GIVING CREDIT WHERE CREDIT IS DUE: WHAT WE CAN LEARN FROM THE BANKING AND CREDIT HABITS OF UNDOCUMENTED IMMIGRANTS

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ABSTRACT

Undocumented immigrants currently make up more than 5% of the U.S. labor force and 7% of school-age children. Numbering over eleven million, undocumented immigrants unquestionably comprise a significant segment of the population, yet most lack financial security and stability on multiple fronts. In addition to the everyday risk of deportation, many risk being taken advantage of on the basis of their immigration status, in both employment and debtor–creditor relationships. While some of these financial conditions are well chronicled, this Article describes the first empirical study of the debtor–creditor relationships of undocumented immigrants. Through live interviews of undocumented immigrants in New Mexico, this Article recounts the general financial impediments some undocumented immigrants face in trying to work, pay taxes, raise children, participate in the U.S. economy, and simply survive.

Among other topics, this Article explores whether undocumented immigrants use traditional financial institutions or more informal ones, and whether predatory lenders such as payday and title lenders have made inroads into immigrant communities. It further explores study participants' perceptions of and attitudes

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toward various forms of credit, with the hope of using this sample to gain more generalized insights into the credit uses and attitudes of undocumented Americans as a whole in today's consumer credit economy.

Through this study, some of the grim realities of living in the financial shadows became clearer. Most of our participants had only precarious means of financial support, were distanced from social safety networks at home, at an obvious legal disadvantage, and without a place at any policy-related table. Indeed, we conclude that the financial condition of many undocumented immigrants is far more precarious than one might imagine, as shown through our data that 74% of the persons interviewed would not be able to cover a $100 emergency if it came up. Many in this study also had a fear of and disdain for credit, demonstrating sensible ideas about credit, which many of us in the mainstream population could learn from.

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INTRODUCTION

President Obama recently proposed regulation that would allow over eleven million undocumented immigrants to remain in the United States, reducing deportation risks and allowing many to work legally in the United States and also receive certain public benefits.[1] This change could greatly improve the financial outlook for many undocumented persons in the United States. Currently, however, many undocumented immigrants living in the United States lack financial security and stability. They face the risks of deportation as well as being taken advantage of on the basis of their status, in both employment and debtor–creditor relationships.[2] While some of these

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1. Karen Tumulty, *Illegal Immigrants Could Receive Social Security, Medicare Under Obama Action*, WASH. POST (Nov. 25, 2014), http://www.washingtonpost.com/politics/illegal-immigrants-could-receive-social-security-medicare-under-obama-action/2014/11/25/571caefe-74d4-11e4-bd1b-03009bd3e984_story.html. Under President Obama's new program to protect millions of illegal immigrants from deportation, some will be eligible to receive Social Security, Medicare, and a wide array of other federal benefits, a White House official said November 25, 2014. *Id.* In a speech given on November 20, 2014, the President announced that he would bring "accountability to a broken immigration system, under which [eleven] million or more people are estimated to be living in this country illegally." *Id.* He claimed that he would offer the following deal:

> "If you've been in America more than five years. If you have children who are American citizens or [legal] residents. If you register, pass a criminal background check and you're willing to pay your fair share of taxes, you'll be able to apply to stay in this country temporarily without fear of deportation," he said. "You can come out of the shadows and get right with the law."

Id.

2. David P. Weber, *(Unfair) Advantage: Damocles' Sword and the Coercive Use of Immigration Status in a Civil Society*, 94 MARQ. L. REV. 613, 619-32 (2010).

financial conditions are well chronicled, this Article describes the first empirical study of the debtor–creditor relationships of undocumented immigrants, as well as the general attitudes of this demographic group about the various forms of credit.

More specifically, this Article explores the banking and credit habits of one group of undocumented immigrants living in New Mexico and describes the general financial condition of the study participants, including the general financial impediments they face in everyday life. This Article also explores whether people use traditional financial institutions; more informal credit associations among private individuals, such as tandas;[3] or predatory lenders, such as payday and title lenders. As to all forms of credit, this Article provides otherwise unavailable information about participants' perceptions of and attitudes about these various forms of credit and explores whether undocumented immigrants feel comfortable using the court system to pursue their legal rights and the extent to which reluctance or inability to do so further undermines the financial condition of undocumented immigrants.

The mere presence of undocumented immigrants in the United States is a subject of much controversy, debate, and division, as Obama's 2014 reform actions demonstrate.[4] Some Americans might

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3. Anita Bernstein, *The Trouble with Regulating Microfinance*, 35 U. HAW. L. REV. 1, 39 (2013) (defining a tanda as "a credit association formed by individuals in small groups united by acquaintance and a degree of mutual trust"); *see also* Donald V. Kurtz & Margaret Showman, *The Tanda: A Rotating Credit Association in Mexico*, 17 ETHNOLOGY 65, 67-68 (1978); Nezua, *In Tough Economic Times, Will a Tanda Work for You?*, EL MACHETE (Aug. 4, 2009, 1:03 PM), http://theunapologeticmexican.org/elmachete/2009/08/04/in-tough-economic-times-will-a-tanda-work-for-you/ (encouraging Mexican-Americans who need cash to explore this tradition).

4. *See* Stephen H. Legomsky, *Portraits of the Undocumented Immigrant: A Dialogue*, 44 GA. L. REV. 65, 68 (2009). Professor Legomsky recites some of the common questions upon which scholars and the general public disagree:

> Much of the debate is over basic facts, such as the origins, causes, and demographics of the undocumented population. Most of the factual debate, however, is over impact: What are the fiscal consequences of illegal immigration? How do unauthorized workers affect the jobs, wages, and working conditions of the domestic labor force, as well as the general economic health of the nation? What is their environmental impact? What are the racial, religious, and cultural implications of illegal immigration? What are undocumented immigrants' crime rates? Do they threaten public health? Do they compromise national security?
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> Perhaps the fiercest debate is over the appropriate policy responses: [S]hould we beef up enforcement? If so, should we concentrate our resources at the border, in the interior, or both? Should we prioritize

find the financial plight of the undocumented to be a natural consequence of their legal status—after all, this argument goes, "*they're here illegally, and they get what they deserve.*" Those who feel immigration policies should be tightened believe that the primary defining feature of the undocumented immigrant is that he or she is a lawbreaker, an outlaw.[5] Those who favor more lenient rules focus on another attribute—namely, the presence of the person in our country who is, therefore, worthy of robust protection.[6] Among those who fear that the presence of undocumented people in the United States is harmful, typical claims include that undocumented people undermine the rule of law, public order, government power, and even overall respect for the law.[7] Typical financial claims include that undocumented immigrants strain our fiscal budgets, take jobs from Americans, lower wages, add to population growth and thus add to air and water pollution, increase congestion and pressure on our infrastructures, commit crimes, threaten national security, and drain the health care system, the justice system, and the schools.[8] This Article tests some of these assumptions and ideas through our unique survey data.

In its conclusion, this Article briefly explores the costs to our economy of keeping such a large number of people outside the traditional economy. Additionally, this Article further concludes that when one combines record numbers of undocumented immigrants[9]

> deportations, criminal prosecutions, or both? Should we strengthen the employer sanctions regime? Should we encourage self-deportation by making life in the United States as difficult as possible for undocumented immigrants, through such means as barring access to elementary, secondary, or tertiary education, or denying drivers' licenses, credit cards, identification cards, bank accounts, and even housing? At the other end of the spectrum, should we offer legal status to at least a substantial percentage of the undocumented population and, if so, under what conditions? Should we insist on greater labor law protections for undocumented workers? Should we expand our formal programs for admitting permanent residents, temporary guest workers, or both, in order to dampen the incentive for illegal immigration? Should we make greater efforts to stimulate economic development in Mexico and other source countries?

Id.

5. *Id.* at 70.
6. *Id.*
7. *Id.* at 73-93.
8. *Id.* at 74.
9. Right after the financial crisis, the numbers of people entering the country, illegally or otherwise, fell significantly because the economy was so poor in the United States. *See* JEFFREY S. PASSEL & D'VERA COHN, TRENDS IN

with no clear road to naturalization, lax consumer-protection laws in the United States, and a generally poor economy, the credit options available to this demographic are both limited and hazardous. It also reports that people in the financial condition of those reported on are, in some ways, wiser about some forms of credit and were less likely overall to borrow money than the average, similarly situated, U.S. citizen. This may change quickly, however, as more and more creditors reach out to recent immigrants in order to fulfill their needs

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UNAUTHORIZED IMMIGRATION: UNDOCUMENTED INFLOW NOW TRAILS LEGAL INFLOW, PEW HISPANIC CTR. 1 (2008), http://www.pewhispanic.org/files/reports/94.pdf. Right after the financial crisis, the total size of the undocumented immigration population fell dramatically. *Id.* at 2 (noting that average annual growth has slowed from approximately 525,000 for the years 2000-2005 to 275,000 for years 2005-2008); *see also* N.C. Aizenman, *Data Show Big Dip in Migration to the U.S.*, WASH. POST (Sept. 23, 2008), http://www.washingtonpost.com/wp-dyn/content/article/2008/09/22/AR2008092202563.html (hypothesizing that the slowdown in immigration appears to be driven primarily by the ailing economy); Mariano Castillo, *Mexican Immigration to U.S. Off 40 Percent, Study Finds*, CNN (July 22, 2009, 9:41 AM), http://cnn.com/2009/WORLD/americas/07/22/mexico.immigrants/index.html. Now, however, the numbers are inching back up, but not for Mexicans. Jens Manuel Krogstad & Jeffrey S. Passel, *5 Facts About Illegal Immigration in the U.S.*, PEW RESEARCH CTR. (July. 24, 2014), http://www.pewresearch.org/fact-tank/2014/11/18/5-facts-about-illegal-immigration-in-the-u-s/. This research site notes that the number of unauthorized immigrants in the United States has stabilized in recent years after decades of rapid growth. *Id.* It also notes that Mexican immigrant figures have dropped since the peak for this population in 2007. *Id.* According to this source, Mexicans make up about half of all unauthorized immigrants (52%) right now, and there were 5.9 million Mexican unauthorized immigrants living in the United States in 2012, which was down from 6.4 million in 2009. *Id.*; *see also* Ryan Knutson, *Deprivation of Care: Are Federal Laws Restricting the Provision of Medical Care to Immigrants Working as Planned?*, 28 B.C. THIRD WORLD L.J. 401, 406-07 (2008) ("Over the past thirty years the United States has seen a rapid rise in its immigrant population, and, currently, immigration is at the highest level in U.S. history. According to a recent study of the U.S. Census figures, the total number of immigrants in the country increased from 9.6 million in 1970 to 35.2 million in 2005, an increase of more than 300%. Immigrants as a percentage of the overall population increased significantly as well, from 4.7% in 1970 to 12.1% in 2005. From 2000 to 2005 alone, an additional 7.9 million immigrants entered this country. Since 1970, the number of naturalized citizens has decreased in relation to the total number of immigrants. As a result, the total number of immigrants has, since 1970, included more and more non-naturalized residents, such as undocumented and legally residing immigrants. Of the 35.2 million estimated immigrants in 2005, a recent study suggests that between 9.6 and 9.8 million of these immigrants are undocumented. Undocumented immigrants comprise approximately one-fourth of the foreign-born population. Even more illustrative is the fact that undocumented immigrants account for approximately half of the recent overall growth in the immigrant population." (footnotes omitted)).

for a larger and less wealthy customer base and as more immigrants need cash for deferred action applications.

I. UNDOCUMENTED IMMIGRANTS AND THE LAW OF IMMIGRATION, STATUS DISCRIMINATION, AND CONSUMER CREDIT: A PERFECT STORM

To provide context for the results of this study of immigrants and credit, we take a brief peek at four legal and economic milieus: first, U.S. immigration law and policy; second, the law, or lack thereof, relating to discrimination against undocumented immigrants based upon their immigration status; third, the law and policy of consumer credit; and fourth, the economic implications of being underbanked. When combined, these legal and economic milieus add to or exacerbate an already precarious financial condition and create a circle of impediments to financial success.

A. American Culture and Immigration Policy: The Melting Pot on Ice

America has traditionally been referred to as a "melting pot." Compared to other countries, the United States has traditionally been viewed as welcoming of people from many different countries, races, and religions, many of whom are drawn to the United States by religious freedom, new opportunities, and a better way of life.[10] Indeed, early in its history, the United States relied heavily on immigration to populate its land and develop its economy.[11] Of course, race and national origin have always affected which immigrants were considered more welcome than others. Not all immigrants are created equally in the eyes of our culture or the

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10. Joyce Millet, *Understanding American Culture: From Melting Pot to Salad Bowl*, CULTURAL SAVVY, http://www.culturalsavvy.com/understanding_american_culture.htm (last visited Sept. 20, 2015). According to a web site dedicated to helping business people and others learn about the cultures of other countries: "American history began with waves of immigrants, bringing their own cultures and traditions to a vast new country. No other place in the world has such a diverse population. It is this diversity that makes America what it is and, at the same time, creates the challenges it faces." *Id.* The site goes on to name virtually every culture from which Americans hail, a long list indeed.

11. *See* John Higham, *American Immigration Policy in Historical Perspective*, 21 LAW & CONTEMP. PROBS. 213, 215 (1956) (stating that Congress itself attempted to stimulate immigration levels from 1864 to 1868 and that many individual states "developed programs to lure new settlers from overseas").

immigration policies of the United States.[12] Indeed, immigration laws favoring whites over others have laid the financial foundation through which whites currently retain an economic edge over other races.[13] This phenomenon is evidenced through higher income and wealth levels for whites compared to others.[14]

Despite the U.S.'s self-image of welcoming immigrants, the reality of the U.S.'s immigration sentiments and resulting laws are far different.[15] The country is now, and has often been in the past, embroiled in a national debate about whether to loosen immigration laws.[16] Today, the specific issue is whether to provide either citizenship or residency to the estimated eleven million people already living in the United States without a legal right to do so.[17] Obama's recent reforms would provide residency, but no path to citizenship.[18] Previously, there was not even a path to permanent residency.[19] Rather, all illegal entrants were simply, and for the most part permanently, undocumented.

An immigrant is "undocumented" in the eyes of the law if he or she does not fall into any of the following categories: naturalized or full U.S. citizens, lawful permanent residents,[20] temporary legal

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12. IAN HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 37-47 (N.Y.U. PRESS 2006); Andrea Freeman, *Payback: A Structural Analysis of the Credit Card Problem*, 55 ARIZ. L. REV. 151, 180 (2013).

13. LOPEZ, *supra* note 12, at 169; Freeman, *supra* note 12, at 180.

14. Freeman, *supra* note 12, at 180.

15. *See* William Booth, *One Nation, Indivisible: Is it History?: Soon, No Single Group Will Comprise Majority*, WASH. POST, Feb. 22, 1998, at A1. Eventually, national origin quotas were adopted to ensure that the stream of immigrants reflected the current population mix. CHARLES GORDON, STANLEY MAILMAN & STEPHEN YALE-LOEHR, IMMIGRATION LAW AND PROCEDURE § 2.02[3] (2004) (outlining the origins of the U.S. immigration quota system).

16. *See* Legomsky, *supra* note 4, at 69-71.

17. *See id.* at 106-07; Tumulty, *supra* note 1.

18. Tumulty, *supra* note 1.

19. *See id.* The Senate, in its bipartisan reform bill approved in June of 2013, opted to grant a "pathway to citizenship" for illegal immigrants. Seung Min Kim, *Senate Passes Immigration Bill*, POLITICO (June 27, 2013, 4:25 PM), http://www.politico.com/story/2013/06/immigration-bill-2013-senate-passes-093530. In the House, many Republicans call that "amnesty" and want none of it. Now, however, House Republicans are discussing this alternative: provide a pathway to legal status, but not citizenship. In any case, on November 30, 2014, President Obama announced amnesty for a potential 11.7 million people currently residing here illegally. *Id.* This is not a path to citizenship, just a capacity to stay and work. *Id.*

20. BOB THIBODEAU, EXA MANUAL 2 (2010), https://www.dshs.wa.gov/sites/default/files/ESA/eaz-manual/rev709.pdf.

residents,[21] temporary protected status immigrants or refugees.[22] Unless a person is born in the United States or is born elsewhere with one U.S. citizen as a parent,[23] the road to naturalization or U.S. citizenship is complex. Naturalization requires first lawfully entering the United States and then becoming a permanent legal resident.[24] Thereafter, a person must reside in the United States continuously for five years (or three years for spouses of American citizens).[25] During that "probationary" period, a naturalization candidate must be physically present in the country at least 50% of the time.[26] An

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21. BRYAN BAKER & NANCY RYTINA, U.S. DEP'T OF HOMELAND SEC., ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITES STATES: JANUARY 2012, at 1 (2012), http://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf. In general, the law is not very specific about what it means by "undocumented immigrant," "unauthorized alien," "illegal alien," or other terms that are frequently used to mean that the person is not a legal resident or citizen. However, one can piece together a fairly good definition from the U.S. Department of Homeland Security web site definitions of "unauthorized resident" and "legal resident," which are:

> Legal Resident[:] . . . all persons who were granted lawful permanent residence; granted asylum; admitted as refugees; or admitted as nonimmigrants for a temporary stay in the United States and not required to leave by January 1, 2012. Nonimmigrant residents refer to certain aliens who were legally admitted temporarily to the United States such as students and temporary workers.
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> Unauthorized Resident[:] . . . all foreign-born non-citizens who are not legal residents . . . . Most unauthorized residents either entered the United States without inspection or were admitted temporarily and stayed past the date they were required to leave.

Id.

22. David P. Weber, *Halting the Deportation of Businesses: A Pragmatic Paradigm for Dealing with Success*, 23 GEO. IMMIGR. L.J. 765, 768 (2009), (citing Passel & Cohn, *supra* note 9, at 1) (noting that there were approximately 11.9 million undocumented immigrants living in the United States in 2008, which at the time was approximately 4% of the U.S. population).

23. "The U.S. recognizes citizenship according to two fundamental principles: *jus soli* (right of birthplace), and *jus sanguinis* (right of blood)." *U.S. Citizenship & Naturalization Overview*, FINDLAW, http://immigration.findlaw.com/citizenship/u-s-citizenship-naturalization-overview.html (last visited on Sep. 20, 2015). "Under *jus soli*, a person receives American citizenship by virtue of being born in the United States." *Id.* By contrast, *jus sanguinis* confers citizenship on those born to at least one U.S. citizen anywhere in the world." *Id.*

24. *Id.*

25. *Id.*

26. *Id.* The theory behind this probationary period is that it allows a foreign national to become fully acclimated to American life, so he or she can fully participate in the national community upon becoming a citizen. *Id.*

applicant must also be at least eighteen years old.[27] Parents or adoptive parents can file applications on behalf of children under eighteen with their own petitions.[28] Most children receive *derivative citizenship* from their parents, and need not satisfy the five-year residence requirement.[29]

Besides border patrol, which can never fully stop unauthorized entry into the United States, immigration laws are largely enforced through statutes that make it illegal to hire undocumented workers.[30] These laws have been described as the central enforcement mechanism of current immigration law and policy.[31] The Immigration Reform and Control Act of 1986 (IRCA) forbids employers from knowingly hiring what the Act calls "unauthorized" immigrants, and requires that employers verify the work authorization of all applicants by examining certain documents, such as birth certificates, passports, and social security cards.[32] This verification system is nicknamed the "I-9 system" after the government form that employers are required to complete.[33] The IRCA makes combating the employment of unlawfully present aliens central to "[t]he policy of immigration law . . . by establishing an extensive employment verification system designed to deny employment to aliens who (a) are not lawfully present in the United States, or (b) are not lawfully authorized to work in the United States."[34]

If a job applicant is unable to present the required documentation, he or she cannot be hired.[35] It is also a crime under the IRCA for an undocumented person to use or attempt to use "any

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27. *Id.*

28. *Id.*

29. *Id.* The only exception is if people age out of the system, meaning they become eighteen before their paperwork is processed by a relative. *Id.*

30. Dorothy A. Harbeck, M. Michelle Park, Rachael L. Dizard & Karen M. Mainieri, *Emerging from the Jungle: New Jersey Workers' Compensation and Workers Without Lawful Immigration Status*, 37 SETON HALL LEGIS. J. 261, 263-64 (2013).

31. *Id.*

32. Immigration Reform and Control Act of 1986, Pub. L. No. 99–603, § 101, 100 Stat. 3359, 3360 (1986).

33. Developments in Law, *State and Local Regulation of Unauthorized Immigrant Employment*, 126 HARV. L. REV. 1608, 1612 (2013); Harbeck et al., *supra* note 30, at 263-64.

34. Harbeck et al., *supra* note 30, at 264.

35. *Id.* (footnotes omitted) (citing Immigration Reform and Control Act § 101; Immigration & Naturalization Serv. v. Nat'l Ctr. for Immigrants' Rights, Inc., 502 U.S. 183, 194 n.8 (1991)).

forged, counterfeit, altered, or falsely made document" or "any document lawfully issued to [or with respect to] a person other than the possessor" for purposes of obtaining employment in the United States.[36] "Violation of the IRCA can result in fines, incarceration, or [even deportation] for the alien offender."[37] "Similarly, employers may be subject to significant civil money penalties and even criminal sanctions for knowingly hiring unauthorized aliens."[38] These laws are specifically designed to make it difficult for undocumented people to work for a living and support themselves and their families.[39] Another obvious difficulty to making a living is the inability of some recent immigrants to speak English, which precludes some immigrants from most jobs either implicitly or explicitly.[40] Not being able to make a living due to being potentially dismissed at any time; having a limited number of places to obtain work; and as discussed below, being unable to pursue legal remedies makes it difficult for many undocumented persons to stay afloat.

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36. Harbeck et al., *supra* note 30, at 264 (citing Immigration Act of 1990, Pub. L. No. 101–649, § 544, 104 Stat. 4978, 5059-60).

37. *Id.*

38. *Id.* "Employers that unknowingly hire an unauthorized alien, or later discover that the alien has lost his lawful status during employment," are required by law to "immediately discharge that employee." *Id.*

39. *Id.* Regardless of how inhospitable we try to make it here for undocumented immigrants, it seems to beat the alternative of staying home, as the recent crisis of children at the border shows. Since October 2012, more than 63,000 children have crossed the border into the United States, most from El Salvador, Honduras, and Guatemala, often with the help of parents who desperately want their children to have a better life than what they can offer in their home countries. Jens Manuel Krogstad, Ana Gonzalez-Barrera & Mark Hugo Lopez, *Children 12 and Under Are Fastest Growing Group of Unaccompanied Minors at U.S. Border*, PEW RES. CTR. (July 22, 2014), http://www.pewresearch.org/fact-tank/2014/07/22/children-12-and-under-are-fastest-growing-group-of-unaccompanied-minors-at-u-s-border/. So desperate are parents to provide an opportunity for children in the United States, some are willing to send children to the United States alone, knowing they may never see or hear from them again. *Id.* Many of such children are fleeing violence, human trafficking, and poverty and detail harrowing tales of being terrified to return to their home countries, fearing gang violence and retribution. *Id.* While these children look for solace and safety in the United States, the troubling reality is that more than 40% of them will be processed and face deportation without legal counsel. *Id.* Another recent Pew Research Center paper claims that children under twelve are the fastest growing demographic in this border crisis, and that a fair number of the children are under five. *Id.*

40. *See* Mark Colón, *Line Drawing, Code Switching, and Spanish as Second-Hand Smoke: English-Only Workplace Rules and Bilingual Employees*, 20 YALE L. & POL'Y REV. 227, 228-29 (2002) (noting that no federal statute specifically prohibits employers from adopting English-only workplace rules).

B. Unfair Advantage Due to Immigration Status: A Hidden Financial Burden

In addition to the expected difficulties of not being able to make a living, undocumented people face another less obvious impediment to financial security, namely, the inability or unwillingness to avail oneself of the legal system or to receive fair treatment when such rights are pursued.[41] Leaving aside the limited availability of low-cost legal services[42] and the extreme poverty of some immigrants,[43] immigration status is often used against undocumented persons in legal proceedings,[44] which dissuades undocumented persons from using the legal system to right wrongs.[45] Using immigration status as leverage is common in the context of employment relationships because an undocumented person cannot always demand a fair wage or even the wages promised.[46] This occurs in part because the law does not always prohibit the use of immigration status to defend a suit.[47] Additionally, undocumented persons may be unwilling to use or trust the court system, even where the law would protect their interests.[48] These sentiments were expressed in our study data.[49]

Leverage due to immigration status is by no means limited to employment situations. Other commercial transactions can be affected, which can further undermine the financial condition of the undocumented immigrant.[50] In his article *(Unfair) Advantage: Damocles' Sword and the Coercive Use of Immigration Status in a*

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41. Weber, *supra* note 2, at 618-37.

42. Mark E. Budnitz, *The Development of Consumer Protection Law, The Institutionalization of Consumerism, and Future Prospects and Perils*, 26 GA. ST. U. L. REV. 1147, 1185-88 (2010).

43. *See infra* Part III.

44. Weber, *supra* note 2, at 618-37. These rights include the right to be paid according to state wage laws, the right to enforce a contract, and the right to not be subject to fraud or criminal activity. Undocumented persons can use the court systems and even file for bankruptcy. Chrystin Ondersma, *Undocumented Debtors*, 45 U. MICH. J. L. REFORM 517, 518 (2012).

45. *Id.* at 540-48; *see* Weber, *supra* note 2, at 618-37.

46. Stephen Lee, *Policing Wage Theft in the Day Labor Market*, 4 U.C. IRVINE L. REV. 655, 678 (2014); Llezlie Green Coleman, *Procedural Hurdles and Thwarted Efficiency: Immigration Relief in Wage and Hour Collective Actions*, 16 HARV. LATINO L. REV. 1, 4 (2013).

47. Weber, *supra* note 2, at 630.

48. *Id.* at 678; Coleman, *supra* note 46, at 12.

49. *See infra* Part III.

50. Weber, *supra* note 2, at 618-37.

Civil Society, Professor David Weber recounts one such situation in which Ms. Griffin, a purported buyer of a home owned by an undocumented person, turned in the owner to "the FBI, local police, local media, the state attorney general, the governor's office" and even asked her congressman to contact U.S. Immigration and Customs Enforcement (ICE), all in order to avoid eviction.[51] Ms. Griffin also "posted bright red signs in the yard, which read: 'This house is owned by an illegal alien,'" after which ICE agents arrived at the homeowner Mr. Jimenez's residence and initiated removal proceedings against him.[52] Ms. Griffin, who had no money to buy another home, or apparently even this home, said: "At the end, do I feel bad the family got in trouble? No, not at all."[53] Specifically mentioning that her actions resulted in the owner losing his job, she said: "Once I realized my family had seven days to get out of a house that a family's not even legally supposed to own . . . I did let his employer know."[54] She also added: "I don't feel bad for anything that happens to the Jimenez family at this point."[55] Naturally, sentiments like these, or mere fear of similar sentiments, further undermine the financial stability of undocumented immigrants.

The silencing of undocumented persons due to fear of deportation has implications for contract and consumer law. In many situations, businesses, and particularly lenders, impose onerous or unsatisfactory terms on consumers *ex ante*, and then modify the terms *ex post* for consumers who complain.[56] While there are numerous examples of this, one well-publicized event involved a

51. *Id.* at 616.

52. *Id.* (quoting *Homeowner's Illegal Status Exposed After Aborted Sale*, FOXNEWS.COM (Nov. 17, 2008), http://foxnews.com/story/0,2933,453011,00.html).

53. *Id.* (quoting *Homeowner's Illegal Status Exposed After Aborted Sale*, *supra* note 52).

54. *Id.* at 616-17 (quoting *Homeowner's Illegal Status Exposed After Aborted Sale*, *supra* note 52).

55. *Id.* at 617 (quoting *Homeowner's Illegal Status Exposed After Aborted Sale*, *supra* note 52).

56. Amy Schmitz, *Access to Consumer Remedies in the Squeaky Wheel System*, 39 PEPP. L. REV. 279, 281 (2012); R. Ted Cruz & Jeffrey J. Hinck, *Not My Brother's Keeper: The Inability of an Informed Minority to Correct for Imperfect Information*, 47 HASTINGS L.J. 635, 674 (1996) (discussing how sellers differentiate among buyers by providing contract changes and adjustments to only the most sophisticated consumers who complain); Arthur Best & Alan R. Andreasen, *Consumer Response to Unsatisfactory Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress*, 11 LAW & SOC'Y REV. 701, 702 (1977) (noting that sellers choose to use "less stringent quality control practices" and simply compensate those who complain about defective products).

credit card company that increased interest by 2% for all customers and then rescinded the rate increase for those who complained.[57] This squeaky-wheel phenomenon, written about extensively by Professor Amy Schmitz, allows businesses to ration resources, increase profits, and maintain the more onerous terms for contracts with those who lack the time, resources, or power to complain.[58] As Professor Schmitz discovered when she surveyed 306 consumers in Colorado, consumers in general were skeptical that complaining about a consumer product would do them any good.[59] Indeed, those who have tried were often unsuccessful, further evidencing the perception that there is simply no way around getting ripped off, and trying to do so is a waste.[60]

Professor Schmitz uses her study data and previous law review research to debunk the "informed minority" theory, which claims that a vocal, knowledgeable, educated minority can keep the market clean for all of us.[61] Professor Schmitz notes that consumers who cut special deals are often given incentives from sellers and lenders to keep the special deals to themselves, rather than sharing them with the rest of us.[62] She also notes what should be obvious by now, namely, that low-income consumers complain less, creating a "caste" system of sorts for consumer protection.[63] Low-income consumers may not know they *can* complain[64] and may also be less sensitive to poor treatment than wealthier consumers.[65]

Similarly, Professor Rebecca Sandefur found that in many low- to moderate-income situations, people do not even pursue their legal rights, either because they do not actually see the problems as ones the law might address, or because they do not think it will do them much good to pursue these rights.[66] Additionally, Sandefur found that

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57. Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1, 22 (2008).

58. Schmitz, *supra* note 56, at 282-83.

59. *Id.* at 301-03.

60. *Id.* at 303. This lack of success further reduces consumer expectation, creating a feedback loop that weakens consumer-protection policies and practices.

61. *Id.* at 308.

62. *Id.*; *see also* Bar-Gill & Warren, *supra* note 57, at 22 (discussing how companies conceal contractual terms from consumers who do not complain or seek redress).

63. *Id.* at 312.

64. *See id.* at 311.

65. *Id.* at 311-12.

66. Rebecca L. Sandefur, *Money Isn't Everything: Understanding Moderate Income Households' Use of Lawyers' Services*, *in* MIDDLE INCOME ACCESS TO JUSTICE 222, 234 (Michael Trebilcock et al. eds., 2012).

poor persons are less likely to turn to anyone outside the family for advice or help in resolving a problem with money or housing.[67] Like Schmitz and others, she has found that wealthier people make more grievances about products and services than poorer people do and that the law may actually be less helpful in the remedies it can provide poorer persons.[68]

Professor Sandefur has also found that middle-class parents model a sense that they are entitled to have fair rules and procedures governing their experiences, to have the consequences of their actions explained, and to have situations customized to their unique needs.[69] These habits are not equally present among the poor, further disadvantaging the poor in financial matters compared to other classes. Finally, stereotypes and biases may affect how company representatives and customer-service agents react to consumers who complain or ask for assistance, thus further reducing service and expectations for women and people of color.[70]

We can now add another status that exacerbates this same low-end, consumer-protection caste system, namely, undocumented status. This tenuous status, combined with the squeaky-wheel phenomenon, allows those without legal status in the United States to be taken advantage of by businesses that serve this population, thus furthering the powerlessness and precarious financial situations of undocumented persons.

C. Consumer Credit Culture Law and Policy: Give Me Your Tired, Your Poor, But Especially Your Poor

The consumer credit system, in general, is not sufficiently robust to protect the rights of consumers. Being an undocumented consumer adds fuel to the fire. When poet Emma Lazarus wrote the famous phrase, "'Give me your tired, your poor, / Your huddled

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67. Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, *in* TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 114 (Pascoe Pleasence et al. eds., 2007).

68. *Id.* at 116. As Sandefur explains, many problems that poor people experience are less institutionalized as legally soluble, meaning they cannot necessarily be remedied through the law. *Id.* Poor people may lack resources that would allow them to benefit from the remedy, such as transportation, and some problems result from the poverty itself, which the law does not rectify. *Id.*

69. *Id.* at 116-17.

70. Schmitz, *supra* note 56, at 298.

masses yearning to breathe free,'"[71] neither she nor those who later chose to emblazon the Statue of Liberty with the phrase meant, "give me your tired and poor" so we can exploit them by offering them more consumer credit than they could ever pay back and in so doing make as many fees and as much interest as we can get away with. This reality, however, is part of the current law and policy of consumer credit in the United States.

Historically, consumer protection is on the wane despite the recent economic downturn.[72] In *The Development of Consumer Protection Law, The Institutionalization of Consumerism, and Future Prospects and Perils*, Professor Mark Budnitz chronicles the development of our current consumer-protection scheme.[73] He describes the birth of consumer-protection laws in the 1970s; the decline of consumer protection under Presidents Reagan, Bush I, Clinton, and Bush II; and the concomitant rise in the culture of consumerism in the United States. As he explains:

> During the forty years covered in this survey, consumers have continued to face severe problems, and the consumer financial services industry has never slowed its promotion of new practices consumers regard as unfair and deceptive while opposing stronger consumer protection law and enforcement. Given the vast disparity of resources between individual consumers and the industry, the continued viability of efforts to promote

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71. Emma Lazarus, *The New Colossus*, *in* OXFORD BOOK OF AMERICAN POETRY 184, 184 (David Lehman & John Brehm eds., 2006). The entire sonnet reads:

> Not like the brazen giant of Greek fame,
> With conquering limbs astride from land to land;
> Here at our sea-washed, sunset gates shall stand
> A mighty woman with a torch, whose flame
> Is the imprisoned lightning, and her name
> Mother of Exiles. From her beacon-hand
> Glows world-wide welcome; her mild eyes command
> The air-bridged harbor that twin cities frame.
> "Keep, ancient lands, your storied pomp!" cries she
> With silent lips. "Give me your tired, your poor,
> Your huddled masses yearning to breathe free,
> The wretched refuse of your teeming shore.
> Send these, the homeless, tempest-tost to me,
> I lift my lamp beside the golden door!"

Id.

72. Most scholars agree that after the incredible world financial crisis caused by lax consumer regulation in the United States, more consumer-protection regulation was needed. *See* David P. Cluchey, *The Financial Crisis and the Response of the United States: Will Dodd Frank Protect Us from the Next Crisis?* (Jan 1, 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1831661.

73. Budnitz, *supra* note 42, at 1147-48.

> consumer protection law is a major concern to those who believe stronger laws and enforcement are essential.[74]

At the same time that consumer laws have weakened,[75] a culture of consumerism has grown exponentially,[76] all while sophisticated and dangerous consumer financial products have proliferated.[77] As Professor Andrea Freeman further notes, in the early twentieth century, the use of credit was considered an economic sin that led to serfdom, by setting "'utterly false standards of living' and causing 'hopelessly distorted' judgment."[78] It is certainly no longer a sin to use credit; indeed, gorging on credit is almost an American civic duty.[79] Yet the prospect of serfdom based upon false standards of living and distorted judgment is as omnipresent as ever.

While credit and a culture of consumerism are ubiquitous in the United States, low-income persons have little disposable income with which to play.[80] While most wealthy people believe that being poor today is easy because government benefits are available with no

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74. *Id.* at 1148.

75. *Id.* at 1169-73.

76. JULIET B. SCHOR, THE OVERSPENT AMERICAN: UPSCALING, DOWNSHIFTING, AND THE NEW CONSUMER 3-4 (1998); Freeman, *supra* note 12, at 160.

77. Budnitz, *supra* note 42, at 1179-82; Bar-Gill & Warren, *supra* note 57, at 33-45. As Professor Andrea Freeman explains in the context of credit card use:

> Early credit cards attracted many lifestyle users, most of whom paid their balances in full, leading to the imposition of annual fees on cards in the 1970s. Over the next few decades, technological advances altering social interactions created a new lifestyle user. As Juliet Schor explains in *The Overspent American*, most modern Americans no longer strive to emulate their neighbors. Instead, they now seek to attain a quality of life manifested through materialist acquisition and overt consumption that matches that flaunted by celebrities, television and film characters, and co-workers. The present-day leisure class transmits its taste and values to "the 99%" primarily through fictional families, and studies reveal that most people report dissatisfaction with their class status, regardless of what it is.

Freeman, *supra* note 12, at 160 (footnotes omitted).

78. *See* Freeman, *supra* note 12, at 160 (quoting John P. Watkins, *Corporate Power and the Evolution of Consumer Credit*, 34 J. ECON. ISSUES 909, 913 (2000)).

79. Nathalie Martin, *The Role of History and Culture in Developing Bankruptcy and Insolvency Systems: The Perils of Legal Transplantation*, 28 B.C. INT'L & COMP. L. REV. 1, 2 (2005).

80. Charles M. Blow, *How Expensive It Is to Be Poor*, N.Y. TIMES (Jan. 18, 2015), http://www.nytimes.com/2015/01/19/opinion/charles-blow-how-expensive-it-is-to-be-poor.html?_r=0.

need to do anything in return,[81] being poor is far from easy. Being poor is typically accompanied by worry, stress, and exhaustion, in part because basic living expenses are so much more expensive for the poor than the middle class.[82] For example, low- and moderate-income households spend 42% of their income on transportation, compared to just 22% for the middle class.[83] Moreover, as discussed in Section D, the unbanked spend 2.5-3% of each government benefit check and 4-5% of each payroll check to gain access to their own money through banks and check cashers, and low-income people pay an average of $1,200 annually for alternative financial services.[84] These expenses far exceed the annual cost of a checking account.[85] Perhaps even more remarkably, in 2015, the poorest Americans will pay an average of 10.9% of their income in local and

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81. *Id.*

82. *Id.*

83. *Id.* As the originals PEW report described in this news article explains, in defining the low- and middle-income groups it studied:

> Throughout this report, we divide the public into five groups based on their overall level of financial security, a measure that correlates with income but provides a more nuanced understanding of the extent to which Americans at different income levels are on solid footing in the modern economy. To do this, we created a scale of financial security, based on 10 interrelated items. Using the scale, we then divided the public into five groups that vary between 15% and 25% of the public.
>
> Four of the items on the scale are measures of financial security (having a savings account, a checking account, a credit card or any form of retirement savings), while six of the items on the scale are measures of financial insecurity, including two items measuring the receipt of means-tested benefits (SNAP benefits, Medicaid), as well as four measures of financial stress (having trouble paying bills, affording housing or medical care or borrowing money from family or friends).
>
> Overall, 25% of the public are in the most financially secure group (having all four of the characteristics of financial security and none of the indicators of financial insecurity); 20% of the public are in the least financially secure group. See Appendix A for full details of the scale and the groups.

The Politics of Financial Insecurity: A Democratic Tilt, Undercut by Low Participation, PEW RES. CTR. (Jan. 8, 2015), http://www.people-press.org/2015/01/08/the-politics-of-financial-insecurity-a-democratic-tilt-undercut-by-low-participation/.

84. Blow, *supra* note 80. Alternative financial services include payday loans, title loans, refund appreciation loans, and high-cost installment loans. Roman V. Galperin & Andrew Weaver, *Payday Lending Regulation and the Demand for Alternative Financial Services* 2 (2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2494426.

85. Blow, *supra* note 80.

state taxes, middle-income people will pay an average of 9.4%, and the wealthiest Americans, a mere 5.4%.[86]

Perhaps not surprisingly then, the cost of credit for low-income individuals is also higher than for middle- and high-income individuals. Some of this increased cost is justified by the greater risk of lending to low-income persons. Other higher costs are unjustified by any measure.[87] Whether we are talking about traditional bank relationships with their overdraft and other fees,[88] credit cards,[89] subprime mortgages,[90] or payday and title loans,[91] the

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86. *Id.*

87. Freeman, *supra* note 12, at 168-69.

88. *See, e.g.*, Ron Lieber & Andrew Martin, *Overspending on Debit Cards Is Painful, but Not for Banks*, N.Y. TIMES, Sept. 9, 2009, at A1 ("At the moment, people who pay overdraft fees help subsidize the free accounts of those who do not.").

89. Freeman, *supra* note 12, at 154 (stating that "[c]onsequently, low-income consumers now receive credit cards with high fees and interest rates, while higher-income consumers reap the rewards of credit card use, such as travel miles and concierge services. Credit card companies target vulnerable consumers for inferior products through tactics such as teaser rates, mass mailings of preapproved cards, fee-harvesting cards, overly complex credit card agreements, and credit-card redlining. As a result of these practices, 80% of the industry's profits now come from interest payments and late and over-the-limit fees instead of annual and interchange fees. This shift represents a massive redistribution of wealth from the poor to wealthier consumers and corporations.").

90. David Ray Papke, *Perpetuating Poverty: Exploitative Businesses, the Urban Poor, and the Failure of Reform*, 16 SCHOLAR: ST. MARY'S L. REV. ON RACE & SOC. JUST. 223, 224-25 (2014) (citing DeNeen L. Brown, *The High Cost of Poverty: Why the Poor Pay More*, WASH. POST (May 18, 2009), http://www.washingtonpost.com/wp-dyn/content/article/2009/05/17/AR2009051702053.html (identifying food, housing, mortgages, transportation, health care, payday loans, insurance, goods and loans from rent-to-own outlets, and title pawns)).

91. Mehrsa Baradaran, *How the Poor Got Cut Out of Banking*, 62 EMORY L.J. 483, 490, 547 (2013). As Professor Baradaran explains:

> Studies show that many low-income families carry a startling debt load to payday loan providers, often taking out loans from one fringe lender to pay off another. Once these customers enter the payday loan industry, it becomes a trap from which they cannot escape. The typical check-cashing outlet charges between 1.5% and 3.3% of a check's face value. For a typical client—who earns approximately $18,000 per year—this amounts to nearly $500 annually.

Id. at 492 (footnotes omitted); s*ee also* Olivia M. Peña, *Municipal Regulation of Payday & Title Loans in Texas*, 17 J. CONSUMER & COM. L. 71, 76 (2014). This author claims that payday lenders' profitability stems primarily from their customers' inability to repay the loan in a short time, thus requiring borrowers to repay the fees over and over again. *Id.* Indeed, lenders opposing local ordinances that limited rollovers and required lenders to limit loans to a percentage of income argued in one case that imposing these limits would put them out of business. *Id.* at poor pay more for credit. Yet ironically, the most profitable customers in consumer credit markets are those who have the least ability to repay their debts.[92] People who pay off their credit card balances are deadbeats because they simply do not earn many fees for credit card companies.[93] These are not the customers card companies want to attract. Rather, late payers and people who are strapped for cash are far more profitable. For example, a product frequently offered to low-income consumers with presumably poor credit is a credit card with a $300 credit limit, a $79 application fee, and an additional $281 in fees upon approval. This card is one of many fee-harvester cards with similar terms.[94] Professor Freeman explains:

> [L]ow-income consumers now receive credit cards with high fees and interest rates, while higher-income consumers reap the rewards of credit card use, such as travel miles and concierge services. Credit card companies target vulnerable consumers for inferior products through tactics such as teaser rates, mass mailings of preapproved cards, fee-harvesting cards, overly complex credit card agreements, and credit-card redlining. As a result of these practices, 80% of the industry's profits now come from interest payments and late and over-the-limit fees instead of annual and interchange fees. This shift represents a massive redistribution of wealth from the poor to wealthier consumers and corporations.[95]

Turning to high-cost credit-alternative financial products such as payday and title loans,[96] which can carry annual percentage rates

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75. In making this argument, lenders effectively admit that their business model requires that customers have an inability to repay. *Id.*

92. Freeman, *supra* note 12, at 162. As Professor Freeman explains, again in the context of credit cards:

> The credit card industry divides consumers into four classifications: nonusers, convenience users (or deadbeats), revolvers, or late payers. A nonuser is someone who does not use credit cards. A convenience user is a consumer who pays off monthly balances in a timely fashion. A revolver is a credit card holder who carries a balance over from month to month. A late payer is someone who pays off the monthly balance, but not before the due date.

Id. at 162 (footnote omitted).

93. *Id.*

94. *Id.* at 167. A fee-harvester card disguises the effective interest rate by attaching fees to the card use that exceed the credit being provided. One example is a card with a $300 credit limit that costs a total of $360 in fees. The fees are paid over time so they are not obvious to the customer until after they are paid. *Id.*

95. *Id.* at 154 (footnote omitted).

96. Jessica Silver-Greenberg & Michael Corkery, *Rise in Loans Linked to Cars Is Hurting Poor*, N.Y. TIMES (Dec. 26, 2014), http://dealbook.nytimes.com/2014/12/ 25/dipping-into-auto-equity-devastates-many-borrowers/?_r=0.

of 500%-1,000% or more,[97] the most profitable customer is one who will need to roll over or refinance a loan multiple times.[98] This leaves those consumers with the least ability to pay large fees and interest costs vulnerable to the highest fees.[99]

Hispanics (of which our study participants are one tiny subset) are no strangers to these high-cost credit realities. Industry credit practices exploit and exacerbate racial inequalities caused by other areas of the law, such as immigration law.[100] Credit card companies and mortgage lenders steer Hispanics and African Americans into high-cost loans through red-lining and other identifying methods.[101] Hispanics of all stripes, immigrants or not, are targeted for subprime cards, based in part on the presence of a significant immigrant population in many Hispanic communities.[102] This exploitation can arise from language barriers, cultural differences, or the need to send remittances, all conditions more common among recent immigrants than other Hispanics.[103]

The lack of a credit score further exacerbates these conditions. According to a study by the National Council of La Raza, 22% of Hispanic borrowers have no credit score as compared to only 4% of whites and 3% of African Americans, and Hispanics may also misunderstand how to build credit.[104] Immigrants in particular may be "unfamiliar with the U.S. credit system and financial products, [may] have cultural differences regarding finances," and may also

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97. Nathalie Martin, *Public Opinion and the Limits of State Law: The Case for a Federal Usury Cap*, 34 N. ILL. U. L. REV. 259, 268-69 (2014).

98. *Id.* As far as the law is concerned, we eventually regulate some products by limiting interest and fees, but even then, we tend to regulate the products used by the middle rather than the lower classes. Baradaran, *supra* note 91, at 491 (stating that "[f]ringe banking operations such as loan sharks, pawn shops, payday lenders, and check-cashing stores operate at high costs to the poor" and that these services are obtained through unregulated lenders). Compare this with the Card Act, which regulates credit cards, a primarily middle-class credit product. Credit Card Accountability Responsibility and Disclosure Act of 2009, Pub. L. No. 111-24, 123 Stat. 1735.

99. Freeman, *supra* note 12, at 181.

100. *Id.* at 180.

101. *Id.* at 181.

102. *Id.* at 186.

103. *Id.* (citing Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace*, 45 AM. U. L. REV. 1027, 1087 (1996)); *see also* Nicole Lutes Fuentes, Comment, *Defrauding the American Dream: Predatory Lending in Latino Communities and Reform of California's Lending Law*, 97 CALIF. L. REV. 1279, 1305, 1309 (2009); Ezra Rosser, *Immigrant Remittances*, 41 CONN. L. REV. 1, 1, 4 (2008).

104. Freeman, *supra* note 12, at 186.

face language barriers.[105] "[M]ost financial documents and financial educational materials are available only in English," and the disclosures "are highly complex and confusing, even for native English speakers."[106]

Hispanics also experience their share of high-cost borrowing. A recent article recounts the story of one law student's interview with Ms. Garcia, a forty-five year-old Hispanic woman who visited a payday loan store.[107] Ms. Garcia had a middle-school education and did not speak English. She also was a single mother of three who worked as a waitress at a Mexican restaurant. She barely made enough money to cover the monthly expenses. After her car broke down Ms. Garcia obtained "a $625 payday loan and had already made payments totaling that amount."[108] During the student's first conversation with Ms. Garcia, Ms. Garcia answered the following questions:

> 1) Did you sign a contract? "Yes."
>
> 2) Did you read it? "No. The lady told me where to sign."
>
> 3) Was it in English or Spanish? "English."
>
> 4) Do you speak, read, or write English? "I do not, but I can understand the basic words."
>
> 5) Did she tell you the total cost of the loan? "No. She just told me the monthly payment."
>
> 6) What numbers do you see in the contract? "I see the loan amount of $625 and a total amount of $1250."
>
> 7) Did you see these numbers before you signed? "No. I was desperate and really needed the money."[109]

Additionally, a business associate at the lender's office demanded payment and threatened Ms. Garcia with jail time.[110] A recent report of the Center for Responsible Lending also found that Latinos were at a disadvantage in various credit transactions, regardless of credit history.[111]

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105. *Id.* at 188.
106. *Id.*
107. Peña, *supra* note 91, at 71-72.
108. *Id.* at 72.
109. *Id.*
110. *Id.*
111. CENTER FOR RESPONSIBLE LENDING, FINANCIAL FAIRNESS FOR ALL: THE STATE OF LENDING FOR LATINOS IN THE U.S. 1, http://www.responsiblelending.org/resources/fact-sheets/crl_factsheet_latino.pdf (last visited Oct. 15, 2015). This recent reports states that in 2014, Latino homeownership rates dropped from 46.1% in 2013

These are but a few examples of a common plight, namely, that when it comes to credit of almost every form, the poor pay more. In fact, there has been no greater spread in what the rich and the poor pay for credit in the history of the world.[112] Use of the consumer credit system by the poor is a double whammy, as there are enormous costs with little income to cover them. Adding immigrant status creates a perilous combination of financial insecurity and potential abuses, which many immigrants will not be aware of or willing to fight against in formal legal proceedings. The problem is so dire for immigrants that one scholar has called for a complete overhaul of the consumer credit system to protect against these abuses in the credit arena.[113]

D. The Consequences or Correlates of Being Unbanked and the Controversy Around Banking the Undocumented

If a person is unbanked or underbanked, he or she is likely poor. The Federal Deposit Insurance Corporation (FDIC) defines unbanked households as those without a checking or savings account and underbanked households as those that have a checking or savings account but also rely on alternative financial services.[114]

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to 45.4%. *Id.* In 2013, Latinos were rejected "for home loans at twice the rate of non-Latino White borrowers and were more than twice as likely to pay a higher price for their home loans." *Id.* On the subject of auto loans, the Center for Responsible Lending found that "[d]ealer-financed mark-ups are hidden increases in interest rates that compensate the dealer for negotiating the loan" and that Latinos and African Americans were not only more likely to be subject to interest mark-ups, but also that they were "more likely to be subject to higher mark-ups, regardless of credit history or shopping strategy." *Id.* The report also noted that according to another survey, over 75% of Latino consumers were unaware of auto dealer markups. *Id.*

112. *See* Martin, *supra* note 97, at 268-69; *see also* State *ex rel.* King v. B & B Inv. Grp., Inc., 329 P.3d 658, 663-64 (N.M. 2014).

113. *See* Bender, *supra* note 103, at 1077-82.

114. FED. DEPOSIT INS. CORP., 2011 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS: EXECUTIVE SUMMARY 3 n.2 (Sept. 2012), https://www.fdic.gov/householdsurvey/2012_unbankedreport_execsumm.pdf. Incidentally, in New Mexico, the state in which the study described here was conducted, one-third of all unbanked households and almost one-quarter of all underbanked households earn less than $15,000 per year. FED. DEPOSIT INS. CORP., APPENDICES H AND I OF THE 2011 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS: DETAILED STATE AND MSA TABLES 71 (Sept. 2012), https://www.fdic.gov/householdsurvey/2012_unbankedreport_app_h-i.pdf. Nationally, in 2014, the federal poverty level for a family of four in the forty-eight contiguous states and

While it is not entirely clear how immigrants participate in the financial mainstream, we do know that undocumented immigrants are frequently unbanked or underbanked.[115] Our own data reflect this reality. In the city in which our study was conducted, at least two mainstream financial institutions regularly provided bank accounts to undocumented individuals, but relatively few survey participants reported actually using checking accounts and savings accounts, with 44% and 32% respectively.[116] Thirty-eight percent (38%) used no bank accounts at all and were thus unbanked, compared to an unbanked rate of 7.7% in the total U.S. population.[117] As far as being underbanked is concerned, as Part II of this Article shows, the other 62% of our participants were essentially underbanked, compared to 20% of the overall U.S. population.

Being unbanked or underbanked has become synonymous with various unfavorable economic conditions. Since 2009, the FDIC has surveyed Americans about their banking and credit product uses every two years in connection with the U.S. Census.[118] As a general matter, unbanked and underbanked people disproportionally live in poverty and are more likely to be people of color.[119] They have lower education levels than banked people and have lower incomes than banked people.[120] Stated differently, if a person is a minority, low-

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the District of Columbia was $23,850. Annual Update of the HHS Poverty Guidelines, 79 Fed. Reg. 3593, 3593 (Jan. 22, 2014).

115. *See* FED. DEPOSIT INS. CORP., 2013 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 5 (Oct. 2014), https://www.fdic.gov/householdsurvey/2013report.pdf.

116. *See infra* notes 160-62 and accompanying text.

117. *See* 2013 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS, *supra* note 115, at 4. In the FDIC 2013 study, 34.9% of households in which only Spanish was spoken did not have bank accounts, as compared to our 38% of undocumented people without bank accounts. *Id.* at 17.

118. *See id.*; FED. DEPOSIT INS. CORP., 2011 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS (Sept. 2012), https://www.fdic.gov/householdsurvey/ 2011/2012_unbankedreport.pdf; 2009 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS (Dec. 2009), https://www.fdic.gov/householdsurvey/2009/ full_report.pdf.

119. State *ex rel.* King v. B & B Inv. Grp., Inc., 329 P.3d 658, 665 (N.M. 2014).

120. *Id.* at 665-66. As the *B & B* court found with respect to New Mexico in general:

> Demographically, unbanked and underbanked New Mexicans have significantly less education than the general population, are disproportionately living in poverty, and are more likely to be people of color. Their education levels are lower; the State presented evidence that in over 25 percent of unbanked and underbanked households, no one holds

income, or unemployed, he or she is nearly twice as likely to be unbanked or underbanked as one who does not meet one of these characteristics.[121]

Focusing now on immigrants in general, rather than undocumented immigrants, these financial determinants apply equally to those who are unbanked or underbanked.[122] Studies involving immigrants show that lower levels of education correlate with being unbanked, and households with higher net worths are more likely to participate in mainstream financial markets.[123] For example, a 2006 study of immigrants from Mexico, Latin America, Europe, and Asia sought to determine the likelihood that immigrants had bank accounts, the socioeconomic and demographic characteristics of those who were unbanked, and whether participation in the financial mainstream differed for immigrants from different countries or regions.[124] Looking specifically at the

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> a high school degree, and in only a handful of unbanked households—just over 9 percent—does anyone have any college education at all. They are more likely to be poor: 27.9 percent of unbanked households and 24.2 percent of underbanked households in New Mexico lived on less than $15,000 per year in 2009. *Id.* Over 50 percent of underbanked households live on less than $30,000 per year. *Id.* They are also more likely to belong to an ethnic minority: 41.6 percent of Hispanic households are unbanked or underbanked, and 58.3 percent of "other" households (defined as non-Hispanic, non-black, and non-white, which is a category that includes Native Americans) are unbanked or underbanked.

Id. (citations omitted).

121. *See* 2013 FDIC NATIONAL SURVEY, *supra* note 115, at 16-18 (stating that "[c]lose to half of all households in these groups were underbanked or unbanked, compared to slightly more than one-quarter of these households overall"). Interestingly, the FDIC found upward mobility with regard to banking among Hispanics in general, since its 2012 study. *Id.* at 18. As it states:

> Relative to 2011, the estimated unbanked rates in 2013 were generally similar for most groups. One exception is Hispanic households. While still relatively high, the unbanked rate for Hispanic households decreased to 17.9 percent in 2013 from 20.1 percent in 2011. Improvements in economic conditions and changing demographics among Hispanic households over this time period explain nearly half of this reduction in the unbanked rate. In particular, relative to 2011, Hispanic households in 2013 experienced higher levels of employment, income and educational attainment. These characteristics are all associated with lower unbanked rates.

Id. (footnote omitted).

122. Sherrie L. W. Rhine & William H. Greene, *The Determinants of Being Unbanked for U.S. Immigrants*, 40 J. CONSUMER AFFAIRS 21, 23 (2006).

123. *Id.* at 28-34.

124. *Id.*

Mexican group studied, unbanked persons were more likely to have less than a high school education, live in large extended family units, earn income below the poverty level, and live in the South.[125] Conversely, those who were *banked* were more likely to be married, work longer hours, have higher household incomes, and become naturalized U.S. citizens.[126] Those who immigrated between 1960 and 1964 were 23.4% less likely to be unbanked than the most recent immigrants,[127] signaling a correlation between age and generation with participation in mainstream banking.[128]

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125. *Id.* at 33-35.

126. *Id.* Results for the Latin (non-Mexican) group were the same, except that for the Latin-American group, citizenship was not an indicator of participation in mainstream financial markets, and poverty was not an indicator of being unbanked. *Id.*

127. *Id.* at 36.

128. *Id.* at 34. In the European immigrant group, the under-educated and low-income cohorts were less likely to participate in mainstream financial markets. Overall, however, the study found that, "cohort or assimilation effects [were] not found to play an important role in the decision to be unbanked for European immigrants." *Id.* at 38. The authors wondered if this was because these immigrants came from countries with similar financial markets. *Id.* By comparison to the Latin group, the Asian immigrant group was more likely to both participate in mainstream financial markets and to integrate (financially) more quickly with the exception of two cohorts: householders with less than a high school education and those who lived in larger family units. *Id.* Another study found that Hmong people living in Minneapolis, when controlling for income and education, were "less likely to have savings accounts and credit cards and [were] more likely to use currency exchanges, compared to randomly selected non-Hmong households living in the same neighborhoods." Anna Paulson & Sherrie L. W. Rhine, *The Financial Assimilation of an Immigrant Group: Evidence on the Use of Checking and Savings Accounts and Currency Exchanges*, 29 J. FAM. ECON. ISSUES 264, 266 (2008). "However, these effects are mitigated by time spent in the U.S." *Id.* The authors found that it took approximately fifteen to twenty years for this group to assimilate financially, but that this could be a low estimate. *Id.* These data have significant policy implications—the idea that financial assimilation takes place in the context of a *generation*, and not over a few years, indicates that financial literacy efforts may be needed that focus on the children of immigrants. "These findings also expand our understanding of immigrant assimilation and highlight some of the complexities associated with the process of assimilation." *Id.* at 264. Data was also collected on wage discrepancies among immigrants as compared to the general population:

> The results indicate that experience had little impact on hourly wages. In contrast, men had higher wages, as did individuals with more schooling. Compared to individuals with less than a high school degree, those with a college degree or higher had wages that were approximately 35% higher, and those with some college had wages that were about 18% higher. There was no statistically significant difference in the wages of those with a high school degree and those with less education. . . . The figure [3] shows that the median predicted hourly wage for the Hmong would equal that of the

Regarding the benefits of being banked, the authors concluded that immigrants participate in the mainstream economy for four primary reasons: (1) to shield them from the risks of keeping cash on hand; (2) to save money and build wealth (including eventual home ownership); (3) to cushion against unforeseen events; and (4) to learn tools for managing household finances. In addition to personal protections afforded by banking within mainstream financial markets, communities also benefit when recent immigrants are banked, as they are more resilient against economic downturns and better poised to take advantage of economic growth when community members participate in mainstream financial markets.[129] Such participation can arguably help stabilize and revitalize local communities and enhance credit flows to help facilitate residential and business financing.[130]

Views vary widely, however, regarding whether undocumented immigrants should even *have* access to bank accounts and other traditional financial services.[131] Some people are deeply concerned

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> Control sample of $13.85 per hour after approximately 25 years of U.S. experience.

Id. at 276.

129. *See id.* at 265.

130. *See id.* Like other studies, this study found the following traits were associated with the unbanked or underbanked: less education, younger, lower income, and minority group members. Reasons for not banking were primarily cost-related. The 1996 SIPP longitudinal survey (SIPP) was the basis for the comparisons and conclusions presented in this Article, which were that:

- 14% of white U.S.-born families were unbanked
- 53% of Mexican households were unbanked
- 37% of other Latin American households were unbanked
- 20% of Asian households were unbanked
- 17% of European households were unbanked

Survey of Income and Program Participation, U.S. CENSUS BUREAU, http://www.census.gov/programs-surveys/sipp/data.1996_Panel.html (last visited Sept. 20, 2015).

131. Drew K. Kifner, *Alien to Financial Services: Should Social Security Numbers Be Required for Banking Services Provided to Immigrants?*, 12 N.C. BANKING INST. 303, 303 (2008). There are two criticisms of financial products that are being offered to immigrants without SSNs. *Id.* at 309. The first is that the product may violate the Patriot Act. *Id.* The second is that making the products available encourages the maintenance of illegal status or in some way decreases the incentive for an undocumented immigrant to fix her status. *Id.* Drilling down on the criticisms, some specific concerns are elevated: not requiring a SSN can protect a money-laundering agenda or promote identity theft. *Id.* at 310. The unspoken assumption here is that social security numbers (SSNs) protect against these crimes. *Id.* at 309-20.

that offering this credit encourages people to enter the country and stay illegally.[132] Others fear that people without social security numbers are laundering money or otherwise engaging in illegal activity that cannot be traced to anyone in particular for enforcement.[133] On the other side of the political spectrum, some people worry that nonbank, alternative credit options available to immigrants, which include payday and title loans, are oppressive and cause more harm than good.[134] Leaving aside the debate, one does not need a social security number in order to open a bank account, get a bank loan, or even to obtain a credit card.[135] In our market, both

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132. *Id.*

133. *Id.* at 310. Under the Patriot Act, financial institutions must verify the identity of a potential customer, keep records of the verification process, and check known- or suspected-terrorist lists prior to opening a new account. Further, the Treasury Department demands that financial institutions create "Customer Identification Programs" utilizing "risk based procedures" to substantiate the institution's conclusion that the new customer is not a terrorist. *Id.* at 311. Minimum information that must be collected includes name, date of birth, address, and identification number. *Id.* at 311-12. Neither the Act nor the associated regulations require a SSN as a minimum identification requirement, however. *Id.* at 312.

134. *See* Katherine Houren, *Achieving the American Dream in Debt? Why the USA Patriot Act Puts Undocumented Immigrants at Risk for Abuse by the Payday Loan Industry*, 15 WASH. & LEE J. C.R. & SOC. JUST. 561, 570 (2009). To protect the undocumented, specifically, Houren recommends first that the USA Patriot Act be improved by requiring banks to provide both oral and written instructions to foreign customers that specifically explain how mainstream bank products work, when the customer can incur fees, how the customer can avoid incurring fees, and how payday loans make customers more susceptible to fees and involuntary account closures. *Id.* at 584. Bank regulatory agencies should provide boilerplate language, and all communication should be provided in the language used to initiate the banking relationship. *Id.* Second, legislation needs to provide better protections against the threat of criminal prosecution or deportation. *Id.* Third, funding needs to be legislated "for a non-profit organization to track the habits of collection agencies with respect to citizens, documented immigrants and undocumented immigrants." *Id.* Fourth, protective legislation should "mandate a federal payday loan database to track borrowers' habits and ensure that lenders do not issue more than one loan to a consumer at a time." *Id.* at 585. Houren's point is that since the undocumented gained access to mainstream banking through the USA Patriot Act, they have been subjected to predatory lending practices that have had especially harsh results for this population. *Id.* at 585. She maintains that banning payday loans will only lead to some other exploitative product taking their place. *Id.* at 585-86. She argues that the federal government should step in with meaningful, comprehensive reform that includes funding for enforcing fair lending practices. *Id.*

135. Kifner, *supra* note 131, at 306. There are two criticisms of products that are being offered to immigrants without SSNs. *Id.* at 309. The first is that the products may violate the Patriot Act. *Id.* The second is that making the products available encourages the maintenance of illegal status or in some way decreases the incentive for an undocumented immigrant to fix her status. *Id.* Drilling down on the

Wells Fargo Bank and Bank of America are well known for offering bank accounts through Individual Taxpayer Identification Numbers (ITINs) to people without social security numbers, as are many credit unions.[136]

II. THE STUDY DATA

This Part describes our study methodology and our results. Going into this study, I and cohort Professor Chrystin Ondersma, from the Rutgers University School of Law in Newark, applied for funding from the National Conference of Bankruptcy Judges to find out what the credit habits were for two very different U.S. populations and also how people viewed the various forms of credit. Going into the study, we knew that existing information on the types of borrowing available to undocumented borrowers was extremely limited and that there also was a dearth of information addressing what portion of undocumented borrowers apply for and receive various loan products. There also was very little information addressing the circumstances in which these loans are applied for and the purpose for which the money is obtained. Our questions probed the uses of credit as well as experiences with and attitudes toward the various credit products.

Prior to this study, there also was little information from undocumented immigrants regarding their perceptions of, experiences with, or evaluation of these various lending products. Our study sought to fill this void with some relevant information on these topics. In addition, because undocumented immigrants face significant barriers to legal relief—including bankruptcy relief—we feared that they may be targeted by predatory lenders. We hoped that the information gathered in this study could help identify whether predatory lending is a problem for immigrant communities and also whether some types of lending are beneficial for this community.

The methodology for this study was based on that of numerous studies in this genre, including a study conducted by University of Texas law professor Angela Littwin that addressed the borrowing behavior of low-income women.[137] Because of the impossibility of a

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criticisms, some specific concerns are elevated: Not requiring a SSN can protect a money-laundering agenda or promote identity theft. *Id.* at 310. The unspoken assumption here is that SSNs protect against these crimes. *See id.*

136. *Id.* at 310.

137. *See generally* Angela Littwin, *Testing the Substitution Hypothesis: Would Credit Card Regulations Force Low-Income Borrowers into Less Desirable*

random sample of this community (undocumented individuals are not likely to respond to mass mailings, specifically those which ask them to self-identify as undocumented), we selected and recruited participants using what is called a "snowball sample," a standard technique used by sociologists to reach populations that cannot be reached through randomized methods.[138]

After obtaining Institutional Review Board approval and testing our questions on a few pre-participants, we took data from two "convenience samples" in order to reflect two communities of undocumented debtors: one in New Mexico and one in New York City. The interviews took about an hour to conduct, sometimes a bit longer, and participants received $50 in cash for participating. New Mexico study participants were drawn from two sources in Albuquerque's South Valley, a primarily immigrant community: (1) parents of a South Valley charter high school and (2) a medical clinic that serves a largely undocumented clientele. We collected data from August of 2011 to September of 2012.[139] Interviews were conducted

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Lending Alternatives?, 2009 U. ILL. L. REV. 403 (2009) [hereinafter Littwin, *Testing the Substitution Hypothesis*]; Angela Littwin, *Beyond Usury: A Study of Credit-Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451, 456-57 (2008) [hereinafter Littwin, *Beyond Usury*].

138. *See* Littwin, *Beyond Usury*, *supra* note 137, at 456-57; *see also* Jean Faugier & Mary Sargeant, *Sampling Hard to Reach Populations*, 26 J. ADVANCED NURSING 790, 792 (1997) (recognizing the advent of nonrandom-sampling techniques termed snowball sampling to study hard-to-reach populations); Sarah H. Ramsey & Robert F. Kelly, *Using Social Science Research in Family Law Analysis and Formation: Problems and Prospects*, 3 S. CAL. INTERDISC. L.J. 631, 643 (1994) (observing the popularity of snowball samples in social-science research). For examples of snowball sampling in social research, see José B. Ashford, *Comparing the Effects of Judicial Versus Child Protective Service Relationships on Parental Attitudes in the Juvenile Dependency Process*, 16 RES. ON SOC. WORK PRAC. 582, 584 (2006) (using a "convenience sample" of forty subjects to study the effect of judicial and caseworker relationships on perceptions of fairness by parents in the child-protective-services process); Elizabeth Chambliss & David B. Wilkins, *The Emerging Role of Ethics Advisors, General Counsel, and Other Compliance Specialists in Large Law Firms*, 44 ARIZ. L. REV. 559, 561 (2002) (investigating "the emerging role of compliance specialists in large law firms" using a snowball sample); Mariano-Florentino Cuéllar, *Refugee Security and the Organizational Logic of Legal Mandates*, 37 GEO. J. INT'L L. 583, 586 & n.6 (2006) (using a snowball sample to obtain one of three sets of interviews on "the legal, political, and bureaucratic dynamics affecting refugees' physical security"); Rosanna Hertz, *The Contemporary Myth of Choice*, 596 ANNALS AM. ACAD. POL. & SOC. SCI. 232, 243 n.1 (2004) (reviewing a study in which researcher Phyllis Moen used a snowball sample to locate women who left full-time careers when they had children).

139. The New York City study participants were drawn from clients of The Street Vendor Project, an organization located in Manhattan that works with street

in Spanish by native Spanish speakers or bilingual persons and were then translated into English. In the community in which the New Mexico data was collected, 40.3% of the population is white, 48.1% Hispanic, and 5.1% Native American. Twenty-two percent (22%) of the population is bilingual in Spanish and English, meaning that Spanish is their first language.

Only persons without a social security number or a legal right to be in the United States could participate in the survey. After each interview, we asked each participant if he or she would like to invite another person to participate. Many did not do so, which meant we had to wait for more persons to enter our intake sites and respond to our signs. We ultimately interviewed fifty persons in each region, and this paper reports only on the New Mexico data.

Our questionnaire contained sixty questions that allowed participants to pick answers from a list of choices or sometimes to pick their own answer not offered. After most questions, participants could follow up with comments of a general nature. The interviews were 100% structured, however, meaning that interviewers did not ask follow-up questions of participants that were not part of the script.

The questionnaire, a copy of which is available from the author, began with questions about demographic information, including race, income, age, education level, employment information, and marital status. The next set of questions addressed general financial information, such as income, savings, debt load, monthly bills, and bank-account status. Next, we asked participants which forms of borrowing they had used (home mortgage, car loan, catalog, loan shark, credit card, rent-to-own, payday loan, relative, or friend). For each borrowing method employed, we asked participants about their experience with the method. In addition, we asked what financial coping mechanisms the individuals turned to first in the event of a sudden financial crisis. To develop the questionnaire effectively, we used the first several interviews to test out the instrument and then sought input of these participants in further developing the questionnaire. The questionnaires were also reviewed by other scholars in the field of debtor–creditor law.

Given the working conditions, legal structures, and credit conditions set out in Part I above, one would expect undocumented immigrants to be in relatively dire financial conditions. In our

vendors, the majority of whom are undocumented, though that data is not reported on here.

population, this is exactly what we found. The New Mexico undocumented cohort interviewed was characterized by low, unstable wages, very little savings, few assets, and an inability to absorb even a $100 unexpected expense from current wages. The survey data took a full thirteen months to collect, in part because participants were understandably afraid to talk to us for fear of deportation. The results, once in, were startling. Even taking into account the poverty of the state of New Mexico as a whole,[140] the financial condition of those we interviewed was far grimmer than anyone could have predicted.[141] Generally, survey research on financial issues is subject to perception and reporting biases, and individuals often report better financial conditions than they actually have.[142] This means reality could actually be worse than what is reported here.

A. Basic Demographics

In our survey sample of 50 people, the vast majority (47 out of 50) were Mexican nationals. One each was from Argentina, El Salvador, and Peru. These figures roughly correspond to the immigrant population in the Albuquerque area and also reflect the specific neighborhood or community in which we collected our data, Albuquerque's South Valley. Sixty-four percent (64%) were women and 36% were men. The participants varied in age from 19 to 76, with the vast majority being between 26 and 55. Participants were almost equally divided between those who lived with a spouse or

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140. *See* State *ex rel.* King v. B & B Inv. Grp., Inc., 329 P.3d 658, 674 n.6 (N.M. 2014) (stating that "[n]ineteen and a half percent of New Mexicans live below the poverty level, compared to 14.9 percent of people nationwide"); *see also State and County QuickFacts: New Mexico*, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/states/35000.html (last revised Aug. 5, 2015). Thirty-five percent (35%) of New Mexico households are unbanked or underbanked, compared to 28.3% of households nationwide. *See* 2011 FDIC NATIONAL SURVEY, *supra* note 118, at 126. New Mexico and Nevada households have a higher rate of unbanked and underbanked households than anywhere in the Northeast, Midwest, or West. *Id.* Only seven states have a higher or the same percentage of underbanked households: Alabama, Arkansas, Georgia, Louisiana, Mississippi, Nevada, and Texas. *Id.* Only four states have a higher percentage of unbanked households: Arizona, Arkansas, Mississippi, and Texas. *Id.*

141. Did the compensation drive the population we got? Not necessarily. Many said they just wanted to tell someone what was going on and that it felt good to be heard.

142. *See* Schmitz, *supra* note 56, at 300-01.

partner and those who did not.[143] In terms of the time spent living in the United States, this ranged from two to thirty-two years, with many participants having lived in the country since they were small children.

B. Basic Financial Determinants

1. *Type of Work, Income, and Number of People Supported*

Seventy-two percent (72%) were working and 28% were not. The most common forms of work are set out in the chart below:

Type of Work	**Percentage**
Not Working	28%
Housekeeping	22%
Construction	10%
Manual Labor	8%
Food Service	8%
Child Care, Health Care, Sales, Management	24%
Total	**100%**

The net income of participants by category was as follows:

Reported Net Income Per Month	**Percentage**
Less than $500	14%
Between $500 and $1,000	34%
Between $1,000 and $2,500	42%
Between $2,500 and $5,000	8%
Over $5,000	2%
Total	**100%**

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143. Of the 46% who lived with a partner, all but one were actually married as opposed to just living together, a much higher marriage rate than the overall population.

> In 2011, the Pew Research Center found that 51 percent of Americans were married, compared to 72 percent in 1960. However, rates of cohabiting couples are rising—according to private research company Demographic Intelligence, less than half a million couples were cohabiting in 1960, compared to 7.5 million in 2010.

Marriage Rate Declines To Historic Low, Study Finds, HUFFINGTON POST (July 22, 2013), http://www.huffingtonpost.com/2013/07/22/marriage-rate_n_3625222.html. Among the currently single people living without a partner, three were separated or divorced, and two were widowed; the others had never been married.

Only one person in our study sample netted over $5,000 a month, and he worked doing maintenance on homes in foreclosure.[144] As for the number of people each participant supported, 22% supported only themselves, 18% supported one person other than themselves, 14% supported two others, 24% supported three others, 16% supported four others, and 4% supported five or more individuals.

2. *Government Assistance*

The survey asked participants if they received various forms of public assistance. None reported receiving any government help with housing assistance, which makes sense, as the participants for the most part were ineligible for this form of assistance.[145] Six percent (6%) reported receiving some form of government assistance when asked this question generally, but more specific questions generated a larger number of persons reporting receiving pubic benefits.[146] Eight percent (8%) reported receiving cash assistance from the government, and 40% reported receiving Medicaid. Thirty-four percent (34%) reported receiving food stamps. Participants were eligible for benefits for U.S.-born children,[147] though less than half of those who were eligible took advantage of these benefits.

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144. In this one case, it was not clear if this figure was net or gross because we could not tell if the person was self-employed or employed by someone else.

145. Undocumented persons are not entitled to any federally funded housing benefits. *See* Fred Fuchs, *Immigrants and Eligibility for HUD Housing Programs*, 66 TEX. B. J. 884, 884 (2003). Additionally, only U.S.-born children of undocumented persons are entitled to other benefits, such as Temporary Assistance to Needy Families (TANF), Women, Infants, and Children (WIC) benefits, food stamps, regular medical care, and so on. Barbara J. Shaklee, *Undocumented Immigrant Children: Legal Considerations Regarding Human Services Needs*, 34 COLO. LAW. 93, 94 (2005); *see also* The Immigration Subcomm., Access to Justice Comm., *Legal Basics: 10 Biggest Myths about Immigrants and the Law in S.C.*, 17 S.C. LAW. 14, 16 (2005).

146. Some may not have considered some of these things to actually be public assistance. *See* Ryan Knutson, Note, *Deprivation of Care: Are Federal Laws Restricting the Provision of Medical Care to Immigrants Working as Planned?*, 28 B.C. THIRD WORLD L.J. 401, 401 (2008) (noting that "[t]he Personal Responsibility and Work Opportunity Act of 1996 has severely limited immigrants' access to medical care [that] [i]n enacting the legislation, Congress stated that immigrants were too great a burden on the U.S. medical system and cost the federal government too much [but that] [i]n reality, immigrants do not place an unduly high burden on the medical system").

147. *See* Leighton Ku & Brian Bruen, *Poor Immigrants Use Public Benefits at a Lower Rate than Poor Native-Born Citizens*, CATO INST. ECON. DEV. BULL.: CTR. FOR GLOBAL LIBERTY AND PROSPERITY, Mar. 4, 2013, at 1, 1-2.

Two accessed Woman, Infants, and Children (WIC) funds, and one got Low Income Home Energy Assistance Program (LIHEAP) assistance with heating bills, but that was it for the entire fifty-person sample, despite the fact that many would qualify for WIC and LIHEAP.[148] Some survey participants either thought or knew they were not eligible for any government assistance. Others did not know what was available in the way of assistance, showing a lack of information. Some felt it was a point of pride to provide for themselves. We found it interesting that not one respondent gave an answer that reflected that they knew or thought about the possible immigration consequences of getting government help. We wondered if this reflected knowledge that there was really no hope of ever getting residency or citizenship, or whether some other factor was at work. In reality, accessing public benefits can affect naturalization, assuming there is an actual chance of naturalizing, but only in indirect ways.[149]

In Question 15, we specifically explored attitudes about applying for public assistance. One person said, "I didn't think I could get government help, but I also didn't want to rely on other people's help. I wanted to make my own money."[150] Another explained, "I do not live with my kids, so why take advantage of the system when I don't have extra mouths to feed."[151] Another said she "didn't feel like we really needed it,"[152] and yet another that "I do not believe I am eligible- because my children don't have social security numbers either, I don't think my family is eligible."[153] Another said,

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148. *See* N.M. CTR. ON LAW & POVERTY, SUMMARY OF IMMIGRANT ELIGIBILITY FOR NEW MEXICO PUBLIC BENEFITS, 1, 5, http://nmpovertylaw.org/WP-nmclp/wordpress/wp-content/uploads/2011/08/Chart-Immigrant-Eligibility-for-Benefits-NM-ONLY-2011-08-011.pdf (updated July 2011). U.S.-born children of undocumented persons are U.S. citizens and can qualify for whatever benefits U.S. citizens qualify for. *See id.* at 1; *see also* Shaklee, *supra* note 145, at 94; The Immigration Subcomm., Access to Justice Comm., *supra* note 145, at 16.

149. For more on this topic, see Knutson, *supra* note 146, at 422 (noting that our public policy is that immigrants should not rely on public benefits to survive or otherwise burden American society); *see also* Shaklee, *supra* note 145, at 94; The Immigration Subcomm., Access to Justice Comm., *supra* note 145, at 16.

150. Interview no. 1. **Editor's Note: Due to the proprietary nature of the survey data, the interviews cited in this Article were not available for verification or publication. We rely on the author's representations of all statements and data.*

151. Interview no. 9.

152. Interview no. 11.

153. Interview no. 13.

"Our family never thought about it. We would only apply as a last resort."[154] Still another said:

> I think that the right thing to do is work and see if you can maintain yourself that way. I know a lot of people take advantage of things like food stamps, and I want to set an example for my daughters. I think the real reason I am against borrowing money and asking for assistance is that I don't want my daughters to think that is way to do things. First you need to try and make it on your own.[155]

3. *Property Owned*

We also inquired about whether participants in our study owned any property, either in the United States or in their home country. Sixty-two percent (62%) owned a home in one of the two places, the United States or their country of origin. In addition, 46% owned one vehicle in their household, 34% had more than one car in a household, and 16% had no car. Forty percent (40%) owned some tools. Forty-six percent (46%) had had property stolen or had lost property recently as well.

Several participants commented on the logistics of buying homes and how this was done without status, as well as some of the financial risks and rewards. As one participant explained:

> We paid for it in cash payments. It is a mobile home that we bought from Florida Homes. They never asked for a social security number on the contract we signed with them. The down payment was $3,000. The contract said there was a late fee of $25. The payments were due on the first of every month and we never missed a payment or were late on any of our payments, so I'm not sure what the consequences would have been for not paying.[156]

Another, when asked if she still owed on the home, said, "No, we paid it off completely over seventy-two months. We were paying roughly $250 a month and had a payment plan of seventy-two months. The APR rate was fixed at 19.99%."[157] When asked how one goes about buying a home without being in the country legally, one said, "My husband and I are making monthly payments on our home. We pay with personal checks. We have a real estate contract with the

154. Interview no. 16.
155. Interview no. 17.
156. Interview no. 18.
157. *Id.*

seller who is a private individual."[158] She reported that the payments were "$940 a month over 30 years."[159] Another said:

> We bought the house we live in now with the money from our house in California that we sold. We just paid in cash. But when we first moved to Albuquerque we bought a house using a real estate contract. The person selling us the house was a lawyer and the interest was really high. The down payment was more than $10,000 and we paid $1,300 a month, but the interest was 12 or 13%.[160]

These rates are astoundingly high given that at the time of the survey, mortgage rates for a traditional thirty-year mortgage for those with good credit hovered around 4-5%.[161] Houses were, unquestionably, a source of both pride and happiness among participants, as well as financial strain, as one participant explained:

> The biggest expense in our life that we constantly are struggling to keep up with is our house payments. We have been paying on our house for five years. For the first two and a half years our payments were $1,500 a month. After two and a half years of struggling with these payments, we were able to negotiate a modification with the woman who sold us the home and with whom we have a private contract to pay off the home. Times were very difficult when we asked for the modification because my husband was not working at the time and we could barely keep up with the bills—including our heating bills and it was during the winter months and very cold. We just could not keep up with our expenses. The woman who sold us the house had done something to betray our trust, so we were in a position to demand a modification on our payments because she asked us what she could do to regain our trust, and we told her, "please reduce our payments."[162]

Financed cars and trucks were another source of constant financial strain, as these two comments show:

> I bought a truck in Mexico but had trouble making payments when I had a prolonged medical illness. The lender kept calling me to make payments but I had nothing to give him because I had not been to work for over a month. I ultimately let four months go by without payment.[163]

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158. Interview no. 17.

159. *Id.*

160. Interview no. 15.

161. *30-Year Fixed Rate Mortgages Since 1971*, FREDDIE MAC, http://www.freddiemac.com/pmms/pmms30.htm (last visited Oct.15, 2015) (showing monthly average commitment rates and points on 30-year fixed-rate mortgages for the study period of August 2011 to September of 2012 in the range of 3.55% to 4.95%).

162. Interview no. 17. Another said, "I [fall] behind making payments on the house and am usually only one month behind. By the end of the month I usually catch up." Interview no.12.

163. Interview no. 5.

> We bought a car and I lost my job within two months. We had to pay the car off with only one salary and missed some payments. We had the car dealer who gave us the loan call us several times threatening to take back the car if we didn't pay him back with more interest.[164]

Another said, "Shortly after buying my truck I had to refinance because I lost my job."[165] Auto repairs were of course another problem. As one person reported, "The last time we needed to get our car repaired we really didn't have the money for it. Now we only have one car that works though we really need two for both of us to be able to work."[166]

4. *Savings*

Perhaps not unexpectedly, our sample had very little savings. Since we know that savings is the safety net that helps people stay in their homes or away from high-cost lenders, we wondered how a population with very little job security would survive during down times. Not through savings accounts or money under the mattress, apparently, because we found very little evidence of savings that would be sufficient enough to help in an emergency.

Overall, sixteen participants said their savings accounts had a positive balance; two had savings accounts in Mexico; five had savings with zero balances; five kept their savings at home;[167] and twenty-one had no savings accounts or other savings. One kept her money at her daughter's house, though we did not learn why.[168] Most participants reported having little to no savings. One said, "My husband has about $1,000 in a savings account in Mexico," and another said, "We typically have $700 in our savings account."[169] Three had around $300.[170] The rest responded that they had nothing

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164. Interview no. 4.

165. Interview no. 29.

166. Interview no. 15.

167. One reported to the question "[i]f no savings account, do you save money somewhere else? How much do you typically have saved?":

> "When I was working I would just take my money with me or try to keep it in a safe place where I lived. It was hard to save money for very long because I would need to use it when I wasn't working."

Interview no. 1.

> "I currently have nothing in savings because every penny I make is going to current debts. Hardly any. We just keep it in our house or on us."

Interview no. 9.

168. Interview no. 34.

169. Interviews nos. 6 and 11.

170. Interviews nos. 33, 37 and 38.

or next to nothing. For example, in one case, a couple had $70-$80 because the bank account required a minimum balance of $50; a few had $25 and similar amounts that few of us would consider actual savings. One said she had savings in a piggy bank.[171]

5. *Remittances*

One line of questions tried to capture what people did with the money they earned, starting with remittances. In the past, the common immigrant narrative was one in which the vast majority of people were thought to be sending money home in order to help family back there and perhaps build a home and a future life in their home country. Today's narrative may be quite different, but 66% of our participants reported sending remittances home fairly regularly.[172]

C. Use of and Attitudes Toward Traditional Financial Products and Alternative Financial Products

1. *Use of and Attitudes Toward Bank Accounts and Bank Loans*

Regarding whether they had bank accounts, 44% reported having checking accounts, 32% reported having savings accounts, and 38% had neither one.[173] The chart below reports on the frequency of ATM use among participants during the prior six months:

ATM Use In the Past 6 Months	Percentage
Used fewer than 5 times	4%
Used between 5 and 10 times	16%
Used between 10 and 20 times	6%
Used over 20 times	10%
Never used	64%

171. Interview no. 23.

172. As for how people sent these remittances, 34% used Western Union, 12% used a bank, 8% sent them through friends, perhaps who crossed the border to do it, 4% used MoneyGram, and 2% used a Mexican remittance company. It seems as though banks could do better at capturing this business.

173. We also compared the demographics between those that had bank accounts and those that did not, among the high-cost loan users, and oddly, there was not much of a difference. The five participants that were making over $2,500 a month (whether they had payday, title, or installment loans or none at all) all had bank accounts.

In terms of how the undocumented immigrants pay for general expenses, we found that 66% said they use only cash, 10% use only debit cards, 22% use both, and 2% did not answer the question.[174] When asked about the frequency of checking account overdrafts, participants reported paying overdraft fees to lenders in these frequencies and percentages:

Overdraft Fees Paid	**Percentage**
Have never paid	28%
Have paid occasionally	10%
Have paid somewhat frequently	6%
No checking account, therefore no overdraft fees	56%

Taking the 44% as the whole or 100%, this means that 63% reported never paying overdraft fees, 22.7% occasionally paid overdraft fees, and 13.6% reported paying such fees somewhat frequently.

We also asked if participants had taken out a bank or credit union loan, and 8% reported that they had. Next we asked if people thought getting a bank loan would be helpful. Thirty-six percent (36%) said yes, 30% said no, and 34% had mixed feelings. When asked if they had applied for a bank loan, if people said no, we asked why not. A few others commented that they did not think they would qualify and thought they could not get one because of their immigration status or because of no credit history. Others feared high interest and fees, said they could not pay it back, said they had no job, and one said she had a prior bad experience and did not want to

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174. The qualitative interview data show a more varied and textured approach to using cash or credit, a fair amount of switching between cash (including money orders) and debit cards, and even an occasional credit card. Nevertheless, the questions asked for how one most commonly paid, not paid each time.

One commented that she only uses "cash or money orders (which charge a lot!) because I have had bad experiences with ATMs, debit cards, and checking accounts in the past." Interview no. 2.

Another said she "only uses cash because we don't have enough money to open a bank account." Interview no. 3. Another said she has a Bank of America debit card that looks like a credit card, but may get a real, full credit card in one year. Interview no. 10. She seemed pleased at the prospect.

Another said, "I pay for my house payments with personal checks because it was a requirement of the contract. I pay for things with cash, checks, and also my debit card. It just depends on what I'm spending money on, . . . I would say it's even between cash, credit card, and debit card . . . . I usually pay for things in cash; I have a debit card but I am about to close that checking account because it's costing me money to keep it open . . . . Cash, except I use my debit card to get gas."

apply for any other bank loans. Another reported not knowing how to apply for a bank loan.

As a follow up, we asked if people had heard of experiences of others with bank loans. Thirty percent (30%) reported knowing others who had experience with bank loans. Of those reporting, 18% said that the others they knew had bad experiences with bank loans, 8% reported hearing about good experiences, and 4% reported mixed experiences. A few others commented further about their feelings about borrowing from banks, two positively and four negatively.[175] Several mentioned high fees, with one reporting, "I bought plane tickets using my debit card, but due to a bank error I paid overdraft fees. Because of the fees, I paid double for the tickets and money was very tight for the following months."[176]

When given a choice of adjectives to use to describe the feeling they would expect to get when borrowing from a bank, 40% reported feeling uncomfortable, 20% relieved, 14% embarrassed, 6% proud, 10% did not answer, and another 10% chose other.[177]

2. *Use of and Attitudes About Credit Cards*

Credit card use in our sample was low, as one might expect, and fear of getting deep into debt using credit cards was common. Twelve percent (12%) reported having and using a credit card.[178] When participants were asked whether they thought having a credit card would be helpful, 24% said they thought having a card would be helpful, 40% said it would not, and 14% reported that they might find it helpful or that they had mixed feelings. Of those reporting that

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175. Interviews no. 4 and 47.

176. Interview no. 11.

177. Five participants answered "other." One stated she wanted more information, another stated she was frustrated because she did not have access to loans, another stated he felt impotent, and another stated she was worried, and the last had a good feeling about bank loans.

178. Participants provided several reasons for not using credit cards, but the most common were that they could not get them because they had no social security numbers or proof of residency. Four also said they did not want one, three reported being scared of credit, two said because they had no credit history, two said they had no proof of residency, and one each said he or she had never been offered one, had no job, and had a bad experience with a credit card before. One participant, a twenty-six year-old, single female from Mexico with two children, who had been in the United States for fourteen years, said she tried to get one with an ITIN and was denied. Interview no. 22.

a credit card would not help them, most specifically commented that they would be fearful of credit in this context.

Credit cards were seen as dangerous by many. When participants were asked how they would feel about using/borrowing by using a credit card, 36% of participants reported that they would be uncomfortable borrowing from a credit card, 12% would feel proud, 22% would feel relieved, and 30% would not choose any adjective to describe that feeling.[179] As one said, "People can't resist the temptation, . . . you spend and spend without knowing how much money you have and how much you owe," and "if you can't pay, the company raises what you owe and raises the interest you have to pay back."[180] One said, "The biggest expense in our life that we constantly are struggling to keep up with is the credit card payments. When my husband lost his job we got by just paying for things with the credit card, and now we have a lot of debt. We have to pay about $400.00 a month."[181]

3. *Use of and Attitudes Toward Alternative Financial Services*

When asked to rank credit options according to how beneficial they were for consumers, participants viewed payday or title loans as the worst place to go for money for emergencies. They were well aware of the high interest rates and that in the case of title loans, they could easily lose their property to the lender.[182] Of the fifty people we interviewed, an astounding thirteen people had used payday, title, or high-cost installment loans in the past year, a total of 26%. This 26% rate of use is high compared to the overall population because to get a payday loan, one must get a regular paycheck and must have a bank account. Neither of these requirements are needed to get a title

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179. Additionally, 6% were embarrassed, 8% said other. Other phrases that we noted were "traumatized," "afraid," "impotent" and also, simply, "not good." Participants were allowed, but not necessarily encouraged, to pick more than one answer.

180. Interview no. 7. This is similar to the sentiments Angela Littwin found in her study of credit card use and attitudes among low-income women. *See* Littwin, *Beyond Usury*, *supra* note 137, at 456, 466.

181. Interview no. 18.

182. This is very interesting given that many, if not most, Americans are unaware of the high rates of interest charged by these lenders. *See* Timothy E. Goldsmith & Nathalie Martin, *Interest Rate Caps, State Legislation, and Public Opinion: Does the Law Reflect the Public's Desires?*, 89 CHI. KENT L. REV. 115, 130 (2014).

or installment loan, however, which are now quite common in the market in which the interviews took place.[183]

In our sample, almost none had a regular paycheck, and just 44% had the bank accounts needed to get payday loans. Practically speaking, this means that all or nearly all of the 26% who used these products took out title or installment loans. Compared to the general U.S. population, 24% have used any of the three forms over a lifetime, showing a much higher rate for title and installment loans among the undocumented we surveyed.

Very disturbingly, new lenders have now entered the New Mexico market that specifically target Spanish speakers. These lenders include Tio Rico (which translates to "Rich Uncle") and Don Dinero (which translates roughly to "the Honorable Mr. Money"). Tio Rico alone has rented fifteen billboards in the Albuquerque metro area, more than any other business. This market development puts immigrants at even greater risk than in 2011 and 2012, especially given the expected uptick in Deferred Action for Childhood Arrivals (DACA) petitions following President Obama's new initiatives.

Some participants spoke at some length about their own title loan experience. For example:

> When my first payment became due, I attempted to pay off the entire balance. I went in to New Mexico Title Loans and told them I wanted to pay off my account, but they spoke fast to me and confused me and ultimately did not allow me to pay off the loan that day. They avoided letting me pay off the entire loan even though that was what I wanted to do. They only let me pay $112, even though the balance was $531.21 and I had the money to pay them off.[184] I no longer owe anything on the loan. I finally was able to pay it off in May of 2012, even though I could have paid it off in March of 2012.[185]

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183. Nathalie Martin, *Public Opinion and the Limits of State Law: The Case for a Federal Usury Cap*, 34 N. ILL. U. L. REV. 259, 268 (2014) (describing installment loans); *see generally* Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending*, 77 MO. L. REV. 41 (2012) (describing the title loan market).

184. Interview no. 21.

185. *Id.* This quote was changed slightly to remove the exact due dates and payment dates of these loans. One thing was very clear from this interview, however. The participant knew exactly when every dime was paid and to whom over a long period of time. This level of attention to financial matters is not often seen in mainstream society, at least in my own anecdotal and personal experience.

> I took out title loan when [my] boyfriend did not get paid at work. His employer owes him 3 weeks' pay and did not pay him back.[186]

Another participant, apparently more savvy, reported as follows:

> We knew what was due and when. We took out $1000 and it was clear from the beginning how much we would be paying including interest.[187]

When asked whether their borrowing experiences from title and payday lenders had been positive, negative, or somewhere in between, one answered:

> Somewhere in between. We don't like having to pay interest and owing people money, but sometimes borrowing money is necessary to get through times where you don't have enough money to pay for things you need.[188] My husband knows the place that we've borrowed from really well because he has borrowed money from them for a long time. The place is called Southwest Financial and they usually take the title to people's cars when they loan money, but because they know my husband we don't have to give them the title to our car.[189]

Another lost his truck to the loan company, and reported:

> I had a family emergency in Mexico, so I had to take out a $600 title loan. One month later, I lost my job and was unable to pay the loan. I ended up losing the truck.[190]

As indicated above, when asked in general about what were the worst forms of credit to use, payday and title loans topped the list. People had these comments:

> Payday and title loans are the worst deals. They don't help you get back on your feet by charging too high of interest.[191]
>
> Payday and title loans are the worst because you lose everything like my friends have experienced. They always try to refinance your loan as you never escape.[192] I know someone who is still paying after four years.[193]

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186. Interview no. 22.

187. Interview no. 18. Two people reported having had or heard of someone having a good experience. Interview no. 31. ("Do you know anyone who has used a title or payday lender? I did. It was a good experience. They lent me $500, and I paid like $800 approximately."); *see also* Interview no. 9 (reporting that "I lost my truck, but my friend did not. For him it was good because he kept his job and could pay off the loan. There were times it was difficult for him to pay the loan, but he ultimately paid it off").

188. *Id.*

189. *Id.*

190. Interview no. 9.

191. Interview no. 26.

192. Interview no. 46

193. Interview no. 46.

> They steal everything from you, they charge a lot of interest, and they take your things like your car.[194]
>
> My friend had a $1,000 loan and her car is worth like $30,000. She doesn't have the title. Hasn't lost it yet [the car].[195] I would never recommend that anyone go to this title lender for a loan. They take advantage of people and confuse people and make them borrow more money than they want to. They told my friend who referred me there, that they would pay him money for referring a friend, which they never did.[196]

Explaining why they use these lenders, one participant said:

> Construction has been really slow lately, so sometimes I do not even work fifteen hours a week. My partner lost her job recently too, so we have had to apply for food stamps for the children and spend less money. Our savings account is almost gone, so we got a title loan for $1,500 and put a lien on our truck.[197]

We also asked about use of and attitudes about prestamistas,[198] which translates to "loan sharks." Somewhat humorously, these were confused with or discussed along with payday and title loans. Perhaps this indicates that true loan sharks in the traditional sense, as in violent black market lending institutions, do not really exist in this market.[199] In any case, high interest was the overwhelming reason for saying payday, title, and installment loans were bad deals.[200] In addition, prestamistas were described as having "less scruples in giving new loans."[201]

D. Extreme Income Insecurity and Unexpected Expenses

The most surprising finding in the study was the extreme income and expenses insecurity of our sample. Virtually all participants—98%—reported having trouble paying a bill in the past three years.[202] Only slightly fewer—96%—reported having difficulty

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194. Interview no. 19

195. Interview no. 23.

196. *Id.*

197. Interview no. 6.

198. Presamistas are lenders, pawn brokers, or most commonly, in colloquial terms, loan sharks. *Prestamista*, REVERSO, http://dictionary.reverso.net/spanish-english/prestamista (last visited Sep. 20, 2015).

199. Interestingly, the loan sharks in the black market charge less than the payday and title loans in New Mexico. State *ex rel.* King v. B & B Inv. Grp., Inc., 329 P.3d 658, 674 (N.M. 2014).

200. Interview nos. 4, 5, 6, 7, 8, 11, 12, 19, 22, 25, 27, 28, 33, 42, 47, 50.

201. Interview no. 48.

202. The responses were divided into three groups, those who never had enough to meet their expenses every month, so they could not or would not borrow

paying bills during the past year, showing that the problem is chronic, or at the least, has not improved for most participants. Comments on the topic of income insecurity and how to make ends meet included:

> To pay the rent in the trailer park where I live, sometimes I pay rent late because I can't get the money in time. This happened to me recently and I paid after the fifth of the month, and I was charged $28 extra.[203]
>
> I simply pay the interest on my accounts now.[204] I just don't pay those medical bills even though the hospital sends me a new bill every month.[205] We only eat whatever we can get from the food pantries every month.[206]
>
> During some hard months we had to move out of our place and move in with a friend because we could not afford the rent.[207]
>
> We had to pawn our TV and a voice recorder.[208]
>
> I work more shifts.[209]
>
> I am still paying for immigration expenses.[210]
>
> I recycle cardboard.[211]
>
> I began going door to door to sell beauty products and husband moved outside Albuquerque to find a job.[212]
>
> I paid about $60-80 dollars a month for hospital bills [and my parents also helped me]. Now, my parents are unable to pay.[213]
>
> Would do whatever I could to make money – get small part-time jobs, pick up extra house cleaning jobs. Husband would also work extra doing whatever possible.[214]
>
> I sold furniture and TV.[215]

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because they knew they had very little chance of being able to pay anything back; those who could meet their expenses and could borrow for an emergency; and those who had savings to cover an unexpected expense.

203. Interview no. 32.
204. Interview no. 24.
205. Interview no. 3.
206. *Id.*
207. *Id.*
208. *Id.*
209. Interview no. 26.
210. Interview no. 36. One can only imagine what these expenses could be since none of our participants could naturalize.
211. Interview no. 7.
212. Interview no. 10.
213. Interview no. 16.
214. Interview no. 17.
215. Interview no. 28.

> My other siblings and I got together and got a loan from a neighbor to bail out our brother.[216]

To see how bad the situation actually was, we asked if people would be able to handle what we thought was a relatively small, unexpected expense—$100—right now. An astounding 72% said they could not.[217] Unexpected expenses participants had already experienced included:

Unexpected Financial Setbacks Participants Experienced*	**Percentage**
Loss of job	33%
Loss of spouse	22%
Other family breakup	12%
Eviction or foreclosure	45%
Medical expenses	22%
Deportation or removal	14%
Arrest, incarceration, or legal expense	16%
*Some participants experienced multiple unexpected expenses.	

Additional comments on the topic of scarcity, coping, and particular bills that need to be paid include:

> It's always hard to find enough to pay the bills. Especially toward the end of the year it seems like.[218]

> It's just really hard to pay all the bills all the time. At the end of the month I often struggle to make ends meet.[219]

> When I went to hospital for depression my family incurred a lot of expenses that they haven't been able to pay off.[220]

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216. Interview no. 30.

217. Compare this study result to two studies addressing the amount Americans in general either have saved or would have on hand in case of an emergency. One study by the PEW Charitable Trust found that "[more] than half of American households have less than one month of income available in readily accessible savings to use in case of an emergency." *See* Ann Carrns, *The Dangerous State of Americans' Savings*, N.Y. TIMES, Jan. 31, 2015, at B4. In the second, a survey of the general American population revealed that 64% would not have $1,000 on hand to cover an unexpected emergency. *See* Jessica Dickler, *Most Americans Can't Afford a $1,000 Emergency Expense*, CNN MONEY (Aug. 11, 2011, 11:19 AM), http://money.cnn.com/2011/08/10/pf/emergency_fund/ (last visited Sep. 20, 2015). The 64% here said they would need to borrow money or take out a cash advance on a credit card to cover such an expense. *Id.*

218. Interview no. 13.

219. Interview no. 14.

220. Interview no. 16.

> When we moved apartments, we didn't get our deposit back for a while so we couldn't pay the electric bill on time. Once we got our security deposit back we were able to pay the bill.[221]

> Last time I had trouble was paying rent, I had to borrow from my sister.[222]

> My scholarship did not come in until much later so it was hard to buy books, pay rent, and buy gas for my car.[223]

> I lost my job and did not have any money in savings to buy anything, food, rent, gas.[224]

> My kids ask me for things, but I don't have the money to make them happy.[225]

> I didn't have the money to pay electricity and gas and the utility company didn't help me.[226]

> I just don't pay those medical bills even though the hospital sends me a new bill every month.[227]

> We only eat whatever we can get from the food pantries every month.[228]

When asked specifically about medical debt, 46% reported having medical debt, 38% reported having no such debt, and 16% did not answer. When asked if they had health insurance, 81% said no, and 19% said yes. Of those with insurance, one-third reported having private insurance of some kind with the other two-thirds reporting having government insurance.

E. Feelings About Borrowing Money in General

The majority of the responses show that the participants were thinking about borrowing as an unfortunate necessity to respond to scarcity. The overwhelming sentiment was that borrowing money is not a good thing. It creates pressure and bad feelings, it is embarrassing or uncomfortable, and it can ruin relationships. Only one participant's comment demonstrated that borrowing might be viewed in a different, more entrepreneurial frame of mind, expressing the desire to be able to borrow money to start a family restaurant: "We don't want charity at all. We want to do everything

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221. Interview no. 19.
222. Interview no. 22.
223. Interview no. 25.
224. Interview no. 27.
225. Interview no. 33.
226. Interview no. 28.
227. Interview no. 3.
228. *Id.*

legally. I wish that we could get a loan to open a small sandwich shop. My husband makes the best sandwiches, and I know that we could do really well if someone would just give us a chance."[229] One comment reflected an attitude of pride about being offered credit, that "it is something that you have as a promise"[230] and that borrowing and repaying money was a way to "build your word" in the community.

In immigrating to the United States, many Latin families are giving up their life-long networks and building new community networks, by borrowing or lending. Then, repaying might be seen as a way of demonstrating your good character to people who have not known you their whole lives. One comment reflected a mindset that being able to borrow in this country was desirable and a symbol of status: It meant you had a social security number.[231] Another participant commented that borrowing was good with a close family member; it showed trust and provided financial opportunity for the borrower.[232] In that case, a father had lent the participant money to buy a house.[233] Few people aspired to take out bank loans. As one person explained in a fairly common theme, "I could ask one of my friends or neighbors who I know well. I would pay them back after selling some recycling cans. I would not go to a bank."[234] In similar sentiments, another person said, "I would ask everyone I know if I could clean their houses to make some money. I would go up to Rio Rancho and collect cans and bottles to recycle at the recycling center to make some money. I would avoid asking to borrow money because I know I can't pay it back."[235]

The vast majority of comments reflected that even when money is very tight, credit should be avoided. As one explained, "I had to cancel my phone. I preferred not to have a phone than take out credit."[236] Another, when asked about whether he or she would like to take out a loan to cover an unexpected expense, simply said, "I guess we could, but then we wouldn't be able to pay for something else—like gas or something."[237] This anti-borrowing sentiment is

229. Interview no. 2.
230. Interview no. 9.
231. Interview no. 45.
232. Interview no. 22.
233. Interview no. 38.
234. Interview no. 31.
235. Interview no. 19.
236. Interview no. 23.
237. Interview no. 15.

fascinating, given that the general American population seems relatively comfortable with borrowing more than can ever be repaid.

As previously noted, in the context of the discussion of payday and title loans, we also explored people's knowledge and feelings about which options were best for mitigating unexpected expenses. When asked how they would feel about borrowing money from friends and family members, 30% reported feeling uncomfortable, 32% embarrassed, 14% relieved, 6% proud, and 8% none of the above. The rest did not answer at all. Some of these comments included:

> Last time I had trouble was paying rent, I had to borrow from my sister.[238]
>
> My other siblings and I got together and got a loan from a neighbor to bail out our brother.[239]
>
> I would borrow from a family member. Loans are really expensive so probably borrow from family.[240]
>
> I would borrow from my siblings. My husband is not working right now because he just had surgery on his hip.[241]
>
> I would borrow it from a family member who would do me the favor.[242]
>
> I'd ask my brother-in-law for some money.[243]

The majority had borrowed at least some money from family or friends, which were unfortunately lumped together on the survey. Borrowing from family and friends was overwhelmingly viewed as the best alternative for borrowing money. Reasons given included the benefit of having an interest-free loan as well as overall flexibility in repaying the money. One comment cited privacy as the main reason, "We think it's better to not go outside to borrow money and just keep it in family."[244]

While we discussed the topic by category of credit above, we also asked people which forms of credit were better than others, and we report on that comparative data here. Bank or credit union loans were viewed as the second-best borrowing alternative, after borrowing from family members. Top reasons given included low interest rates and the security of the transactions (banks are regulated

238. Interview no. 22.
239. Interview no. 30.
240. Interview no. 22.
241. Interview no. 37.
242. Interview no. 38.
243. Interview no. 39.
244. Interview no. 16.

and are viewed as dealing more fairly with clients).[245] Other reasons included a chance to build the borrower's credit history and credit score and monthly instead of bi-weekly payments. Tandas or informal community borrowing groups came in third place. Participants explained that most of the people they know are also in poor financial conditions, so the tandas do not really work. People borrow the money but cannot afford to pay it back. Again, high-cost lenders were seen as the worst option, a fact lost on many non-immigrant, low-income people.[246]

Finally, knowing that Americans in general had taken on far more credit in the years leading up to our 2010-2012 data collection, we wondered if the same would be true of our target population. The answer seemed to be no. When asked if their borrowing habits had changed over the past several years, most (thirty-eight, or 76%) said no. Of the twelve participants (24%) who indicated there had been a change over the last three years in the kind of borrowing they used, ten reported that they continued to struggle with scarcity, with no significant change to their financial situation. Their comments reflected reactive responses to their situations, such as giving up on banking relationships (going cash only), getting more comfortable with the idea of asking family for loans, or switching from borrowing from friends to using tandas instead. One said, "No more title loans," reflecting a hard lesson learned.[247]

Only two gave answers that reflected that they made proactive changes to their spending and savings habits in order to get control of the need to borrow, probably because it is next to impossible to cut from a tiny budget. One said, "We have noticed that we have to save more and only borrow when we absolutely have to."[248] "I have learned to spend a lot less. I have learned to be more conscientious."[249] In summary, the vast majority of participants showed more willingness to work more or cut expenses than to take on debt.[250]

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245. We found this interesting because the general view is that low-income people are intimidated by banks and would rather not use them. *See* Mehrsa Baradaran, *It's Time for Postal Banking*, 127 HARV. L. REV. F. 165, 168-69 (2014).

246. Most people do not know that this high-cost lending is even happening. *See* Goldsmith & Martin, *supra* note 182, at 130.

247. Interview no. 47.

248. Interview no. 38.

249. Interview no. 23.

250. For similar stories in another context, see Laura M. Tach & Sara Sternberg Greene, *"Robbing Peter to Pay Paul": Economic and Cultural*

F. Attitudes About Whether Being Undocumented Means Being Taken Advantage of

Being aware of the literature on how being undocumented can impact negotiations and an overall inability to pursue one's legal rights,[251] we asked people if they ever felt taken advantage of because they did not have social security numbers. Sixty-eight percent (68%) said yes, 30% said no, and 2% did not respond. When asked if they would feel comfortable using the court system to right a wrong, 32% said yes, 42% said no, and 26% were unsure.[252] The comments also suggested some would not sue to pursue a legal right. For example, one woman did not get her security deposit back, but declined to push the issue in court.[253]

CONCLUSION

In retrospect, there are things I wish we had been able to pursue further. For example, the 2013 FDIC Survey of the Unbanked and Underbanked noted a large uptick in the use of pre-paid cards since their 2011 survey.[254] At the time we wrote our survey in 2010, before we obtained our study funding, pre-paid cards were far less utilized than they are today. It would be interesting to find out whether the population we interviewed has also begun to use the cards with more regularity, given their growing popularity with lower income consumers in general.[255]

Even more pressing than questions about pre-paid cards, I wish we had been able to interview consumers now about their use of

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Explanations for How Lower-Income Families Manage Debt, 61 SOC. PROBS. 1, 5 (2014).

251. *See* Weber, *supra* note 2, at 618.

252. When asked if they had ever filed for bankruptcy, all said no: 98% said they had never considered it, and 2% (one person) said he or she had considered it. Most believed they were ineligible for bankruptcy relief in the United States, and several people felt that even if they could file, filing for bankruptcy could negatively affect their ability to naturalize. Adjectives people identified to describe how they would feel if they could file for bankruptcy included embarrassed (58%), uncomfortable (16%), hopeless (2%), worthless (2%), sad or difficult (2%), or relieved (2%). Sixteen percent (16%) did not answer and 2% did not know how they felt.

253. Interview no. 8.

254. *See* FDIC 2011 NATIONAL SURVEY, *supra* note 118, at 5.

255. *See id.*; *see also* Catherine Lee Wilson, *Making Prepaid Safe for Consumers: A Framework for Providing Deposit Insurance and Regulation E Protections*, 17 U. PA. J. BUS. L. 925, 927 (2015).

payday, title, and other high-cost loans. Beginning in the summer of 2014, our market became flooded with high-cost lenders that specifically target immigrants, with lenders such as Tio Rico, el Dinero, and others. Tio Rico, in particular, has at least fifteen billboards and five outlets in the Albuquerque metropolitan area alone. Nonprofits and churches who serve the immigrant community are deeply troubled by the influx of these lenders, by their extensive advertising, and by the sudden desire of many in the undocumented community to access enough cash to apply for President Obama's deferral program.[256]

Finally, much more data is needed regarding whether people have been taken advantage of by people who claimed to be able to help them naturalize. Not long after we finished our data collection, several large notario[257] fraud cases were uncovered, and other facts came out about lawyers who engaged in unscrupulous practices and sold false hope to people who had no chance to naturalize under current law. There is no doubt that these sorts of frauds on undocumented immigrants will continue and perhaps even be exacerbated as a result of the President's new programs.

All studies happen at a certain place and time, however, and these issues will hopefully be addressed by future researchers. We were able to uncover a few of the grim realities of living in the financial shadows, with only precarious means of financial support, outside of social safety networks at home, at a legal disadvantage, and without a place at any policy-related table. The extent to which our study participants lived without a safety net was shocking. Seventy-four percent (74%) of those we interviewed had no ability to handle an unexpected expense of even $100. Some used traditional banks, some had too little money to do so, and still others chose not to use traditional financial institutions because of high fees and bad past experiences. Whether this decision was voluntary on the part of participants or not, it still places participants in a cohort of low-wage, low-education, low-mobility persons. Indeed, it is hard to imagine a person making it to the middle class without developing these traditional financial relationships. In the end, we learned a fair amount about how the undocumented community survives, and in

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256. Interview with Antoinette Sedillo Lopez, Executive Director, Enlace Communitari (March 12, 2015).

257. Notario fraud involves promising to help an immigrant obtain legal status here, when there is no legal road to do so. *See* Careen Shannon, *Regulating Immigration Legal Service Providers: Inadequate Representation and Notario Fraud*, 78 FORDHAM L. REV. 577, 588 (2009).

many ways it is remarkable that it does. Participants overall were very wary of debt, a trait the general American population could learn from.

We also learned that at least in this cohort, an admittedly small sample, there was little attempt to try to access public benefits or otherwise tax the American system. While these participants were unquestionably from the economic group that critics assume would burden society and sap the social benefits offered in the United States,[258] few received any benefits even when they were eligible. Most worked hard and did jobs that few others would want to do. Most even hesitated to pursue the legal rights they do have, and instead chose to stay in the background. Additionally, fewer participants than anticipated used traditional banking systems or fully participated in our economy, which means that fuller participation in the economy by undocumented immigrants could help our economy grow. Conversely, keeping this population in the economic shadows is costing lenders a hefty profit, and society as whole economic growth. It is genuinely surprising that lenders have not created more economic incentives to increase business from this cohort nationally.

Finally, many if not most of the undocumented persons we interviewed paid taxes. This is not surprising given that nationally, undocumented "immigrants pay $90-$140 billion a year in taxes, including $6-$7 billion in Social Security that they will never collect."[259] In New Mexico, the state of the study, undocumented "immigrants paid almost $65 million in taxes in 2004."[260] "By law they cannot receive welfare, food stamps, housing assistance, unemployment, or medical care except in an emergency," meaning that these "[i]mmigrants pay an estimated $20-$40 billion a year more in taxes than they receive in public benefits, including education."[261] Many of these findings bolster prior research showing that this cohort of American society gives more than it takes.

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258. Ku & Bruen, *supra* note 147, at 7 (concluding that immigrants use public benefits less than similarly situated non-immigrants, but not taking eligibility into account); *see also* Knutson, *supra* note 9, at 422.

259. *Fairness for Immigrants*, ALBUQUERQUE INTERFAITH, http://www.abqinterfaith.org/initiatives/fairness-for-immigrants/ (last visited on Sep. 20, 2015).

260. *Id.*

261. *Id.*