

Undocumented Immigrants' Right of Access to North Carolina Courts

by Carlos E. Mahoney



Carlos E. Mahoney is a partner in the law firm of Glenn, Mills & Fisher, P.A. in Durham. He has a civil litigation practice that includes the areas of personal injury, civil rights, and estates litigation. Mr. Mahoney received his B.A. in 1996 and J.D. in 1999 from the University of North Carolina at Chapel Hill. He presently serves as vice-chair of the Academy's Civil Rights division and membership chair of its Spanish division. He is also a board member with the North Carolina Occupational Safety and Health (NCOSH) project.

Article I of the North Carolina State Constitution ("Declaration of Rights") guarantees the "great, general, and essential principles of liberty and free government" in this state. Section One ("The equality and rights of persons") of the Declaration of Rights states, "We hold it to be self-evident that **all** persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor; and the pursuit of happiness."¹ In order to ensure the equality and rights of all persons in our great state, everyone must have the right of access to our courts—regardless of immigration status.

This article will present recent judicial decisions that concern the rights of an undocumented immigrant to file civil suit. Three recent North Carolina appellate cases will be discussed, followed by an examination of the United States Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. National Labor Relations Bd.*² We will also consider subsequent cases applying the legal principles articulated by the Supreme Court in *Hoffman*.

The Rights of Undocumented Workers to Prosecute a Civil Suit

The Fourteenth Amendment to the United States Constitution holds that no State shall "deny to any person within its jurisdiction the equal protection of the laws."³ Similarly, Article I, Section 19 of the North Carolina Constitution mandates that "[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin."⁴ These constitutional rights are complicated by the immigration laws of our country. In this section, we will review recent challenges in North Carolina and across the United States to the rights of undocumented

immigrants to institute and prosecute civil lawsuits.

Within the past decade, North Carolina experienced a tremendous increase in the number of Latinos (primarily Mexican and Central American) living, residing, and working in this state. North Carolina companies recruited most of these workers, and brought them into the state under temporary visas. While many Latinos have proper immigration documents, there are some workers who are not properly in our country, and will be referred to hereinafter as "undocumented workers."

Undocumented migrant workers have contributed to the economic vitality of our state. They have started to remain in North Carolina, where they often work and live alongside the resident immigrant community. Like citizens and residents, undocumented workers suffer personal injuries and property damage, injuries on the job, discrimination in employment, and civil rights violations. However, their immigration status leaves them particularly susceptible to abuse and reluctant to have their injuries addressed in our courts of law due to fears of incarceration and deportation.⁵ In recent years, North Carolina employers have challenged the rights of undocumented workers to receive workers' compensation benefits for on-the-job injuries.

The first challenge occurred in the matter of *Rivera v. Trapp*.⁶ In *Rivera*, the plaintiff was an 18-year-old male roofer from Honduras who spoke little English and did not possess an INS "green card" or Social Security number. In January of 1997, a forklift carrying the plaintiff collapsed, and he fell from the third story of a home that was being repaired. Mr. Rivera sustained a fracture of his left radius and contusions to his abdomen and chest. He was given a 10 percent permanent partial impairment rating of his left arm and directed to refrain from heavy lifting.

The Industrial Commission subsequently determined that the plaintiff was entitled to temporary total disability benefits. The employer appealed the award and argued on appeal that the plaintiff was not entitled to temporary total disability benefits because he lacked earning capacity as an undocumented worker. The North Carolina Court of Appeals rejected the argument and held "that the General Assembly sought to include individuals like the plaintiff under the protections of the Workers' Compensation Act."⁷

A couple years later, a broader challenge was made in the case of *Ruiz v. Belk Masonry Co. Inc.*⁸ In *Ruiz*, the plaintiff was an undocumented worker who presented a false Social Security card and I-9 form (Employment Eligibility Verification) to

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his construction employer. In the fall of 1997, the plaintiff fell 70 feet from a forklift onto a concrete floor while working. He sustained a traumatic brain injury, kidney contusion, and several fractures.

The Industrial Commission awarded the plaintiff permanent and total disability benefits, and the employer appealed. On appeal, the employer argued that the plaintiff was not entitled to any benefits because he was an illegal alien. The employer further argued that the federal Immigration Reform Control Act of 1986 (IRCA) prohibited the employment of illegal aliens and pre-empted the state workers' compensation laws.⁹ The North Carolina Court of Appeals rejected both arguments, and held that "federal law prohibiting the hiring of illegal aliens does not prevent illegal aliens from being included in the North Carolina Workers' Compensation definition of 'employee,' nor does federal law prevent illegal aliens, based solely on immigration status, from receiving workers' compensation benefits."¹⁰

One month after the *Ruiz* decision, the North Carolina Court of Appeals examined the appropriate workers' compensation standard for terminating temporary total

disability benefits for an undocumented worker. In *Gayton v. Gage Carolina Metals, Inc.*, the plaintiff was an undocumented worker who presented a false Social Security card and a false resident alien card to his employer.¹¹

In May 1997, the plaintiff suffered two herniated central discs while moving a pallet on the job. The defendant-employer accepted the plaintiff's workers' compensation claim and began paying him temporary total disability benefits. In April 1998, the defendant-employer discovered the plaintiff's illegal status while attempting to find the plaintiff suitable outside employment through a vocational rehabilitation specialist. The defendant-employer was unable to locate a suitable job for the plaintiff, and thereafter filed an application

to terminate his workers' compensation benefits. The Industrial Commission denied the application, and the defendant appealed, arguing that the plaintiff's illegal work status constituted a constructive refusal to perform vocational rehabilitation. The Court of Appeals held as follows:

[I]t is the employer's burden to produce sufficient evidence that there are suitable jobs plaintiff is capable of getting, "but for" his illegal alien status. Until the employee reaches this "but for" situation, the employer may perform any vocational rehabilitation to place employee in a position where if the employee were a legal alien he could be employed. This vocational rehabilitation may even include helping the employee take steps to obtain proper authorization forms. However, we reiterate that the employee's illegal alien status is the last step for consideration. An employer still has the burden of returning the employee to a state where "but for" the illegal status, the employee could obtain employment.¹²

The Court affirmed the decision of the Industrial Commission finding that the

"[d]efendants never conclusively identified a specific job that 'but for' plaintiff's illegal alien status he could return to suitable work that met plaintiff's work restrictions."¹³

The *Rivera* and *Trapp* decisions were victories for immigration advocates and plaintiffs' counsel. The decisions clearly allow undocumented workers to receive workers' compensation benefits on equal footing with other workers in this state. The Court's opinions also forestalled challenges in other aspects of North Carolina civil law to the rights of undocumented immigrants to seek redress in the courts.¹⁴

However, the *Gayton* decision also was a victory for employers and defense attorneys since it establishes that the immigration status of an employee/plaintiff may be relevant in the vocational rehabilitation context. The relevancy is limited to the issue of suitable employment for an injured party, and it is not pertinent to an examination of the party's general right to workers' compensation benefits. The relevancy of immigration status should also be limited in a personal injury action to cases in which the defendant has a legitimate defense to a plaintiff's claim of permanent disability causing a future loss of earnings.¹⁵ It is reasonable to anticipate further challenges to the legal rights of undocumented immigrants in North Carolina.

Hoffman Plastic Compounds, Inc. v. National Labor Relations Board

Efforts have also been undertaken nationally to limit the rights of undocumented workers to obtain redress through the judicial system. The most significant U.S. Supreme Court decision within the last couple of years occurred in *Hoffman Plastic Compounds, Inc. v. National Labor Relations Bd.*¹⁶

In May of 1988, Jose Castro was hired by Hoffman Plastic Compounds after he presented documents verifying that he was allowed to work in the United States. In December of 1988, a union organizing campaign began at the Hoffman Plastics plant. Castro and several other employees supported the organizing campaign and distributed authorization cards to co-workers. One month later, Hoffman Plastics laid off Castro and other employees who were engaged in union organizing activities.

In January 1992, the National Labor Relations Board (NLRB) found that Hoffman unlawfully laid off Castro and three other employees in violation of the National Labor Relations Act. The Board ordered Hoffman to cease and desist from further violations of the NLRA, post a detailed notice regarding the remedial order, and offer reinstatement and back pay to the four workers. In June 1993, a hearing occurred before an administrative law judge to determine the amount of back pay owed to each employee. At the hearing, Castro testified that he was born in Mexico, and that he had never been legally admitted to or authorized to work in the United States. Based on this testimony, the Board declined to award back pay or reinstatement to Castro on the grounds that such relief would be contrary to *Sure-Tan, Inc. v. NLRB* and in conflict with the IRCA.¹⁷

In September 1998, the National Labor Relations Board reversed the order of the administrative law judge with respect to the award of back pay. The Board calculated the back pay award from the date of the illegal termination until the date of the administrative hearing, when Hoffman learned of Castro's undocumented status. The Federal Court of Appeals for the District of Columbia enforced the Board's order after hearing the matter before a panel, and *en banc*. The United States Supreme Court was then asked by Hoffman Plastic Compounds to review the order of the Board awarding back pay to Mr. Castro, the undocumented worker.

On March 27, 2002, the Supreme Court, in a 5-4 decision, reversed the judgment of the Court of Appeals enforcing the order of the NLRB. The majority opinion was written by Chief Justice Rehnquist, and the dissenting opinion was written by Justice Breyer. The majority was primarily concerned with the interplay between the award of back pay to an undocumented worker, and the dictates of the IRCA. The Court stated that "awarding back pay to illegal aliens runs counter to policies underlying IRCA, policies the Board has no authority to enforce or administer."¹⁸ The Court further stated that "[t]here is no reason to think that Congress nonetheless intended to permit back pay where but for an employer's unfair labor practices, an alien-employee would have remained in the

United States illegally, and continued to work illegally, all the while successfully evading apprehension by immigration authorities. Far from 'accommodating' IRCA, the Board's position, recognizing employer misconduct but discounting the misconduct of illegal alien employees, subverts it."¹⁹ In sum, the majority held as follows,

We therefore conclude that allowing the Board to award back pay to illegal aliens would unduly trench upon explicit statutory prohibitions critical to federal immigration policy, as expressed in IRCA. It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations. However broad the Board's discretion to fashion remedies when dealing only with the NLRA, it is not so unbounded as to authorize this sort of an award.²⁰

The dissenting opinion examined the interplay between the order of the NLRB and IRCA in an opposite manner. The dissent concluded that the Board's limited back pay order "reasonably helps to deter unlawful activity that *both* labor laws *and* immigration laws seek to prevent."²¹ Justice Breyer expressed concerns over the ramification of the majority's decision, rhetorically asking the following questions:

What is to happen, for example, when an employer hires, or an alien works, in violation of these provisions? Must the alien forfeit all pay earned? May the employer ignore the labor laws? More to the point, may the employer violate those laws with impunity, at least once—secure in the knowledge that the Board cannot assess a monetary penalty?²²

The dissent then concluded that the majority's decision undermined, rather than enforced, immigration policy stating,

To *deny* the Board the power to award back pay, however, might very well increase the strength of this magnetic force [pulling immigrants towards the United States]. That denial lowers the cost to the employer of an initial labor law violation (provided of course that the only victims are illegal aliens). It thereby increases the employer's incen-

tive to find and hire illegal-alien employees. . . . [T]he Court's rule offers employers immunity in borderline cases, thereby encouraging them to take risks, *i.e.*, to hire with a wink and a nod those potentially unlawful aliens whose unlawful employment (given the Court's views) ultimately will lower the costs of labor law violations.²³

Post-Hoffman Judicial Decisions

Following the Court's decision in *Hoffman Plastic*, there was immense concern among immigrant advocates and employment attorneys about the rights of undocumented workers to recover compensatory damages as a result of discrimination by their employer. Furthermore, there has been additional concern among attorneys that the Court's rationale in *Hoffman* might be applied to other areas of the law (*i.e.*, tort law, civil rights law, etc). We will next examine recent decisions across the United States applying *Hoffman* in non-NLRA cases.

Flores v. Albertson's, Inc. was a federal class action lawsuit in which employee janitors asserted claims for unpaid wages (minimum wages and overtime premiums) under the Fair Labor Standards Act (FLSA) and various common law torts.²⁴ The defendants sought to compel the discovery of documents reflecting the immigration status of the plaintiffs. The U.S. District Court for the Central District of California held that the plaintiffs' immigration status was not relevant in a FLSA action, and that the production of the documents would have an *in terrorem* effect upon undocumented class members.

Zeng Liu v. Donna Karan Int'l involved a class of Chinese immigrant workers who brought an action against the employer under FLSA to recover unpaid wages.²⁵ The employer requested the right to conduct discovery concerning the immigration status of the plaintiffs. The U.S. District Court for the Southern District of New York held that evidence of workers' immigration status was not relevant in a FLSA action, and any probative value was outweighed by the risk of injury to the plaintiffs—namely, the danger of intimidation and the danger of destroying the cause of action, which would inhibit plaintiffs in pursuing their rights. The Court's rationale in *Liu* was extended within the Southern District of New

York to prevent the discovery of immigration status for claims asserted by a non-citizen under the Alien Tort Claims Act for trafficking, involuntary servitude, false imprisonment, and labor violations.²⁶

In *Singh v. Jutla & C.D. & R's Oil, Inc.*, the plaintiff, an undocumented worker, was recruited by the defendant employer to work in the United States.²⁷ The plaintiff worked for the employer for three years and received no compensation. The undocumented employee then filed a wage claim and was awarded a judgment. The parties subsequently settled the wage claim on May 3, 2001, but on the following day, the INS arrested and detained the plaintiff. On March 7, 2002, the plaintiff filed an action against the defendant for retaliation under the FLSA. The defendant moved to dismiss the action under *Hoffman*. The U.S. District Court for the Northern District of California held that the plaintiff's claims under the FLSA were not barred by the Supreme Court's decision in *Hoffman*. The Court found that "[p]rohibiting plaintiff from bringing this claim under the FLSA would provide a perverse economic incentive to employers to seek out and knowingly hire illegal workers, as defendant did here, in direct contravention of immigration laws."²⁸

In *Flores v. Amigon*, the plaintiff filed an action under the FLSA against employer to recover unpaid overtime premiums.²⁹ Following the filing of suit, the defendant employer sought discovery under *Hoffman* of the plaintiff's immigration documents, Social Security number, and passports. The plaintiff moved for a protective order that was before the Court for determination. The U.S. District Court for the Eastern District of New York held that the principles of law articulated in *Hoffman* do not apply to an action under the FLSA to recover unpaid wages. Hence, the requested documents were not relevant to the action. Furthermore, any relevancy was outweighed by the potential for prejudice, namely "[i]f forced to disclose their immigration status, most undocumented aliens would withdraw their claims or refrain from bringing an action such as this in the first instance. This would effectively eliminate the FLSA as a means for protecting undocumented workers from exploitation and retaliation."³⁰

One year later, a New York state district court judge examined the effect of *Hoffman* upon the amount of recovery for an undocumented worker pursuing a FLSA claim. In *Ulloa v. Al's All Tree Serv., Inc.*, a *pro se* employee sued his employer under FLSA for unpaid wages earned over a ten-day period at the rate of \$100 per day.³¹ The employer did not appear at the small claims hearing, and the court was left to determine the amount of damages to award. The New York state court allowed "the Plaintiff's claim for unpaid wages to

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the extent required by FLSA" and "[t]o the extent that the Plaintiff seeks wages in excess of minimum wage, his claim is disallowed as being based on an employment contract tainted with illegality." The court also noted in passing that if the employee had submitted false documents, then the Supreme Court's decision in *Hoffman* would require that the wage claim be disallowed in its entirety.³²

Martinez v. Mecca Farms, Inc., involved agricultural workers who moved for class certification in an action against defendants-employers for the recovery of unpaid wages under the Migrant and Seasonal Agricultural Worker Protection Act (AWPA).³³ The

defendants opposed class certification arguing that under *Hoffman*, the plaintiffs, as undocumented aliens, lacked standing to bring action. The U.S. District Court for the Southern District of Florida held that the plaintiffs had standing to bring suit under the AWPA to recover compensation for work already performed. The Court allowed the motion for class certification, and reiterated that "[u]ndocumented individuals have been allowed to represent classes of deportable aliens."³⁴

In *Cano v. Mallory Mgmt.*, the plaintiff suffered personal injuries when an electric meter exploded, and filed a negligence action against the owner of the meter, Con Edison.³⁵ The plaintiff was a citizen of Costa Rica who had been present in the United States for 20 years, but could not produce proof of citizenship or residency. The owner moved to dismiss the action under *Hoffman*, arguing that the plaintiff is an illegal immigrant and not entitled to seek redress from the courts. The New York state appeals court denied Con Edison's motion to dismiss the plaintiff's complaint based upon his undocumented alien status, and stated that "[t]he plaintiff's undocumented alien status may be presented to the jury on the issue of lost wages, but not on the issue of pain and suffering."³⁶

Escobar v. Spartan Security Service concerned a plaintiff-employee who filed sexual harassment and sex discrimination claims under Title VII, along with various common law torts.³⁷ At the time of the alleged events, the plaintiff was an undocumented worker, but subsequently gained lawful status following his termination from defendant-employer. The defendant moved for summary judgment on plaintiff's Title



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VII claims, arguing that *Hoffman* precluded all relief because the plaintiff was an undocumented worker. The United States District Court for the Southern District of Texas held that the Supreme Court's opinion in "*Hoffman* only compels the conclusion that Escobar [plaintiff] is not entitled to back pay on his claims under Title VII, such a remedy being foreclosed by the fact that he was an undocumented worker at the time he was employed by Spartan. Thus Escobar's claims for back pay under Title VII will be dismissed." However, the Court denied the defendant's motion for summary judgment with respect to the Title VII claim and other recoverable remedies.

In *Tyson Foods, Inc. v. Guzman*, the plaintiff, an undocumented worker employed by a sub-contractor, suffered personal injuries when a Tyson employee ran into him with a forklift.³⁸ The plaintiff sued the defendants for negligence and recovered a judgment upon a jury verdict. The defendants appealed the judgment of the trial court and, on appeal, the defendants cited *Hoffman* for the proposition that national public policy, as expressed by IRCA, militates against any award of wages as damages to undocumented alien laborers. The Texas appellate court held that the plaintiff was entitled to an award of lost earning capacity because Texas law "does not require citizenship or the possession of immigration work authorization permits as a prerequisite to recovering damages for lost earning capacity." Furthermore, "[t]he issue of whether Guzman [plaintiff] is a United States citizen is immaterial to the determination of his damages for lost earning capacity."³⁹

The appellate state courts of New Jersey recently examined the applicability of IRCA and the *Hoffman* decision to an action brought by an illegal alien under the New Jersey Law Against Discrimination [in employment]. In *Crespo v. Evergo Corp.*, the plaintiff filed suit against her employer when she was not allowed to return to work after a maternity leave.⁴⁰ The appellate court found that the plaintiff's claims arose solely from her termination, and had nothing to do with the defendants' treatment of her during the course of her employment. In addition, the court found that the plaintiff had presented a fraudulent Social Security card in order to secure employment. As a result

of these findings, the New Jersey appellate court held that the plaintiff was not entitled to economic damages or non-economic damages "[i]n light of *Hoffman's* strong enforcement of the policies served by IRCA . . ." The case was remanded to the trial court for the entry of judgment dismissing the complaint in its entirety.⁴¹

In summary, defendants across the country have sought to expand the Supreme Court's holding in *Hoffman* so as to curb the right of undocumented aliens to initiate and prosecute lawsuits. However, the courts have generally limited the *Hoffman* decision and been unwilling to expand its application to other areas of law. We should expect additional challenges during the upcoming years to the rights of undocumented immigrants to have access to the courts of North Carolina. Attorneys in this state, both plaintiff and defense counsel, must continue to ensure that all persons, including undocumented immigrants, have the right of access to the courts of North Carolina. Without the right of redress in the courts, gross abuses will be inflicted upon undocumented persons to the detriment of our society as a whole. ■

¹ N.C. Const. Art. I, Section 1 (emphasis added).

² *Hoffman Plastic Compounds, Inc. v. National Labor Relations Bd.*, 535 U.S. 137, 122 S.Ct. 1275 (2002).

³ U.S. Const. Amend. XIV.

⁴ N.C. Const. Art. I, Section 19.

⁵ See General Accounting Office, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops* 8 (GAO/HEHS-95-29, Nov. 1994) (noting a higher incidence of labor violations in areas with large populations of undocumented aliens).

⁶ *Rivera v. Trapp*, 135 N.C. App. 296, 519 S.E.2d 777 (1999).

⁷ *Rivera v. Trapp*, 135 N.C. App. 296, 303, 519 S.E.2d 777, 781 (1999).

⁸ *Ruiz v. Belk Masonry Co. Inc.*, 148 N.C. App. 675, 559 S.E.2d 249, *petition for disc. rev. denied*, 356 N.C. 166, 568 S.E.2d 610 (2002).

⁹ See *Hoffman Plastic Compounds, Inc. v. National Labor Relations Bd.*, 535 U.S. 137, 122 S.Ct. 1275 (2002).

¹⁰ *Ruiz v. Belk Masonry Co., Inc.*, 148 N.C. App. 675, 679, 559 S.E.2d 249, 252, *petition for disc. rev. denied*, 356 N.C. 166, 568 S.E.2d 610 (2002). The Minnesota Supreme Court reached a similar result in *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324 (2003) (holding that IRCA does not preclude states to award workers' compensation benefits to unauthorized aliens).

¹¹ *Gayton v. Gage Carolina Metals, Inc.*, 149 N.C. App. 346, 560 S.E.2d 870 (2002).

¹² *Gayton v. Gage Carolina Metals, Inc.*, 149 N.C. App. 346, 351, 560 S.E.2d 870, 874 (2002).

¹³ *Id.*, 149 N.C. App. at 353, 560 S.E.2d at 875.

¹⁴ See also, *Luna v. Div. of Soc. Serv.*, ___ N.C. App. ___, 589 S.E.2d 917 (2004) (reversing and remanding for further proceedings decision to deny Medicaid coverage for hospital services rendered to undocumented alien).

¹⁵ *Accord, Hernandez-Cortez v. Hernandez*, 2003 WL 22519678 (D. Kan., November 4, 2003) (U.S. District Court order granting summary judgment against undocumented Mexican plaintiffs on claims in negligence action for future lost income in the United States).

¹⁶ *Hoffman Plastic Compounds, Inc. v. National Labor Relations Bd.*, 535 U.S. 137, 122 S.Ct. 1275 (2002).

¹⁷ *Sure-Tan, Inc. v. NLRB*, 467 U.S. 833, 104 S.Ct. 2803 (1984).

¹⁸ *Hoffman Plastic Compounds, Inc. v. National Labor Relations Bd.*, 535 U.S. 137, 149, 122 S.Ct. 1275, 1283 (2002).

¹⁹ *Id.*, 535 U.S. at 149-50, 122 S.Ct. at 1283-84.

²⁰ *Id.*, 535 U.S. at 151-52, 122 S.Ct. at 1284-85.

²¹ *Id.*, 535 U.S. at 153, 122 S.Ct. at 1285.

²² *Id.*, 535 U.S. at 155, 122 S.Ct. at 1286.

²³ *Hoffman Plastic Compounds, Inc. v. National Labor Relations Bd.*, 535 U.S. 137, 155-56, 122 S.Ct. 1275, 1287 (2002) (J. Breyer dissent).

²⁴ *Flores v. Albertson's, Inc.*, 2002 WL 1163623 (C.D. Cal., April 9, 2002).

²⁵ *Zeng Liu v. Donna Karan Int'l*, 207 F.Supp.2d 191 (S.D. N.Y., June 11, 2002).

²⁶ *Topo v. Dhir*, 210 F.R.D. 76 (S.D. N.Y., September 13, 2002).

²⁷ *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F.Supp.2d 1056 (N.D. Cal., August 5, 2002).

²⁸ *Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F.Supp.2d 1056, 1062 (N.D. Cal., August 5, 2002).

²⁹ *Flores v. Amigon*, 233 F.Supp.2d 462 (E.D. N.Y., September 20, 2002).

³⁰ *Flores v. Amigon*, 233 F.Supp.2d 462, 465, fn. 2 (E.D. N.Y., September 20, 2002).

³¹ *Ulloa v. Al's All Tree Serv., Inc.*, 768 2 Misc.3d 262, N.Y.S.2d 556 (Nassau County, N.Y., September 22, 2003).

³² *Ulloa v. Al's All Tree Serv., Inc.*, 2 Misc.3d 262, ___, 768 N.Y.S.2d 556, 558 (Nassau County, NY, September 22, 2003). See also, *Majlinger v. Cassino Contr. Corp.*, 1 Misc.2d 659, 766 N.Y.S.2d 332 (Richmond County, N.Y., October 1, 2003) (granting partial summary judgment in negligence action against undocumented plaintiff on claims for lost earnings); *accord, Veliz v. Rental Serv. Corp. USA, Inc.*, ___ F.Supp.2d ___, 2003 WL 23355662 (M.D. Fl., December 19, 2003).

³³ *Martinez v. Mecca Farms, Inc.*, 213 F.R.D. 601 (S.D. Fl., November 25, 2002).

³⁴ *Martinez v. Mecca Farms, Inc.*, 213 F.R.D. 601, 606 (S.D. Fl., November 25, 2002).

³⁵ *Cano v. Mallory Mgmt.*, 195 Misc.2d 666, 760 N.Y.S.2d 816 (Richmond County, NY, April 10, 2003).

³⁶ *Cano v. Mallory Mgmt.*, 195 Misc.2d 666, 699-70, 760 N.Y.S.2d 816, 818 (Richmond County, NY, April 10, 2003).

³⁷ *Escobar v. Spartan Security Service*, 281 F.Supp.2d 895 (S.D. Tex., July 30, 2003).

³⁸ *Tyson Foods, Inc. v. Guzman*, 116 S.W.3d 233 (Tex App. Tyler, July 31, 2003).

³⁹ *Tyson Foods, Inc. v. Guzman*, 116 S.W.2d 233, 247 (Tex App. Tyler, July 31, 2003).

⁴⁰ *Crespo v. Evergo Corp.*, 366 N.J. Super. 391, 841, A.2d 471 (February 9, 2004).

⁴¹ *Crespo v. Evergo Corp.*, 366 N.J. Super. 391, 401, 841 A.2d 471, 477 (February 9, 2004).