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Justice Talking Radio Transcript

Immigration and Policy: What's Changing and Why—Air Date: 1/28/08

The issue of immigration has been a flashpoint in the Presidential debates. Border fences, identification for illegal immigrants, and other reforms have all been debated. And Mitt Romney has been in the hot seat because some say he didn't act fast enough when he found out illegal workers were cutting his grass. All of these issues raise important questions about U.S. immigration policies, particularly the current crack-down on hiring illegal workers. What happens to workers caught working without papers? Join us for this edition of Justice Talking for a look at our nation's work rules and what they mean for illegal immigrants.

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MARGOT ADLER: From NPR, this is Justice Talking. I'm Margot Adler. Immigrants are coming into the country in numbers greater than any seen in a hundred years. How is America responding? Today on Justice Talking.

UNIDENTIFIED MALE: The influx of the illegal immigrants, for one thing. Schools is another big concern, you have to educate these kids, regardless. Of course we are dealing today a lot with some of these younger kids and getting to see them. Just anything when you bring in, particularly illegals, I think crime is one of your biggest things you have to be concerned about.

UNIDENTIFIED FEMALE: I feel that God has a place for everybody and he's going to put you where he wants you. If they are there and he feels like they need to be here, they will be here the way they need to be. I am not concerned about it, I am not concerned about it at all.

MARGOT ADLER: Coming up after the news.

MARGOT ADLER: This is Justice Talking from the University of Pennsylvania's Annenberg Public Policy Center, I'm Margot Adler. A wave of immigration since the early 1990s has brought new immigrants to states across the country. The change has been dramatic, increasing the number of both legal and illegal immigrants by the millions. And it has provoked an angry backlash, a force influencing this year's presidential campaign. On today's Justice Talking, how are immigrants changing America and what change in policy should it bring? Twenty years ago, demographers say most immigrants, legal and illegal, lived in a handful of places – New York, New Jersey and Florida, Illinois and Texas and California. Now immigrants are filling low-wage jobs all over the country, jobs that employers say are left vacant by America's increasingly skilled native workforce. But the number of illegal immigrants is stirring up anxieties and so far, Congress has failed to act. Oklahoma just passed one of the nation's toughest new measures, giving police authority to check the immigration status of anyone who is arrested and making it a felony to knowingly hire, shelter or transport illegal immigrants. Some say the result has been an exodus of workers from the state, both legal and illegal. And in at least one small community in the Oklahoma panhandle, there is some speculation that they may have taken the town's future with them.

Eric Mack visited the town of Hooker and has this report.

ERIC MACK: Driving down the main street of Hooker right now. The majority of these storefronts are closed, Audrey's Fashion Shop has seen better days. Just a few cars parked here and there and that is about it. So we're going to pull in to the municipal building here and see if we can find the mayor. Rod Childress became the mayor of this sleepy bedroom community of about 1700 last year. He has lived here over 30 years. And he says that like many other small rural towns, things have changed a lot here.

ROD CHILDRESS: Oh, there were a lot of businesses downtown at that time. The businesses, some of them have closed up. People go to Guyman or Liberal, which is twenty miles away and has Super Wal-Mart, it's hard for mom and pop stores to compete with something like that.

ERIC MACK: Hooker is right in between the bigger towns of Guyman, Oklahoma and Liberal, Kansas. Those two cities have been booming in recent years, thanks to the expansion of a few very big meat-packing plants. So when Smithfield Foods announced plans in 2006 to build a huge new beef plant just outside the city limits of Hooker, many residents saw a possible remedy for the downtown doldrums of the local economy. Housing prices began to go up, renovations started to happen in a few downtown storefronts and a handful of new businesses, including a gym and a gift shop, opened up in anticipation of the new plant. But according to Mayor Childress, many residents had a very different reaction to the news.

ROD CHILDRESS: You know, along with some of that, the big growth, comes a lot of headaches. The influx of the illegal immigrants, for one thing, schools was another big concern. If they bring in that many workers – you have to educate these kids regardless. Of course, we're dealing today a lot with some of these younger kids in gangs, even. Just anything – when you bring in, particularly illegals, I think that crime is one of your biggest things you have to be concerned about.

ERIC MACK: That perception is shared by local rancher John Hareford. I am meeting him here at the Mr. Burger restaurant on the south side of town where a flier on the front door announces an upcoming gang awareness meeting. Hareford tells me the notion of 3,000 new low-wage workers descending on Hooker threatens to change the face of the town in more ways than one.

JOHN HAREFORD: They move 3,000 people in here, there has to be more water wells drilled, there has to be more firefighters put on the force, there has to be more police officers. We just built a new jail, we have the Seaboard moving into Guyman and it's full all of the time, so that means we'd have to have more prison space.

ERIC MACK: He says he wouldn't mind seeing a little growth in Hooker, like a few more small businesses on Main Street, but otherwise he says he'd rather leave Hooker just as it is. And he isn't alone – he's the unofficial leader of a group opposing the plant and last year state lawmakers unwittingly helped Hareford's cause. A month after Oklahoma's tough new immigration law went into effect, Smithfield Company leaders signaled they were having second thoughts. This is Smithfield's CEO Larry Pope saying they were going to take their time deciding whether to open the plant during a conference call last August.

LARRY POPE: I think we look forward five years. I think there needs to be a new beef plant. We've got the cattle to supply that. The other side of that is the cost of construction here has gone up pretty dramatically in terms of that plant. That has given us pause to slow down and think this thing through more seriously.

ERIC MACK: And some of those increased costs can be tied to the immigration crackdown in Oklahoma. Steve Kay is the publisher of Cattle Buyer's Weekly, he has been in contact with Smithfield about their changing plans for Hooker. He suspects labor shortages are one of the company's top concerns. He says a lot of beef processors have reason to worry about finding enough low wage workers for the labor-intensive jobs.

STEVE KAY: Some of the major packers even in the last week or so are telling me that in part as a result of those tighter immigration requirements in various states, lack of a coherent immigration policy, their turnover at their plants has increased.

ERIC MACK: Credit a big part of that turnover to high profile raids nationwide and tough new immigration laws like Oklahoma's, according to Pat Finnell of the Latino Community Development Agency in Oklahoma City. She says workers began flowing out of the state as soon as the bill hit the legislature.

PAT FINNELL: The fear that it created in the community caused thousands of people to leave Oklahoma. Latinos that are undocumented primarily, but also we have had an exodus of documented Latinos because the environment is unfriendly.

ERIC MACK: Back in Hooker at Mr. Burger, Liz Gilkie says Hooker should try to keep its reputation as a friendly place that is open to anyone, including immigrant workers.

LIZ GILKIE: I feel that God has a place for everybody and he's going to put you where he wants you. If they are here and he feels like they need to be here, they will be here the way they need to be. I am not concerned about it – I am not concerned about it at all.

ERIC MACK: She said that she'd welcome the new plant and workers to town and hopes that it might create new opportunities for her teenage children. While a number of people I spoke with in Hooker shared that sentiment, the new law is speaking much louder to the immigrant community. My last stop in town was to speak with Moises Avilos, pastor of Hooker's only Spanish-language church. Meat packing workers make up most of his congregation. He told me that even if a new plant opened in Hooker, he would advise people to look elsewhere for work.

MOISES AVILOS: It would be easier if closer to the warehouse and not here in Oklahoma. This lies, police trick. You cannot even transport people from one town to another because they have no legal papers and you can get in trouble for that.

ERIC MACK: And for now, it looks like Smithfield might be staying away from Oklahoma too, leaving Hooker with a handful of new businesses whose owners say they plan to stay open as long as they can. For Justice Talking, I'm Eric Mack.

MARGOT ADLER: As communities like Hooker Oklahoma grapple with what stance to take towards immigrants, national leaders are debating the very same question. A demographer for the Pew Hispanic Center, Jeffrey Passel, says the numbers suggest why some are so anxious. He says change has been coming fast — half a million undocumented workers arriving each year this decade — responding to an economy hungry for unskilled workers.

JEFFREY PASSEL: About 95 percent of the adult undocumented men are in the workforce, as compared with, say, about 83 percent of natives. So that they are coming for jobs. Our economy is generating the kinds of jobs that the undocumented immigrants can do, jobs in construction, in meatpacking, in various aspects of the service industry.

MARGOT ADLER: Is that new that we have more construction or that we have more of these service jobs?

JEFFREY PASSEL: These parts of the workforce grew very rapidly in the 1990s.

MARGOT ADLER: A recent poll reported that 20 to 25 percent of voters are adamantly anti-immigrant. On the other hand there is about 15 to 20 percent that are sympathetic. That leaves about 60 percent of the population that is somewhere in between. How would you characterize that big group in the middle?

JEFFREY PASSEL: Well, I think they are like, probably what most Americans have been historically, somewhat ambivalent. The immigrants represent a break from the recent past, so there is concern about the changing nature of American society. Today, we hear about it in

terms of language and race and ethnicity. These historically have been the driving forces of the concern.

MARGOT ADLER: So you are saying that some of the sentiment and the sort of ambivalence about immigration has to do with, essentially to be blunt, this notion that America will have a non-white majority sometime in 2050. You know, that English will no longer be the majority language, that's the fear.

JEFFREY PASSEL: I mean, what we have seen historically, like I said, and what we are seeing today even is that while the immigrants today speak Spanish and the immigrants 100 years ago spoke other languages, their children grow up speaking English.

MARGOT ADLER: Right, so that – it's a short-term problem, you are saying.

JEFFREY PASSEL: Right, and even after the immigrants have been here 15, 20, 30 years, most of them speak English.

MARGOT ADLER: Does the data support that we will be a non-white majority soon?

JEFFREY PASSEL: Not soon. Well, it depends on what you mean by soon.

MARGOT ADLER: Well, 2050 is what we keep on hearing.

JEFFREY PASSEL: Right, it's about then. It's worth noting that those projections assume that the race and ethnic definitions that we have in place today will still be there 50 years hence. It's worth pointing out that when the Italian immigrants and the Greek immigrants and the Jewish and Polish immigrants came a hundred years ago, they weren't considered whites. They were foreigners and today their grandchildren and great-grandchildren are all part of the white American population.

MARGOT ADLER: Let's talk about enforcement. Critics say enforcement is a joke. What's the status of cracking down on illegal migration and what do we know from your numbers about what actually works?

JEFFREY PASSEL: Well clearly not much works, the numbers have been increasing, as I said before, about half a million a year for at least 10 years and maybe 15 years. So whatever we are doing, doesn't seem to be working very well.

MARGOT ADLER: Jeffrey Passel is a demographer with the Pew Hispanic Center. Thank you so much for coming on our show.

JEFFREY PASSEL: You are very welcome – it was very interesting.

MARGOT ADLER: The failure of federal immigration policy is reverberating through local governments. Some are demanding their local police pick up the slack and demand to know immigration status. We debate the pros and cons.

UNIDENTIFIED MALE: The worst possible thing from a public safety point of view that can happen is if immigrants do not trust the police enough to talk to them.

UNIDENTIFIED MALE: Well, that's not the only issue. People think illegal immigration is a crime that has a negative impact on the nation and they want the law in that area enforced.

MARGOT ADLER: Coming up.

MARGOT ADLER: This is Justice Talking, the public radio show about law, justice and American life. I'm Margot Adler. Today we are talking about the growing population of immigrants and how America is responding to them. State and local governments have begun to act where the federal government has not. Last year, state legislature has passed more than 200 new laws related to immigration, triple the number passed in 2006, and municipal governments have been taking action as well. Among the most controversial policies, some are mandating local police check immigration status. Others are forbidding it. Here to debate which direction is right, Tom Fitton is the president of Judicial Watch, a conservative legal group that advocates for transparency and ethics in government. And David Harris is a professor of law at the University of Pittsburgh. He writes and teaches about police behavior and regulation, law enforcement and national security issues. Welcome both of you to Justice Talking.

DAVID HARRIS: Thank you.

TOM FITTON: Thanks very much.

MARGOT ADLER: First, Tom, your organization is suing the City of Los Angeles over its cannot ask policy. You say it's a dangerous policy, why?

TOM FITTON: Federal law prevents local officials from preventing other local officials from talking to the feds about immigration status of any individual, whether they are a witness, a victim, or an arrestee. And the police are unable to, in Los Angeles, contact Immigration Customs Enforcement about individuals' immigration status. And they are also prohibited from asking anyone about their immigration status, which is part and parcel of the problem. As a result, violent felons who have been deported, who come back and who are evidently here in violation of our immigration law, that the police see on the street, for instance, really can't be picked up and can't be questioned about their status. We see instance after instance of people who have committed crimes, who are here illegally come into contact with local police forces across the nation. They are not brought to the attention of federal authorities. They are let out and they go on to commit crimes again. But for the fact that they had been released by the police and not turned over to the feds, they could have been stopped.

MARGOT ADLER: David, are we tying the hands of the police with policies like this one?

DAVID HARRIS: No Margot, we are not tying the hands of the police. Tom is quite right that the issue is public safety. But I think that police in cities and states around the country see it quite differently. Police in almost any city or town you can name know that in order to make the streets safe, they have to have decent relationships with everybody in their community, whether those people are legal or illegal. Because if they don't have decent relationships with them, people won't trust them. And if they don't trust them, they won't talk to them. The worst possible thing from a public safety point of view that can happen is if immigrants do not trust the police enough to talk to them. If they feel that local police are out there to enforce immigration laws, they will not give them information, even when the immigrants themselves are victims or witnesses.

MARGOT ADLER: So you are saying that the directives that require police to question people about immigration status are in themselves dangerous because they are preventing this trust?

DAVID HARRIS: It can be that they are dangerous. I would say it's a decision for local police. When police are directed to stop people on the street and talk to them about their immigration status, or to make that a primary area of inquiry, what happens is those people begin to fear the police, fear contact with the police. They won't call the police when crime happens, when they are victims, when their family members are victims, when their friends are victims.

MARGOT ADLER: Let me turn to Tom and ask him how do you respond to that argument. After all, many undocumented arguments are here working, they are not criminals. Don't we want them to trust the police and report crime?

TOM FITTON: We want them to report crime and we want them to trust the police. Illegal immigrants are naturally going to be distrustful of the police by the nature of their illegal conduct and their being here in contravention of law. There are two issues here. The issue of requiring the police to enforce immigration law versus the issue of various directives in big cities across the country where the police are prevented from cooperating with federal immigration authorities. And prevented from following their discretion and following their noses on immigration matters. And that's a violation of federal law and they have to stop doing that. The police need to be allowed to do their jobs and there is a divergence of views between the police bureaucracies. And the politicians and the chiefs appointed by the local politicians in the big cities, most of whom rely on these populations to get elected. Versus the views of individual police officers and frankly, the views of the American people. People overwhelmingly want local police to enforce the law. And when you have entire police departments remaining neutral in the face of lawbreaking, you have a terrible undermining of the rule of law.

MARGOT ADLER: Did you just say that the politicians rely on populations that are illegal to get elected?

TOM FITTON: Oh, yes.

MARGOT ADLER: How do they vote?

TOM FITTON: Well, they do vote and they presume that the families of illegal immigrants who are able to vote are more likely to vote for them if they protect their family members.

MARGOT ADLER: In other words you are saying that there are immigrants who are legal who vote who have family members who are illegal.

TOM FITTON: That is right. The general view is that the Hispanic community does not like this and so politicians who want to kowtow to ethnic politics promote these policies. And this issue of public safety and trust, they are after the fact rationalizations. The LAPD policy did not come up because they wanted good community relations. The cops were having trouble getting immigration crimes prosecuted because initially they weren't witnessing the crossing of the immigrant over the border illegally.

MARGOT ADLER: I would like to bring David in here also, but it seems to me that many cops are not necessarily happy though with being required to follow some of these resolutions. And some of them even argue that it will be the death of community policing. Why don't we start with David and then have Tom.

DAVID HARRIS: Well, that is exactly it, Margot. I can't understand how illegal populations are electing our leaders, but I want to tell you something. I do a lot of work with police, I train police, I know police, I work with them. And they are not concerned about being politically correct or reinforcing what the mayor wants. They are setting policy to promote public safety. It is that simple. That is what this is about. It is not about wanting to curry favor or anything like that. Now when Tom says that it's undermining the rule of law – look, there is all kinds of law enforcement in this country, federal, state and local. Every one of those forces, from the FBI to your local police department, has to make choices about what law it will enforce, how intensely, and how it will do that. Local police departments and chiefs across the country have made the decision that safety is the priority. And if the federal government wants to enforce immigration law, they need to step up, fund it and do it. I'm not against that, nobody is against that. What I am against and what police are against is being forced into the situation where they become adjuncts to the federal government and everybody loses.

TOM FITTON: I just disagree with the professor on this. I think the police want to be able to enforce the law and follow their noses on this. And the law prevents these regulations that prevent the police from talking to Immigration Customs Enforcement about an individual's immigration status. This is what these regulations do.

MARGOT ADLER: Tom, as I understand it, even in an area like Los Angeles, police can inquire about immigration status once someone is arrested. And the immigration status is often checked once someone is incarcerated, certainly. At that point, hasn't the local police officer done his or her job, they have arrested a criminal. And if the person is here illegally, they've handed that person over to the feds, so what more is needed?

TOM FITTON: Well, our investigation of LA's policy, the LA Sheriff's Department does have a cooperation agreement with Immigration Customs Enforcement. LAPD does not have it. And

an individual being arrested and going through the system means the sheriff's department is contacting Immigration Customs Enforcement and not LAPD. And woe to the officer in the Los Angeles Police Department that dares cooperate with Immigration Customs Enforcement. They face severe on the job penalties for doing so.

MARGOT ADLER: David, at what point do you believe a police officer should be allowed to be inquire about someone's immigration status? Say there's a car accident and one of the drivers can't produce a driver's license, can't provide a social security number, he or she has trouble communicating in English. In that case, should a local cop inquire about immigration status?

DAVID HARRIS: There is every reason to inquire about immigration status for every person who is arrested and for every person who is incarcerated. And in fact, it's true that the LAPD do that now. Now, I'm looking at a 2002 memo that I got off of Tom's group's own website and it indicates that the LAPD is involved with the county sheriff doing exactly that. But what you want your police officer to do is to see to the basics of his or her mission. And that is assuring public safety, in an auto accident, making sure nobody is hurt, calling medical attention, clearing the traffic lanes. Immigration law is incredibly complicated. I'm a law professor, and I wouldn't get into this stuff of are you legal, are you not. And to ask our police officers without any extra training to get into this mess, it is just a disaster waiting to happen on every level. Do you think the federal government is going to hesitate to turn around and sue local police departments when they do this wrong? Of course not. So it is a loser for local law enforcement, they know it. And this idea that local police are not able to secure their communities from predators because they can't ask about immigration status is just patently false. That's just not true.

MARGOT ADLER: Let me ask both of you why we need either of these policies. Why not leave this up to the discretion of the individual cop, Tom?

TOM FITTON: Well, that's exactly right, but these policies prevent the cop from exercising his or her discretion. And talking with Immigrations Customs Enforcement about a witness in a crime or a victim of a crime or an arrestee.

DAVID HARRIS: We have policies in police departments to cover a whole lot of things – search and seizure, whether you chase a car, what kind of uniforms you wear, how you enforce the law in a whole bunch of ways. To say that in this particular instance you don't want any policies to tell police officers how to use their discretion turns a blind eye to how law enforcement works in the modern age.

MARGOT ADLER: David Harris is a professor of law at the University of Pittsburgh. Tom Fitton is the President of Judicial Watch. This is Justice Talking and we're talking about immigration. David, some police have voiced another concern, that there are people who come into repeated contact with the police. Suppose the cops have reason to believe a person is here illegally and reason to believe that he or she is involved in illegal activity. If they could ask about immigration status, turn that person over to the feds, they might have the opportunity to get that person off the street.

DAVID HARRIS: It's true, but if they have reason to believe that they are involved in criminal activity, that's all they need to get them off the street. We don't need proof positive to arrest somebody, all we need is probable cause. Or even less, reasonable suspicion in some instances for a temporary stop, detention and investigation. So if you let the police do their jobs in the way they are accustomed to, they will do them right, they will do them consistent with the way they always do. And then once a person is arrested, once a person is detained, there is no problem at all checking immigration status. Nobody is against that that I'm aware of and plenty of places do that in their county jails. And the problem often is that the feds don't step up and come and get the people and they have to be cut loose.

MARGOT ADLER: Tom, what about this issue that there are other powers that police can use to get illegal immigrants who commit crimes off the street?

TOM FITTON: Well that's not the only issue. People think illegal immigration is a crime that has a negative impact on the nation and they want the law in that area enforced. Illegal immigrants who go on to commit additional crimes, violent or otherwise, obviously adds to the outrage, but Americans want the laws enforced as it relates to illegal immigration. So the issue of illegal immigration as a crime itself is not being addressed by the local police. They have walled it off for politically correct reasons and for political reasons and for bureaucratic reasons. You know, the costs involved and training officers and such to the degree they need to be trained. And so as a result, illegal immigration itself, which is a crime that concerns the majority, the overwhelming majority, the super majority of Americans. Is not being addressed adequately by big city police departments and many local police departments, obviously, in the suburbs and elsewhere.

MARGOT ADLER: Well, let me ask both of you to just define very clearly for me when you think immigration status should be asked. When a police officer should ask about immigration status – Tom first.

TOM FITTON: Well, I think when he wants to. If he has reason to believe that someone is here illegally, he ought to be able to make the inquiry. And if the local population of citizens through their elected and appointed officials believe the issue of illegal immigration is a strong enough a problem, and a big enough problem in their community, it is certainly appropriate to make it a question for everyone they come into contact with. And there is nothing inappropriate about that and it isn't terribly expensive to ask the questions. And if you don't like the answers or you are suspicious of the answers or suspicious of the documentation, to do appropriate follow-up.

MARGOT ADLER: David?

DAVID HARRIS: I couldn't disagree more. I don't think police belong asking people for papers and their immigrant status. That will lead directly to judgments being made based on appearance and we all know where that leads. That becomes racial or ethnic profiling very, very easily. Police should ask about immigration status when they arrest someone, when they book someone, when they book somebody into jail and incarcerate them. That's the only time it is necessary and appropriate. If you do more than that, if you ask every person you come into contact with what's your immigration status, I bet you anything it's going to be people who look and sound a

certain way, whether those are American citizens or somebody else. And that is not going to be good for public safety or law enforcement.

MARGOT ADLER: Tom, what about this issue of racial profiling that David brings up? If cops can ask anyone at any given time about their immigration status, what's to prevent them from asking anyone of foreign origin or speaks with an accent about their immigration status?

TOM FITTON: Well, the question is, is it on a reasonable question given the circumstances presented to the individual police officer. And just because it may have a disparate impact on people who are Spanish speakers or with a Spanish accent, it's frankly not persuasive to me. We have an illegal immigration problem that comes mainly from Spanish speaking countries, most specifically Mexico. And to put our heads in the sand and pretend we can't ask individuals who don't have a grasp of the English language or don't have appropriate ID questions about their immigration status, and simply because they don't have a grasp of the English language, I don't think makes much common sense to me.

MARGOT ADLER: Tom Fitton is the President of Judicial Watch. David Harris is a professor of law at the University of Pittsburgh. Thank you both so much for being part of this discussion and coming on Justice Talking.

DAVID HARRIS: It was a pleasure, Margot.

TOM FITTON: Thank you for having us on.

MARGOT ADLER: Police policies are just one of the polarizing issues rising from the nation's debate about immigration. How is this domestic policy question affecting the presidential campaign?

UNIDENTIFIED FEMALE: Republicans are poisoning their relationship with Latino voters for decades to come by their stance on this.

MARGOT ADLER: Coming up, we will also hear about one state throwing economic caution to the wind as it moves to punish employers who hire illegal workers.

UNIDENTIFIED MALE: People who think they have an inherent right to break the law because it benefits their bottom line. It is simply profits over patriotism and it shall not and will not be tolerated.

MARGOT ADLER: And one illegal worker tells us what she has learned working in America.

UNIDENTIFIED FEMALE: No one should accept a job below the minimum wage. I know that people should get paid on a regular basis. That after working eight hours, you should get paid time and a half. I know how a job should be.

I know how to do my work better and I know what I shouldn't do.

MARGOT ADLER: Stay with us.

MARGOT ADLER: This is Justice Talking where we make the connection between law, justice and American life. I'm Margot Adler. Today we're talking about immigration and how it's changing the country. Illegal immigration is among the most divisive issues in America today. The numbers are growing by hundreds of thousands a year, and it is estimated there are 12 million illegal immigrants in the US today and almost all of them work. Robynn Takayama brings us Catalina's story. Her name is a pseudonym because she is here in this country on an outdated visa.

ROBYNN TAKAMAYA: Catalina and a group of women are setting off today with well wishes. They are on their way to the fancier neighborhoods in San Francisco to post fliers advertising cleaning, childcare and cooking services. A local day laborer center has helped them organize to find work. With limited English skills and no valid visa, Catalina says these fliers are her lifeline, bringing her the only work she gets. Despite this, she says it is still better than conditions in Mexico, where she and her husband could barely survive. Catalina is a round-faced, quiet woman, who looks weathered by years of poverty. In Mexico, she and her husband lived in her parents' house in a village in the Yucatan. She worked in a stuffy sewing factory for 10 hours a day with one 10 minute break. These long hours took a toll on her health, so she left the factory to clean the home of a wealthy Mexican family, but she says it wasn't enough.

CATALINA: That work, that agricultural work, just doesn't provide for a living anymore, even though we had land and we had the house that my parents owned. It still wasn't enough and we couldn't survive there.

ROBYNN TAKAMAYA: A year later, the family offered her work in San Francisco if she moved with them. Catalina's husband already migrated to Tijuana to find work, so she made a year commitment.

CATALINA: I accepted the idea of coming to the US because I couldn't figure it out how to survive in Mexico, neither personally or economically.

ROBYNN TAKAMAYA: Catalina hopes she might learn English and develop skills for a better job, but instead of finding opportunity in the US, she describes a kind of nightmare. She says the family kept her passport and made her work seven days a week. Advocates say undocumented workers end up exploited workers all too often. And in Catalina's case, she says they didn't even let her leave the house.

CATALINA: They said I would get lost, I would be robbed, I would be assaulted. One year without setting foot on the street, 24 hours a day working, providing for this family. I was very depressed, sure. I cried a lot. But I just had to get through it – I said I am going to get through it and I counted the days.

ROBYNN TAKAMAYA: Finally the year was up and Catalina was able to leave the family with a savings, money she spent on getting her husband into the US. But the hurdles remained high for her to get into the labor market. She didn't speak English and she didn't know anyone in San Francisco. A \$6-an-hour job with the florist didn't last long, so she and her husband migrated around California looking for agricultural jobs. Nothing lasted, but Catalina and her husband never thought they would be better off in Mexico.

CATALINA: Here it's better. In Mexico, you have to do a different type of work other than domestic work, but there are no other jobs, you can't get them. I don't think it's possible to get a job there.

ROBYNN TAKAMAYA: Catalina was certain she had a better chance at a better job in the US. And then she found one of the fliers she would later hand out. It directed to the Women's Collective at La Raza Centro Legal. At the collective, Catalina was able to take the English classes she had always wanted and she learned her rights as a worker, rights that workers in America have, whether or not they are in the country legally.

CATALINA: No one should accept a job below the minimum wage. I know that people should get paid on a regular basis, that after working eight hours, you should get paid time and a half. I know how a job should be. I know how to do my work better and I know what I shouldn't do.

ROBYNN TAKAMAYA: Catalina asks that Americans give her a chance to work. She is only in the US because there is no work in her country. Since she joined the collective, Catalina says her wages have increased and employers treat her with more respect. She has taken a leadership role and coordinates a self-esteem workshop where she encourages her colleagues to strive for more. At a weekly meeting, they respond with a collective chant – yes, it can be done. For Justice Talking, I'm Robynn Takayama.

MARGOT ADLER: Catalina is working in California, a traditional destination for Mexicans struggling to make ends meet at home. But since the early '90s, employers in places like Arizona have come to rely on foreign workers, particularly in the service industry and in construction and many are illegal, but not anymore. Arizona just passed sweeping new legislation that sanctions businesses who hire illegal immigrants. Violators can lose their business licenses. Republican Arizona lawmaker Russell Pearce authored the legislation. He says he is unmoved by employers who complain they can't fill the jobs any other way.

RUSSELL PEARCE: We have a free market that will adjust.

MARGOT ADLER: Pearce says these arguments gall him, especially because he says employers who want to obey federal laws are penalized if they don't hire illegal workers, which federal law has prohibited since 1986.

RUSSELL PEARCE: And what about the business who follows the law down the street and the guy the breaks the law has an illegal immoral competitive advantage over the honest guy. What is his incentive to continue to be a law abiding, honest employer? You know, you destroy the rule of law everything about it when you have this kind of anarchy.

MARGOT ADLER: But one Arizona employer challenges the idea that it will do anything besides scare immigrants and hobble the business community. In his case, Sheridan Bailey, the President of Ironco, a Phoenix -based maker of steel frames for construction, it is meant that he let go 10 percent of his workforce and then he had to outsource the work to Mexico.

SHERIDAN BAILEY: And so we are sending some of our steel fabrication to Mexico now and it wasn't easy to find it and it's a big expense for us, but it's a move we had to make in order to be sure that we can meet our commitments.

MARGOT ADLER: Sheraton is leading a group of employers who have asked the court to intervene. He says compliance will mean firing workers with valid visas. He says the federal database for checking immigration status has a double digit error rate and nobody to appeal to when it's wrong. And he says he couldn't pay his way out of this, even if he wanted.

SHERIDAN BAILEY: I am all for paying people what they are worth and what the market, supply and demand. The problem is that no matter how high I raise wages, I'm not going to attract college students to a trade profession and \$30 or \$35 an hour isn't going to deter them from those goals.

MARGOT ADLER: A judge is expected to rule soon on whether the law applies only to new hires or existing employees. Either way, Bailey says it's bad for everyone.

SHERIDAN BAILEY: We are creating an underclass that is disenfranchised. And when you have a law that is contrary to human rights in the case of the need for a person to put bread on the table, society is going to suffer. I don't think Americans are going to be comfortable becoming secret police.

MARGOT ADLER: But Russell Pearce, the Arizona lawmaker who pushed the law through the legislature, says employers have no business exploiting an illegal labor pool and he's proud Arizona is leading the way.

RUSSELL PEARCE: People who think they have an inherent right to break the law because it benefits their bottom line. It is simply profits over patriotism and it shall not and will not be tolerated. Arizona will not tolerate illegal employers or illegal aliens.

MARGOT ADLER: The passion pushing this issue to the forefront has caught hold in the presidential campaign, particularly on the Republican side. Here is Rudy Giuliani and Mitt Romney going after each other at the CNN debate in Florida in November.

RUDY GIULIANI: The federal policies weren't working stopping people coming in to the United States. If I were President of the United States, I could do something about that by deploying a fence, by deploying a virtual fence. By having a border stat system like my com stat system that brought down crime in New York and just stopping people from coming in. And then having a tamper-proof ID card.

UNIDENTIFIED MALE: Governor Romney, was New York a sanctuary city?

MITT ROMNEY: Absolutely, it called itself a sanctuary city. And as a matter of fact, when the Welfare Reform Act that President Clinton brought forward said they were going to end the sanctuary policy of New York City, the mayor actually brought a suit to maintain its sanctuary city status. And the idea that they reported any illegal alien that committed a crime, how about the fact that the people who are here illegally are violating the law? They didn't report everybody they found that was here illegally.

RUDY GIULIANI: It is unfortunate, but Mitt generally criticizes people in a situation in which he has far the worst record. For example, in his case, there were six sanctuary cities. He did nothing about them. There was even a sanctuary mansion. At his own home, illegal immigrants were being employed, not being turned in to anybody or by anyone.

MARGOT ADLER: Tamar Jacoby is a Republican unhappy with how the candidates are handling the issue of immigration. Jacoby is a Senior Fellow at the Manhattan Institute, a conservative policy research organization. She supported the reform package that failed in Congress last year and now she is tracking how immigration is playing out in the campaign for president. Welcome to Justice Talking.

TAMAR JACOBY: It is great to be here.

MARGOT ADLER: Polls show that most Americans have an ambivalent attitude toward immigration. You have argued they are ready to support practical solutions, but that doesn't for the most part seem to be reflected in the presidential race. How would you characterize the debate on this question?

TAMAR JACOBY: So far, primarily Republican candidates, but not only Republican candidates, have been pandering to voters' fears. Voters have very mixed attitudes. They have a combination of fear and uncertainty and justifiable fear and uncertainty. We haven't seen this level of immigration in about 100 years and people are wondering how is it all going to work out. But the majority of voters, every poll shows that we are talking about between two-thirds and three-quarters, combine those fears with a pragmatic sense. You know, there are 12 million of them here, what are we going to do about them? We are probably not just going to deport them, that doesn't seem practical to most people. We've got to be realistic. And probably most Americans don't want to mow their own lawns anymore or work in the fields or be busboys. People understand those realities.

MARGOT ADLER: When I look at some of the contenders on the GOP side, we first had Republican Congressman Tom Tancredo of Colorado, he has dropped out of the race now. But

he ran essentially on a one-issue campaign, a get tough on immigration approach. Do you think that he is one of the reasons the debate played out the way it did?

TAMAR JACOBY: This was an evil flower ready for picking by any Republican candidate who was in trouble or who knew he had to reach for some hot buttons. Tancredo helped inject it, but Lou Dobbs was there to inject it. And look, there are about 20 percent of the voters, and it is no more than that, who are hard-core on this issue, who do think we should just build a wall and send all of the immigrants here home. They are not all in the Republican Party, but at least half of them are in the Republican Party and they were going to tempt any candidate. There is no election you can point to in the past decade or decade and a half that has turned on immigration and where a majority of voters have voted on the basis of it and the outcome of the election was determined by the immigration issue.

MARGOT ADLER: And do you think that is still true this year? Because when I look at some of the things that I have been reading, I see these kinds of statistics. I see twice as many anti-immigration bills proposed this year compared to last. I hear Michael Huckabee quoted as saying the immigration issue is just red hot, I don't fully understand it. I heard one Democratic pollster say recently it's the most volatile issue since bussing in 1972.

TAMAR JACOBY: I understand. Never say never, never say never. But you know what? I don't think bussing elected a lot of candidates.

MARGOT ADLER: So you don't think it's going to be the Willie Horton issue of 2008.

TAMAR JACOBY: No, I don't. It turns off – when you start to sound too harsh and too punitive, you turn off centrist Republicans, soccer moms, Latino voters. It doesn't work.

MARGOT ADLER: And you don't think that fears about the economy, that in some sense immigration is a stand-in for some economic insecurities and fears?

TAMAR JACOBY: Sure, and to some degree it will be, to some degree it will be. But you know, I have more faith in voters than this. I think voters will vote for president on the basis of who they think will handle the economy best, not on who can tell them the scariest sound bites about immigration.

MARGOT ADLER: What about the Democrats? Do you think that they are going to be at a disadvantage because there is so much passion and anxiety around this issue and they need to court the Latino vote?

TAMAR JACOBY: Once we get to the general election, once it is clear who the nominees are – if that ever happens. But at some point it will happen – both the Democratic and Republican nominee, I think are going to want to forget about immigration and to the degree it comes up to straddle on it. Because they are both going to realize they need Latino votes and that they need sort of some tough-minded conservatives, security minded folks votes.

MARGOT ADLER: And as for the Republicans, what do you think this whole debate means for the GOP's relationship to the Latino community?

TAMAR JACOBY: Republicans are poisoning their relationship with Latino voters for decades to come by their stance on this. And it doesn't mean that Republicans have to pander to Latino voters and say whatever you want on immigration. You can be for border security and you can be for fairly restrictive immigration policy and still appeal to Latinos if you talk about it the right way. But the way Republicans are demagoguing the issue, Latinos hear as not just we don't like immigrants, but we don't like you. A Republican candidate could stand up and say I'm all for border security, I think we have enough immigrants in this country. But the ones we have, the legal ones, they are hard working and great people and we are glad to have them as Americans. That is not the kind of message that Republicans are sending. They are sending – most of these people are criminals and we don't want them in this country, and Latinos hear it and Republicans are poisoning their relationship with Latino voters for a generation. I'm a Republican and it's like we are committing suicide.

MARGOT ADLER: You were a big supporter of the immigration overhaul that failed to pass Congress last year, which some conservatives characterized as giving illegal immigrants amnesty. Tell me a little bit about your own views and how you think America can move forward on this issue when the debate can seem so shrill.

TAMAR JACOBY: I believe that although the politicians are having a shrill debate about it and the public does get emotional about it, I believe that deep down, most of the public wants it solved and that Americans are pragmatic. And you know, to me immigration, it's a little bit like the industrial revolution of our day. And I mean it in this way. If you were living 150 years ago and suddenly there was a factory in your beautiful farm, in your backyard. What you would know about it is that it's a blight on the landscape and belching smoke and children have to work 24 hours a day or go in there and work at night. And you would say, this is only bad. You wouldn't recognize that this was going to be the prosperity for your children and raise standards of living for the world around. And globalization and immigration are today's industrial revolution. And what Americans see and what a lot of the public in Europe too, they see the factory and the smoke and the blight on the landscape and the bad things and they don't see yet the good things. And they don't understand that what policy has to do is accept that this is going to be a driving force for prosperity and figure out how to regulate it and figure out how to maximize the benefits and minimize the costs.

MARGOT ADLER: Tamar Jacoby is a Senior Fellow at the Manhattan Institute. Thank you so much for coming on Justice Talking.

TAMAR JACOBY: Thanks for having me.

MARGOT ADLER: The future of immigration in America, what should it be? Tell us what you think at justicetalking.org. You can post on our message boards, learn more about our guests and sign up for our free podcast. And check out our blog, where many of the nation's leading commentators give their views on law in American life. Thanks for listening. I hope you will tune in next week, I'm Margot Adler.