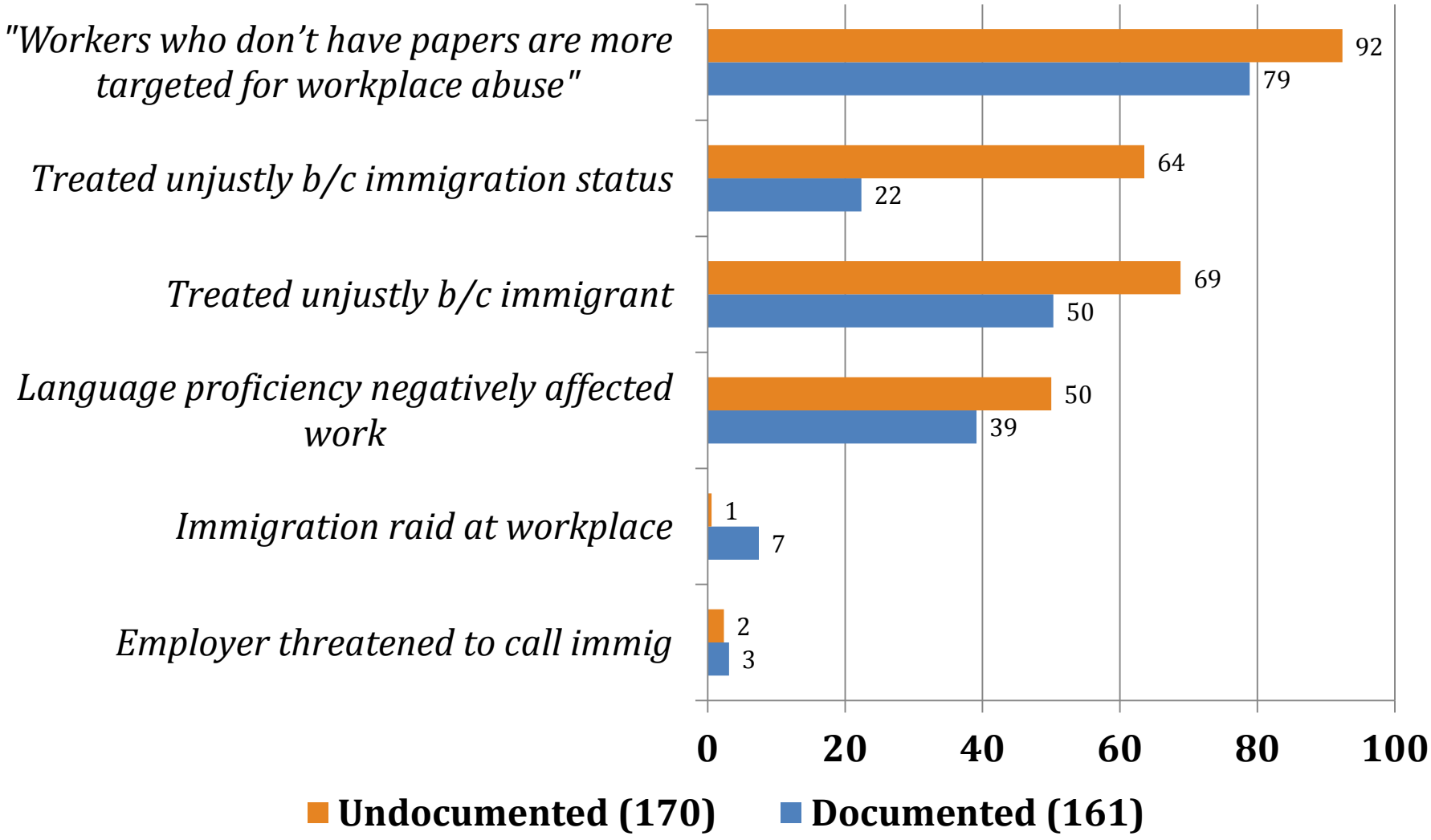
Legal Claim Type

All



Work Experiences

Foreign-Born



Ever Experienced Wage/Hour Violation

	Log Odds	SE	P value
Male	.079	.241	.743
Age	-.156	.067	.020
Age Squared	.002	.001	.034
Education: < than HS	.059	.307	.848
Do not speak at all	-.489	.437	.263
Industry: Restaurant	.762	.417	.067
Industry: Construction	1.588	.766	.038
Cash Payment	1.642	.755	.030
Union	-.170	.321	.596
Undocumented	.602	.318	.059
White	1.053	.443	.017
constant	4.368	1.535	.004
N		450	

Talked Directly To Employer

	All Claimants - Talked to Employer				Wage and Hour – Talked to Employer		
	Log Odds	SE	P val		Log Odds	SE	P val
Male	-.015	.220	.944		-.051	.418	.903
Age	-.042	.053	.434		-.039	.099	.696
Age Squared	.000	.001	.663		.000	.001	.798
Education: < than HS	-.273	.263	.298		-.864	.436	.047
Do not speak at all	-.119	.368	.747		.129	.533	.808
Industry: Restaurant	-.149	.307	.628		.250	.499	.616
Industry: Construction	.536	.466	.250		.610	.643	.343
Cash Payment	.085	.379	.822		-.325	.459	.479
Union	.194	.318	.541		.099	1.143	.931
Undocumented	.352	.276	.202		.022	.493	.964
White	.543	.390	.165		.228	.853	.789
constant	2.077	1.209	.086		2.656	2.070	.199
N	450				175		

Communication with Employer Post-Violation

	Talked to Employer - Threatened				Did not Talk to Employer - Afraid		
	Log Odds	SE	P val		Log Odds	SE	P val
Male	-.198	.442	.654		-.600	.591	.310
Age	-.138	.088	.119		-.069	.127	.588
Age Squared	.001	.001	.152		.001	.001	.487
Education: < than HS	.067	.527	.899		.624	.598	.297
Do not speak at all	1.430	.585	.015		1.548	.739	.036
Industry: Restaurant	1.161	.499	.020		1.647	.714	.021
Industry: Construction	-.818	1.117	.464		*(omitted)*		
Cash Payment	.485	.609	.425		-.733	.938	.435
Union	-.010	.701	.989		-.958	1.144	.403
Undocumented	-.597	.569	.294		.320	.664	.629
White	-.041	.809	.959		.865	.931	.353
constant	.458	1.930	.813		-1.056	2.930	.718
N	320				123		

Tried Going Directly to Gvt. Agency First

	Log Odds	SE	P value
Male	.257	.207	.214
Age	.075	.051	.140
Age Squared	-.001	.001	.190
Less than HS	-.187	.253	.460
Do not speak at all	.442	.347	.204
Restaurant	.115	.292	.694
Construction	.037	.395	.925
Cash Payment	-.741	.369	.045
Union	.402	.301	.181
Undocumented	-.328	.261	.209
White	.142	.336	.674
Still Employed	-.746	.261	.004
Wage/Hour	.609	.235	.009
constant	-2.262	1.140	.047
N		450	

Summary of Multivariate Findings

- **Risk of wage theft**
  - Restaurant, Construction, Cash, Undocumented, White
- **Threatened after confronting employer directly**
  - Non-English speakers, Restaurant workers
- **Did NOT talk directly to employer 1st –fear of retaliation**
  - Non-English speakers, Restaurant workers
- **Avoided approaching government agency directly**
  - Cash payment
  - Workers who are still employed by offender
  - Claim types other than Wage/Hour

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