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Reparations for Mexican Braceros - Lessons Learned from Japanese and African American Attempts at Redress

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REPARATIONS FOR MEXICAN BRACEROS? LESSONS
LEARNED FROM JAPANESE AND AFRICAN AMERICAN
ATTEMPTS AT REDRESS

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The U.S.-Mexico Bracero Program, 1942-1964, was designed originally to be a war-time labor relief measure that brought Mexican laborers to the United States to work in the agricultural and railroad industries. Over the past six years, I have conducted field research in Colorado and California with those who were most directly impacted by the Bracero Program – the formerly contracted Mexican workers. During the summer of 2002, my research was submitted as expert testimony on behalf of Braceros in a class action lawsuit associated with the Bracero savings program.² The ten percent deducted from workers’ paychecks is, from my research, only the tip of the iceberg as it relates to how Braceros were exploited and systematically cheated out of wages and benefits. Illegal deductions for farm implements and supplies such as carrot ties, blankets, room, excessive board, and

¹Assistant Professor of Development Sociology and Latino Studies, Cornell University. An earlier version of this paper presented at LatCrit VIII Conference, Works in Progress Section, Cleveland, OH, May 2003. I am grateful to Mary Romero, Keith Aoki, Steven Bender, Gilbert Carrasco, and Thomas Mitchell for comments on the earlier draft. This paper has benefited tremendously from their collective insights and any shortcomings remain squarely with the present author.

²Ronald L. Mize, Jr., *The Invisible Workers: Articulations of Race and Class in the Life Histories of Braceros* (2000) (unpublished Ph.D. dissertation, University of Wisconsin, Madison) (on file with author); RONALD L. MIZE, *The Persistence of Workplace Identities: Living the Effects of the Bracero Total Institution*, in IMMIGRANT LIFE IN THE US: MULTIDISCIPLINARY PERSPECTIVES (Donna R. Gabaccia & Colin W. Leach eds., 2003). Mize, Court Affidavit Filed on Behalf of Plaintiff, (2002), Jimenez de la Torre v. U.S. Federal Government, Republic of Mexico, Wells Fargo Bank, Banco de Mexico, Banco de Credito Rural.

transportation charges were all commonly documented practices. The affidavit filed from my research was on behalf of a claim of peonage/indentured servitude. The legal and other redress attempts on behalf of Braceros will be situated within the larger context of reparations (primarily Japanese internment reparations and African American attempts at redress for slavery) to compensate for past injustices.

I. REPARATION ATTEMPTS FOR JAPANESE-AMERICAN INTERNMENT AND AFRICAN-AMERICAN SLAVERY

The issue of utilizing legal avenues of redress to remedy past injustices has recently taken center stage. Reparations for Holocaust victims,³ Japanese internees,⁴ survivors and family descendants of the Tulsa race riots and Rosewood, Florida massacre,⁵ victims of apartheid in South Africa⁶, Native American land usurpation and cultural genocide attempts,⁷ Korean “comfort women,”⁸ and the descendants of U.S. chattel slavery⁹ are all current topics of public and legal discourse. Within the

³Since the end of World War II, the nation-state of Germany has been required to pay for Nazi atrocities. In addition, Swiss banks (including the prestigious Union Bank of Switzerland, the Swiss Bank Corp., and Credit Suisse) and German corporations, such as Volkswagen AG, have recently been required to compensate Jewish families for stolen property and WWII employment as slave laborers. *See generally* ROY L. BROOKS, ed., *WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE*, Part 2 (1999); Tasha Vincent, *Holocaust Reparations: Looted gold makes its way across a century to compensate slave laborers* (March 15, 1999), at <http://www.infoplease.com/spot/holocaust1.html>.

⁴*See generally* BROOKS, *supra* note 3, at Part 4; MARI MATSUDA, *Looking to the Bottom: Critical Legal Studies and Reparations*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 63 (Kimberlé Crenshaw et al. eds., 1995); ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS, AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* (2001).

⁵Regarding the Tulsa race riots, see Adrian Brune, *A Reparations Suit for a 1921 Race Riot: A Long Wait for Justice* (April 30-May 6, 2003), available at <http://www.villagevoice.com/issues/0318/brune.php>; ALFRED L. BROPHY, *RECONSTRUCTING THE DREAMLAND: THE TULSA RACE RIOT OF 1921, RACE REPARATIONS, AND RECONCILIATION* (2003); TIM MADIGAN, *THE BURNING: MASSACRE, DESTRUCTION, AND THE TULSA RACE RIOT OF 1921* (2001); JAMES S. HIRSCH, *RIOT AND REMEMBRANCE: THE TULSA RACE WAR AND ITS LEGACY* (2002). For accounts of Rosewood, see KENNETH B. NUNN, *Rosewood*, in BROOKS, *supra* note 3, at 435; ELAZAR BARKAN, *THE GUILT OF NATIONS: RESTITUTION AND NEGOTIATING HISTORICAL INJUSTICES* 296-99 (2000); and the motion picture adaptation of *Rosewood* by director John Singleton.

⁶*See generally* BROOKS, *supra* note 3, at Part 8; Truth and Reconciliation Commission of South Africa, reports available on-line at South Africa Truth and Reconciliation Commission website at <http://www.doj.gov.za/trc>.

⁷*See generally* BROOKS, *supra* note 3, at Part 5.

⁸*See generally* BROOKS, *supra* note 3, at Part 3.

⁹*See generally* BROOKS, *supra* note 3, at Parts 6-7; RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* (2001); MANNING MARABLE, *Forty Acres and Mule: The Case for Black Reparations*, in *THE GREAT WELLS OF DEMOCRACY: THE MEANING OF RACE IN*

fields of critical legal studies, particularly Critical Race Theory and LatCrit, the topic of reparations constitutes one of the contemporary cornerstones of critical interrogation.¹⁰ Though lessons are to be learned from each of these redress claims (and many more not mentioned here), this paper will focus on the relatively successful Japanese internment claim and the still unfulfilled apology and reparations claim on behalf of the victims of U.S. chattel slavery. There is no question that reparations will never fully remedy past wrongs and the limited monetary settlements will never make up for the pain, suffering, humiliation, and outright physical and psychological torture embodied in these historical wrongs. But there is a reason why reparations claims should move forward. Requiring the collective conscience of a nation to come to grips with its sordid history and to allow those who were wronged to express publicly what they endured as the nation-state either looked away or more likely was complicit in promoting the wrongs, the public dialogue on reparations moves offending nations forward by forcing them to deal with a past they deem so easy to forget. It also requires the nation to seriously examine the historical origins of contemporary racialized predicaments and lingering inequalities. From the successful reparations campaign for those who endured the Japanese internment camps, we can develop a proxy for other redress attempts to follow. From the repeatedly unsuccessful attempts at African-American reparations, we also can begin to recognize the long-standing roots of racial oppression and the interpersonal and institutionalized racisms that reparations claims are implicitly challenging.

A. Japanese Internment

During the Second World War, U.S. President Franklin Delano Roosevelt authorized Executive Order No. 9,066 which allowed the Secretary of War to define military areas “from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion.”¹¹ Though Executive Order No. 9,066 never specifically identified people of Japanese descent as the target of exclusion, the order quickly became solely applicable to the Japanese-American population living on the West Coast. Restricted areas and enforced curfews led to the eventual forced relocation and internment of approximately 120,000 innocent “prisoners of war” in ten “concentration camps” as FDR referred to them. In the mid 1980s, *coram nobis*

AMERICAN LIFE 223-254 (2002); JOE R. FEAGIN, RACIST AMERICA: ROOTS, CURRENT REALITIES AND FUTURE REPARATIONS (2001); SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE ON REPARATIONS (Raymond A. Windbush, ed., 2003); *The Case for Black Reparations*, Trans Africa Forum, at http://www.transafricaforum.org/reports/reparations_print.shtml.

¹⁰RICHARD DELGADO & JEAN STEFANIC, CRITICAL RACE THEORY: AN INTRODUCTION (2001); DERRICK A. BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberle Crenshaw et al. eds., 1995); “Reparations, Affirmative Action, Race Conscious Remedies: Teaching it and Doing it” LatCrit VIII Workshop, May 3, 2003. Presenters: R. Westley, A. Robinson, K.D. Chandonpin, and S. Cho.

¹¹Exec. Order No. 9,066, 7 Fed Reg. 1407 (Feb. 19, 1942).

litigation reopened earlier cases filed on behalf of Japanese internees who challenged the curfew and detention process. A class-action lawsuit, *Hohri et al. v. U.S.*, intensive lobbying by the National Asian Pacific American Legal Consortium (NAPALC) and the Japanese American Citizens League (JACL), and a congressional commission eventually led to the passage of H.R. 442. The Civil Liberties Act of 1988 provided for individual payments of \$20,000 to each surviving internee and a \$1.25 billion education fund.

Critical race legal scholar Eric Yamamoto not only participated in the legal action that led to reparations for those Japanese Americans interned during World War II, he also provides a scholarly blueprint for how other attempts at redress can learn from the successful example of the internment redress program. He cites three main nodes where pressure should be applied.¹²

1. There was a congressional commission very similar to that proposed by Rep. Conyers. It gave people an opportunity to tell their stories to the public in a very powerful, concentrated way. It provided for foundational research.
2. There was also extensive legislative lobbying which was multiracial....
3. And third, there were legal efforts. And I was a member of the legal team re-opening the Japanese-American internment cases from World War II based on newly discovered evidence showing there was no evidence of necessity for the internment. I was a member of that team and saw the power of the three-pronged approach.

But it seems to me that Yamamoto misses an equally important form of pressure in the application of grassroots mobilization on the part of aggrieved communities.¹³ Without the pressure from below, it seems highly unlikely that the lobbying, commissions, and lawsuits would survive on their own. When discussing the Bracero litigation claims, I will return to this issue in detail.

One of the pioneering critiques of critical legal studies that helped launch the critical race theory movement, Mari Matsuda's "Looking to the Bottom: Critical Legal Studies and Reparations" identifies three standard liberal challenges to legal challenges made by oppressed groups. The identification of victims and perpetrators in reparations claims, is based on horizontal, intragroup and vertical, hierarchical connections rather than simple individual plaintiff – defendant (direct perpetrator) cases. The relationship between the present claim and past acts belies the proximate cause and statute of limitations arguments that are often invoked in the attempt to right past wrongs. Finally, measures of relief for loss of "sovereignty, dignity, personhood, and liberty are incapable of uniform valuation."¹⁴

¹²Eric Yamamoto, presenter, *The Case for Black Reparations*, TransAfrica Forum, at http://www.transafricaforum.org/reports/reparations_print.shtml.

¹³See ROBERT SADAMU SHIMABUKURO, *BORN IN SEATTLE* (2003) for a contemporary account of the grass-roots mobilization of Japanese-Americans in Seattle seeking redress. Implicitly, Shimabukuro's account of grassroots mobilization also paints Yamamoto's tripartite proxy as incomplete and completely undertheorizing the role of popular pressure in the form of social movements.

¹⁴MATSUDA, *supra* note 4, at 72.

In terms of horizontal, intragroup connections, one finds dissimilarly situated claimants in the plaintiff class. Likewise, not every defendant has a direct relationship as the oppressor (they include both the perpetrator's descendents and current beneficiaries of past injustice, i.e., those who have a social and possessive investment in whiteness). The vertical, hierarchical connections are both direct and indirect but one group sustains privilege at the expense of another's life chances or well-being. According to Matsuda, the proximate cause argument in standard legal claims falls apart with reparations claims that are based upon ongoing stigma and sustained economic harm. Reparations are important because "it takes a nation so long to recognize historical wrongs against those on the bottom."¹⁵ Relief poses the question: How can we put a price tag, or monetary settlement, on the loss of a right or other non-quantifiable past wrongs? Yet we find that the law does this all the time: in worker's compensation laws one finds severed arms are worth \$10,000 but a broken arm half at most. Other examples are compensation for privacy, reputation, and mental tranquility in tort law.¹⁶

B. African-American Slavery

All of the issues that Matsuda brings to the forefront in her discussion are directly applicable to other reparations claims, particularly reparations for slavery and the recent Bracero litigation. The lessons to be learned from African-American slavery redress attempts should not be confined to the most recent discourse on reparations. There is no question that the issue of reparations goes back to the Civil War era and General William Tecumseh Sherman's now infamous promise to freed slaves in South Carolina and Georgia their "40 acres and a mule." Reconstruction, particularly the development of the Freedmen's Bureau, and its abandonment in what President Andrew Johnson referred to as Restoration, points to the potentialities for full African-American inclusion in the racial realities of entrenched economic servitude as a way of life in both the South and the North. The *Dred Scott* and *Plessy v. Ferguson* decisions placed the legislative stamp of approval squarely on the side of Black disenfranchisement, state sanctioned segregation and an institution of racial supremacy doctrine. The civil rights revolution of the 1960s sought to challenge the institutionalized racism, particularly in the form of Jim Crow laws, by recognizing the historical origins of racial inequalities and promoting social programs based on the ethos of equal opportunity. History serves as the context for the contemporary reparations debate and I will employ Yamamoto's schema and Matsuda's contextualization of liberal legal views on reparations for assessing the prognosis of current legal claims, congressional commissions, and lobbying efforts. I will also briefly allude to Black public intellectuals' support and grass-roots campaigns for reparations in cities such as Madison, Milwaukee, Chicago, and Detroit.

At the end of the Civil War, to alleviate pressures on his army by freed slaves who accompanied his march to the sea, Union General William Tecumseh Sherman issued Special Field Orders No. 15 which stated "Whenever three respectable Negroes, heads of families, shall desire to settle on land, [...] the three parties named

¹⁵*Id.*

¹⁶*Id.* at 73.

will subdivide the land, under the supervision of the inspector, among themselves, and such others as may choose to settle near them, so that each family shall have a plot of not more than forty acres of tillable ground.”¹⁷ Radical republican Thaddeus Stevens introduced legislation in March 1867 that would have placed all former slave state property under federal control, employed this 40 acre allocation scheme and redistribute land to all former slaves in the 10 Confederate States, while allowing the remaining parcels to be bought by whites as long as the tracts were smaller than 500 acres.¹⁸

Though the bill was never passed and “Sherman’s land” was eventually returned to its former white landowners by President Andrew Johnson, other aspects of Reconstruction were moderately, yet temporarily, successful in ushering in positive social change for freed women and men.¹⁹ The Freedmen’s Bureau, established in March 1865 and continued for nearly five years despite the vetoes of President Johnson, established schools for African-American children, provided food, clothing, fuel, and medical care, and oversaw the legal rights of the newly franchised. The Bureau also oversaw “all the abandoned lands in the South and the control of all subjects relating to refugees and freedmen.” As W.E.B. Du Bois noted in his essay on the Freedmen’s Bureau, “Up to June, 1869, over half a million patients had been treated by Bureau physicians and surgeons, and sixty hospitals and asylums had been in operation. In fifty months of work 21,000,000 free rations were distributed at a cost of over \$4,000,000,—beginning at the rate of 30,000 rations a day in 1865, and discontinuing in 1869.”²⁰

What the Freedmen’s Bureau represents was the radical potential of Reconstruction as a vehicle for African-American rights and the opposition that it drew, particularly from President Johnson’s Restoration combined aim of restoring the Union and relations of racial dominance, which was certainly not unique to the President. Prior to the Civil War, the *Dred Scott* decision represented both a harbinger of slave’s rights when Chief Justice Roger Taney wrote blacks “had no rights which the white man was bound to respect” and a reminder of the depth the United States had committed itself to in order to ensure a racial hierarchy that infused the very fabric of the nation. As recently uncovered documents demonstrate, the *Dred Scott* decision ended a pattern of slaves using the legal system to defend their rights.²¹ It is beyond the scope of the present essay to detail each progressive

¹⁷See BROOKS, *supra* note 3, at 365-366.

¹⁸THADDEUS STEVENS, *A Plan for Confiscation, in SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE OVER REPARATIONS* 334-36 (Raymond A. Winbush ed., 2003).

¹⁹ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-1877* (2002); W.E.B. DUBOIS, *BLACK RECONSTRUCTION IN AMERICA, 1860-1880* (1935) (1992); *THE FREEDMEN’S BUREAU AND RECONSTRUCTION* (Paul A. Cimbala & Randall M. Miller, eds., 1999).

²⁰W.E.B. DuBois, *The Freedmen’s Bureau*, 87 *ATLANTIC MONTHLY* 354-368 (1901), available at <http://eserver.org/history/freedmens-bureau.txt>.

²¹Stephanie Simon, *Cries for Freedom Still Ring: In long-ago lawsuits uncovered in St. Louis, slaves tell of their suffering. Dozens won release from bondage before all-white juries*, *L.A. TIMES*, Mar. 18, 2003, available at 2003 WL 2392186. In the article, the author

aim of the Reconstruction Acts, Enforcement Acts, Civil Rights Acts and the three Amendments to the Constitution and how they were subverted by Southern Black Codes and other institutional and civil society challenges by white supremacist groups such as the Ku Klux Klan and local, state and federal representatives who used legal means for African-American disenfranchisement and instilling fear by intimidation tactics. But the Reconstruction era bears witness to the squandered opportunities for democracy, a defense of rights, freedom and justice for both blacks and whites (though it is important to remember that the citizenship rights of Native Americans were expressly denied in the 14th Amendment). It is estimated that only fifteen percent of all former slaves were able to purchase and retain title to land. Most former slaves who stayed in the rural South had the option given to them to either sharecrop or work as tenant farmers in a set of social conditions not markedly distinct from the age of slavery. The federal organizations that could either provide relief or legal support for those most aggrieved were completely dismantled by 1877 when all Reconstruction efforts ceased. Former slaves who found wage work most often found themselves on the bottom of the economic ladder and subject to some of the most violent and virulent forms of racism ever witnessed in the history of the nation.²² In 1896, *Plessy v. Ferguson* ushered in the institution of Jim Crow laws and practices in not only the South, but truly the remainder of the country ensuring blacks would be treated as a separate, *unequal* class of citizens.

The calls for redress were severely hampered by what I refer to as the lost 100 years of U.S. history where the rights of African Americans were systematically denied and the fruits of their labors duly deprived. The Jim Crow era saw a rise in the number of lynchings and incidents of racial violence, soaring rates of residential segregation throughout the nation, unequal and separate education systems, barriers to voting and attendant rights of full citizenship, and economic marginalization. From *Brown v. Board of Education* in 1954 to the Fair Housing Act of 1968, the Civil Rights era attempted to dismantle these Jim Crow institutions. The words of Lyndon Baines Johnson's June 1965 speech at Howard University, entitled "To Fulfill These Rights," embodies the liberal dilemma on the eradication of racism and partial acknowledgement and awareness of the legacy of slavery and the impact of the lost 100 years between the end of slavery and the civil rights revolution. LBJ stated: "You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair. Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates."²³ The dominant rhetoric of the time seemed to articulate closely with a call for reparations.

documents 283 'freedom suits' between 1806-1865 where slaves sued in St. Louis court before all white, male juries for their freedom from unscrupulous masters. *Dred Scott* really closed the book on the freedom suits based on the unequivocal view of the Supreme Court that slaves did not have legal rights.

²²See IDA B. WELLS BARNETT, *ON LYNCHINGS* (Humanity Press 2002) (1892). This book provides documentation of lynching practices and the violence-based aspects of the Jim Crow era.

²³Cited in STEPHEN STEINBERG, *The Liberal Retreat From Race During the Post-Civil Rights Era*, in *THE HOUSE THAT RACE BUILT: BLACK AMERICANS, U.S. TERRAIN* 13, 20

Yet, the Civil Rights Act of 1964 and the Equal Employment Opportunity provisions in the law never went so far as to guarantee a fair race or an equally accessible open door policy. Instead, it in theory barred individual acts of discrimination in hiring practices and required public and private institutions (thought not all) to demonstrate efforts at building their own affirmative action program. Much of the Civil Rights legislation attempted to address racial dilemmas without acknowledging, let alone remedying, the structural bases of past and present injustices. But some legal scholars see affirmative action and attempts at outlawing discrimination as a form of redress. Mari Matsuda states: "Every single time I meet a stranger and tell them what I do, when I say I'm a law professor, they are surprised, unfailingly. Because someone who looks like me is not supposed to be a law professor. This is a social fact of life in America. And as long as that's true, we need programs like affirmative action, that are based in part on a theory of reparations, of making amends for historical wrongs that have constructed a present reality of what's possible."²⁴ What we find was that the Civil Rights revolution was most successful in removing the most egregious forms of *de jure* segregation, yet racism and segregation are still with us in the form of *de facto* segregation.²⁵ "A crucial but seldom considered defect of all civil rights legislation is the fact that it needs to be administered and enforced. Many Blacks (and whites, too) appear to be under some delusion that once Congress passes civil rights legislation, Blacks are protected from discrimination and white racism."²⁶ As a result of support for these partial attempts at rectifying the legacy of slavery and the Jim Crow era, calls for reparations during the Civil Rights era were viewed as radical or militant. Yet, contemporary reparations discussions are not only happening within black nationalist circles but also at the level of legislative lobbying efforts, calls for a congressional commission to investigate the viability of slave reparations, lawsuits against companies whose early profits were secured at the expense of slaves and their labor, and black public intellectuals and grassroots mobilization in support of redress.

Since 1989, Representative John Conyers (D-MI) has introduced H.R. 40, "The Reparations Study Bill," with the express intent of building upon "legal precedence [that] had long been established relative to the appropriateness of reparations by

(Wahneema Lubiano ed., 1997). Steinberg then goes on to explore the contradictions in liberal thought on race as they play out in the remainder of the speech and how a call for compensation and equality of results is downplayed by the focus on individual-level factors and the breakdown of "Negro" culture.

²⁴Mari Matsuda, presenter, *The Case for Black Reparations*, TransAfricaForum, at http://www.transafricaforum.org/reports/reparations_print.shtml.

²⁵If, for instance, we look at the recent legal history of school desegregation cases or recent rulings and propositions to end affirmative action in Texas, Michigan, and California (e.g., *Hopwood v. Texas*, 533 U.S. 929 (2001); *San Antonio v. Rodriguez*, 931 S.W.2d 535 (Tex. 1996); *Gratz v. Bollinger*, 123 S. Ct. 2411 (2003); California Proposition 209), it seems obvious that *de jure* segregation is still with us in the Supreme Court's consistent support for "reverse discrimination" ideologies and the empty rhetoric of color blindness.

²⁶ROBERT WESTLEY, *Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?*, in *SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE OVER REPARATIONS* 109, 133 (Raymond A. Winbush ed., 2003).

governmental entities in response to government-sanctioned human rights violations.”²⁷ It is important to note that in the 13 years that H.R. 40 has been introduced, it has never made it out of committee for a full House vote. But the fact that reparations discussions are being forged at the national legislative level is important in and of itself. Coupled with lobbying and public consciousness-raising efforts by organizations such as the National Coalition of Blacks for Reparations in America (N’COBRA), the TransAfrica Forum, and the National Black United Front (NBUF), convening a House-supported study group to investigate the historical impact of human rights violations on contemporary social relations seems right in line with Yamamoto’s three-pronged strategy for successful reparations claims.²⁸

A series of lawsuit lawsuits against profiteers of slavery (led by initial class action lawsuit filed by Deadria Farmer-Paellmann on behalf of all descendents of slavery) represents the third component.²⁹ The initial suit named three corporations, Aetna, CSX, and Fleet Boston for conspiracy, demand for an accounting, human

²⁷JOHN CONYERS, JR. & J.A. NICHOLS WATSON, *Reparations: An Idea Whose Time Has Come*, in SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE OVER REPARATIONS 13, 17 (Raymond A. Winbush ed., 2003).

²⁸Lobbying efforts by N’COBRA have influenced the scope of H.R. 40’s aims and strategies. N’COBRA has sought to take the call for reparations as part of a larger call for Black unity. Taking what was often viewed in the Black community as a nationalist stance, N’COBRA decided early in its inception that: “it was essential to mainstream this issue. It was agreed, therefore, that we would reach out to organizations not generally viewed as reparations supporters that had a human rights or civil rights agenda.” ADJOA A. AIYETORO, *The National Coalition of Blacks for Reparations in American (N’COBRA): Its Creation and Contribution to the Reparations Movement*, in SHOULD AMERICA PAY? : SLAVERY AND THE RAGING DEBATE OVER REPARATIONS 209, 213 (Raymond A. Winbush ed., 2003). Randall Robinson’s tenure as president of the TransAfrica Institute placed the spotlight on redress efforts when C-Span aired a recent roundtable on slave reparations. The legitimacy of the Institute is based on its successful global boycott of South Africa’s apartheid regime and its continued commitment to defending the unfulfilled rights and marginalization of the African continent and the Black global diaspora. The NBUF chairman sees his organization’s call for reparations as part of a larger movement among organizations such as “the December 12th Movement, Uhuru Movement, the Lost and Found Nation of Islam, the Republic of New Afrika (RNA), and the National Black United Front” CONRAD W. WORRILL, *The National Black United Front and the Reparations Movement*, in SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE OVER REPARATIONS 203-04 (Raymond A. Winbush ed., 2003).

²⁹“I am still engaged in the process of targeting existing companies that profited from the enslavement of Africans in America. I am confident that in due time they will atone by apologizing and paying the slavery debts they owe into a trust fund to benefit the descendants of enslaved Africans. Furthermore, the tainted companies may even help to move the federal government to pay reparations as they participate in electoral process seasonally.” DEADRIA C. FARMER-PAELLMANN, *Excerpt from Black Exodus: The Ex-Slave Pension Movement Reader*, in SHOULD AMERICA PAY?: SLAVERY AND THE RAGING DEBATE OVER REPARATIONS 22, 26 (Raymond A. Winbush ed., 2003). She roots her impetus in the ex-slave pension movement led by Ex-Slave Mutual Relief, Bounty, and Pension Association spokesperson Callie D. House. “Between the 1890 and 1917, over 600,000 of the 4 million emancipated Africans lobbied our government for pensions because they believed their uncompensated labor subsidized building of the nation’s wealth for two and a half centuries.” *Id.* at 27.

rights violations, conversion, and unjust enrichment.³⁰ Since the initial lawsuit, more defendants have been listed in an amended and consolidated complaint including Society of Lloyd's, Lehman Brothers, Morfolk Southern, R.J. Reynolds Tobacco Co., Brown and Williamson, Liggett Group, Inc., Loews Corporation, New York Life Insurance, Brown Brothers Harriman and Company, Norfolk Southern, Union Pacific, J.P. Morgan Chase, Westpoint Stevens, Union Pacific, AIG, Canadian National Railway Co., and Southern Mutual Insurance Co.. The Farmer-Paellman suit reserves the right to name up to 100 companies who unjustly profited from the institution of slavery. The status of the case, at the time of writing, is the plaintiff request for mediation has been rejected by District Judge C.R. Norgle. Fifteen of the named defendants filed a joint motion to dismiss the amended complaint on the grounds of four main objections: 'plaintiffs lack standing to maintain this action, statutes of limitations bar claims, political question doctrine bars claims, allegations do not support any cause of action'.³¹ Rather than attempting to challenge each claim of the defendants, it seems imperative to point out that slavery reparations litigation must highlight the link between slavery and the Jim Crow era and use the precedent setting cases of Rosewood, the USDA Black farmers' lawsuit, and the Tulsa Race Riots as providing the necessary link between past crimes and present social conditions.³² It seems that the current pending class action lawsuit has taken a major step backward with the recent denial to appoint a mediator. But the public relations nightmare this lawsuit has created for corporations that formed and profited on the backs of slave labor will certainly put pressure on those corporations to consistently demonstrate their commitment, whether real or imagined, to African American communities and a diverse, inclusive workplace.

Finally, the grassroots mobilization pressing for slavery reparations in cities such as Chicago, Milwaukee, Detroit, and Madison has put this issue in front of local communities and local governments have had to seriously grapple with past events they certainly would prefer to leave in the dustbin of American history. In Milwaukee, the city council voted in 2001 whether they would endorse a recommendation to the federal government to study the lingering effects of slavery.³³ The vote eventually deadlocked but similar measures were introduced in Madison,

³⁰*In re African-American Slave Descendant's Litigation*, Case No. 02 C 7764, US District Court for the Northern District of Illinois Eastern Division.

³¹Joint motion can be found on Aetna corporate website at http://www.aetna.com/legal_issues/suits/7-18-03_memo.pdf.

³²Alfreda Robinson succinctly identifies this avenue in her discussion of the Jim Crow era Alabama prison industrial complex. The direct link between slave labor and prison labor, and the relative sameness of conditions, certainly brings the proximity argument much closer to the current generation of potential claimants. See Alfreda Robinson, *Implementing the Theory: Critical Race Praxis - Corporate Social Responsibility and African American Reparations*, presented at the Critical Race Theory Workshop at the American University, Washington College of Law (April, 2003).

³³Greg J. Borowski, *Council deadlocks on slave reparations: Measure would endorse commission to study lingering slavery impact*, MILWAUKEE JOURNAL SENTINEL, June 20, 2001, at B3, available at <http://www.jsonline.com/news/metro/jun01/repar20061901a.asp>.

Chicago, Cleveland, Dallas, Atlanta, and Detroit.³⁴ In Chicago, Alderman Dorothy Tillman drafted a resolution that not only garnered the city council's support for H.R. 40, it also developed a reparations study commission at the local level.³⁵ Mobilization at the local level brings everyday citizens into the reparations debate in a way that the other approaches tend to minimize. This coupled with a number of prominent Black public intellectuals who are taking reparations seriously (including Columbia professor Manning Marable, Randall Robinson, and Charles Ogletree, to name a few, and at least one prominent Anglo supporter sociologist Joe Feagin) will certainly make reparations a movement for progressive solidarity that is so needed in these times. The overall social question is the level to which a denial of claims is indicative of white America's unwillingness to acknowledge the impact of slavery and Jim Crow as it relates to the contemporary inequalities that African Americans face in every aspect of their collective lived experiences.

A major impediment limiting reparations for descendants of slavery is that the current claimants are not the direct victims, they are at least two generations removed from 'the peculiar institution'. The Braceros' legal claims will certainly be seen in a different light due to the number of surviving victims.³⁶ The following section will outline the general operating guidelines of the U.S. Mexico Bracero Program, 1942 to 1964. Then, direct testimony from former Braceros will be introduced as it relates to two class action lawsuits filed on their behalf. I will evaluate these lawsuits based on the contributions of critical race scholars Yamamoto and Matsuda and the lessons learned from the Japanese internment and African-American slavery redress attempts.

II. BINATIONAL RELATIONS AND THE U.S.-MEXICO BRACERO PROGRAM

From 1942 to 1964, the federal governments of the United States and Mexico arranged a set of accords that supplied U.S. agricultural growers, and for a brief time the railroad industry, with a steady stream of Mexican labor. Initially intended to serve as a war time relief measure, the temporary-worker arrangements were allowed to continue until 1964. The vast majority of workers were sent to three states

³⁴Pat Schneider, *Vote falls 2 short on reparations: 3 decide to duck issue*, CAPITAL TIMES (Madison, WI.), Feb. 5, 2003, at A2, available at <http://www.madison.com/captimes/news/stories/42073.php>. Opposition to this resolution brought to the surface much of the denial of history and outright animosity that informs many whites today (even in progressive Madison, WI) as it relates to reparations. "East-side Ald. Judy Compton named other groups, from the Irish to the Italians to women, who have had a rough time of it securing their place in American society. Compton invited reparations supporters to "get up off their seat ... and stop asking people to apologize." Rep. Conyer's official government website notes that city councils in Detroit, Chicago, Atlanta, and Cleveland have all endorsed his H.R. 40 resolution. See Congressman John Conyer, Jr.'s website, at http://www.house.gov/conyers/news_reparations.htm.

³⁵WORRILL, *supra* note 28.

³⁶I thank Keith Aoki and Steve Bender for bringing this out in earlier reviews of the paper. Also, Gilbert Carrasco's analysis of Mexican immigration and the Bracero Program certainly relates to the following analysis so I thank him for blazing the legal trail of discussing the ramifications of the Bracero Program.

(California, Arizona, and Texas) but a total of thirty states participated in the program.³⁷

The Bracero Program began on August 4, 1942, in Stockton, California, as a result of the U.S. government responding to requests by Southwestern agricultural growers for the recruitment of foreign labor. Though the specific link has not been directly demonstrated, it is certainly more than coincidence that only six months previously, thousands of Japanese farmers and farm laborers (mostly residing in California) were detained as suspected “dangerous enemy aliens” and eventually shipped off to one of ten internment camps.³⁸ The agreement arranged between the federal governments of Mexico and the United States stated the following four terms that served as the general guidelines for its twenty-two-year existence:

1. Mexican contract workers would not engage in U.S. military service.
2. Mexicans entering the U.S. under provisions of the agreement would not be subjected to discriminatory acts.
3. Workers would be guaranteed transportation, living expenses, and repatriation along the lines established under Article 29 of Mexican labor laws.
4. Mexicans entering under the agreement would not be employed either to displace domestic workers or to reduce their wages.³⁹

Under much of the same agreement guidelines, though utilizing different administrative channels, nine months later the railroad industry secured the importation of Mexican laborers to meet war time shortages.⁴⁰

³⁷From 1942-47, the following states contracted the following number of Mexican Braceros: Arizona: 5975, California: 124305, Colorado: 7643, Idaho: 11088, Illinois: 1083, Indiana: 382, Iowa: 3033, Kansas: 796, Michigan: 7516, Minnesota: 5288, Montana: 12767, Nebraska: 4039, Nevada: 2577, New Mexico: 151, North Carolina: 410, North Dakota: 3094, Oregon: 13007, South Dakota: 1577, Utah: 3361, Washington: 15029, Wisconsin: 4817, Wyoming: 2732. WAYNE D. RASMUSSEN, *A HISTORY OF THE EMERGENCY FARM LABOR SUPPLY PROGRAM, 1943-47* 226 (U.S. Department of Agriculture, Bureau of Agricultural Economics 1951). In addition, Arkansas, Georgia, Mississippi, Texas, Ohio, Missouri, Tennessee, and Louisiana participated in the later years of the program. R.M. Lyon, *The Legal Status of American and Mexican Migratory Farm Labor* 225 (1954) (unpublished Ph.D. dissertation, Cornell University) (on file with author). One respondent I interviewed stated that her father worked in the agricultural fields of New York but I have found no official record of Braceros working in New York.

³⁸“Although braceros were initially brought in to replace Japanese-Americans who were sent to internment camps and Americans who went into the armed services or defense industry....” GILBERT P. CARRASCO, *Latinos in the United States: Invitation and Exile, in IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* 190, 197 (Juan F. Perea ed., 1997). Rasmussen also identifies the Japanese labor shortage, caused by internment, as a precursor to Bracero recruitment. See RASMUSSEN, *supra* note 37. A systematic study of this probable link has yet to be conducted.

³⁹JUAN RAMON GARCIA, *OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954* 24 (1980).

⁴⁰BARBARA A. DRISCOLL, *THE TRACKS NORTH: THE RAILROAD BRACERO PROGRAM OF WORLD WAR II* (1999); ROBERT C. JONES, *MEXICAN WAR WORKERS IN THE UNITED STATES: THE MEXICAN-U.S. MANPOWER RECRUITING PROGRAM AND ITS OPERATION* (1991). The claim of a shortage of domestic labor is a source of contention in the literature. Those who disagree

The first guideline was designed to quell Mexican popular discontent and apprehensions about how earlier uses (during World War I) of Mexican labor were thought to have occurred during what Kiser and Kiser refer to as the First Bracero Program.⁴¹ Without government interference, U.S. growers directly recruited Mexican laborers from Mexico to meet war time labor shortages. After the First World War, the citizens of Mexico heard a number of rumors that Mexican laborers, brought to the United States to work in the agricultural fields, were forced into the military to fight in the war-effort. My attempt to research this contention revealed, to the best of my knowledge, no evidence of this practice. Both the governments of the United States and Mexico denied that the practice ever occurred. Nevertheless, to quell Mexican popular apprehensiveness and allay fears, the first article was agreed upon by both governments.

The second article was designed to explicitly ban discrimination against Mexican nationals and served as the key bargaining chip by the Mexican government to promote safeguards of Braceros' treatment by Anglo growers. The arrangements of the First Bracero Program, during World War I, were conducted without the input of the Mexican government.⁴² As a result, Mexican nationals worked in the United States without protections and subsequently, workers were subject to a number of discriminatory acts.

From 1942-1947, no Braceros were sent to Texas because of the documented mistreatment of Mexican workers by Texan growers and other citizens. A series of assurances by the Texas state government were secured before growers were allowed to import labor from Mexico. The states of Colorado, Illinois, Indiana, Michigan, Montana, Minnesota, Wisconsin, and Wyoming were also blacklisted by the Mexican government, up until the 1950's, due to discriminatory practices documented in each of the states.

The third article was designed to guarantee workers safe passage to and from the United States as well as decent living conditions while working in the United States. The costs associated with transportation, room, and board would be covered by someone other than the workers if the article was followed to its exact wording. But

with this prognosis and see Braceros as used by growers to undercut domestic wages include HENRY P. ANDERSON, *FIELDS OF BONDAGE* (1963) *reprinted in* THE BRACERO PROGRAM IN CALIFORNIA (Arno Press 1976); ERNESTO GALARZA, *STRANGERS IN OUR FIELDS: BASED ON A REPORT REGARDING COMPLIANCE WITH THE CONTRACTUAL, LEGAL, AND CIVIL RIGHTS OF MEXICAN AGRICULTURAL CONTRACT LABOR IN THE UNITED STATES* (2nd ed. 1956); ERNESTO GALARZA, *MERCHANTS OF LABOR: THE MEXICAN BRACERO STORY, AN ACCOUNT OF THE MANAGED MIGRATION OF MEXICAN FARM WORKERS IN CALIFORNIA, 1942-60* (1964); NELSON GAGE COPP, "WETBACKS" AND BRACEROS: MEXICAN MIGRANT LABORERS AND AMERICAN IMMIGRATION POLICY, 1930-1960 (R and E Research Associates 1971); Eleanor Hadley, *A Critical Analysis of the Wetback Problem* 21 *LAW AND CONTEMPORARY PROBLEMS* 334-57 (1956).

⁴¹See GEORGE C. KISER & MARTHA W. KISER, *MEXICAN WORKERS IN THE UNITED STATES: HISTORICAL AND POLITICAL PERSPECTIVES* (George C. Kiser & Martha W. Kiser eds., 1979).

⁴²*Id.*; Otey M. Scruggs, *Evolution of the Mexican Farm Labor Agreement of 1942*, 34 *AGRICULTURAL HISTORY* 140-9 (1988); OTEY M. SCRUGGS, *BRACEROS, "WETBACKS," AND THE FARM LABOR PROBLEM: MEXICAN AGRICULTURAL LABOR IN THE UNITED STATES, 1942-1954* (1988).

these costs were subject to negotiation by the Mexican government and as a result, workers had a number of these expenses deducted from their paychecks. Individual contracts signed by Braceros, growers, and representatives of both the Mexican and U.S. governments set standards on how much could be deducted for room and board.

Transportation costs were shouldered by different groups depending on which time period and place the Braceros were migrating to and from. Based on the life stories collected, transportation costs were not paid by Braceros from the recruitment centers in Mexico to the U.S. processing centers and eventual job sites. But the costs associated with getting to the Mexican cities where the Braceros were recruited were shouldered by them and the costs varied depending on where the recruitment centers were located. Throughout the duration of the program, the U.S. and Mexican governments struggled over where recruitment centers would be located because the United States was responsible for paying the transportation costs. The U.S. government wanted recruitment centers near the U.S.-Mexican border to reduce costs whereas the Mexican government wanted recruitment centers in the interior of Mexico where the major sending states were located. These struggles had major impacts on the Braceros who had to secure the funds to afford to pay their way to the recruitment centers.

The final article was designed to reduce competition between domestic and contracted labor, and the United States government played two roles in assuring that competition would not arise. The first role was the determination of the "prevailing wage" in each region of the country. To ensure that Braceros were receiving the same wage as domestics, the prevailing wage was determined prior to the harvest season in each locale and Braceros were to receive that wage. Galarza notes that the prevailing wage was approved by the Department of Labor but it was in fact growers who got together prior to the harvest and fixed the pay rates in order to determine the "prevailing wage" they were willing to pay.⁴³

It was also the responsibility of the Department of Labor to designate when a certain region had a labor shortage of available domestic workers. Again, growers were the key to this determination because they were responsible for notifying the Department when they expected labor shortages to occur. Often was the case that growers would set a prevailing wage rate so low as to effectively discourage domestics from working at wage levels below which one could not live on in the United States.

In regard to all four guidelines, the Bracero Program was lived out much differently by the workers than how the program was designed to work on paper. Unfortunately, the majority of the established literature on the Bracero Program assumes that the program operated according to the guidelines put forth by both governments. Rather than critically examining the experiences of workers, the majority of the published research slights the former Braceros as sources of information and takes for granted that the four general guidelines were enforced and actualized. The history of the Braceros documents how the safeguards "guaranteed" by the governments were rarely put into practice or poorly enforced. Workers were often powerless in their attempts to request those issues guaranteed to them in the standard labor contracts and the agreements made between both governments.

⁴³See GALARZA, *MERCHANTS OF LABOR*, *supra* note 40.

The historical record of the treatment of Braceros developed contrary to the guidelines put forth by the Mexican government. Contrary to the established literature and U.S. government portrayals of the program, Galarza documented the lack of adequate housing, substandard wages, exorbitant prices for inedible food, illegal deductions for food, insurance, health care, inadequate transportation, and a lack of legal rights.⁴⁴ Gamboa found in his study of Braceros working in the Pacific Northwest that “although the workers had contracts guaranteeing minimum job standards, their employers unilaterally established rock bottom and discriminatory wage rates. In doing so, growers reduced the workers to a state of peonage... In addition, the farmers’ reckless abandon of human considerations was shocking and led to numerous job-related accidents.”⁴⁵ Both the works of Galarza and Gamboa represent exceptions to the established literature on the Bracero Program by placing more of a focus on how the program was actually lived out in the experiences of workers.

III. THE INVISIBLE WORKERS: RE-MEMBERING THE BRACERO PROGRAM

The research is based on the life histories, collected in California and Colorado since 1997, of former migrant laborers contracted to work during the U.S.-Mexico Bracero Program.⁴⁶ The ability of Braceros to actively resist their wretched working conditions in the U.S. fields was severely hampered by the high degree of control exerted by growers and their intermediaries. The work demands placed upon the workers dictated their lived experiences in almost every realm of interaction – predominately manual but at times also mental. The set of role expectations, imposed on Braceros from above by growers and their intermediaries, shaped both their actions as subservient and acquiescent as well as, limited their shared memories of the program to only its most agreeable and pleasant aspects.

It was specifically how class and race articulated in the formation of the experiences of the Braceros that enabled this situation to take root in the first place and grow into a web of labor controls that spread well beyond the confines of the fields.⁴⁷ When two former Braceros were asked if they experienced racism while contracted to work in predominately Anglo rural areas, they stated:

Don Francisco: I didn’t have problems with them. When we went into stores to buy things, they treated us fine. I have always had good foremen. If you treat yourself bad, you will be treated bad.

RM (Author): And you?

Don Jorge: When I see someone that has a Spanish face, and I say “You are Hispano” and they say [in English] “Oh no, I don’t speak Spanish,” but they are Spanish.

⁴⁴See GALARZA, *STRANGERS IN OUR FIELDS*, *supra* note 40.

⁴⁵ERASMO GAMBOA, *MEXICAN LABOR AND WORLD WAR II: BRACEROS IN THE PACIFIC NORTHWEST, 1942-1947* 129 (1st ed. 1990).

⁴⁶See Mize, *The Invisible Workers: Articulations of Race and Class in the Life Histories of Braceros*, *supra* note 2.

⁴⁷See MIZE, *The Persistence of Workplace Identities: Living the Effects of the Bracero Total Institution*, *supra* note 2.

Don Francisco: But now they act like they are from here.

Any frank discussion about facing discriminatory treatment was superceded by either the statement that some Braceros acted in a manner deserving exploitation or Mexicanos in general who had the gall to presume they actually belong 'here' (i.e., were rightful citizens of the United States).

From my field notes dated June 1, 1997, the life story of Don Jorge is a typical representation of the Bracero experience from the perspective of former Braceros.

Hailing from a small village (*pueblo*) in Colima, where the young Mexican male had lived all his life, the land he or his parents occupy is used for the subsistence production of corn. By train or bus, he travels to the recruitment center in Irapuato, Guanajato. If he is a young man, his hands are sufficiently calloused, and he has bought the necessary papers for the local government official (in his case about 300 pesos or \$25 US-1950) that enables him to register for a contract, he waits in Irapuato until his number is called. After three months of waiting and wiring his parents asking for money to live on, he is told that work is available. From there, he is bused to Calexico, California where he is given a health examination *en masse*, deloused in a corral with other potential workers, and given his necessary papers and identification card. To this day, he still carries his Bracero identification card in his wallet. He tells me he holds onto it for *recuerdos* (memories), yet every Bracero I interviewed to this day has the card in his wallet. For this eighteen year old man, his first contract is in the San Jose Valley where he works in the broccoli harvest for six months. He is truly lucky on this contract because even though he has no idea how much is deducted from his paycheck for mandatory non-occupational insurance, food, housing, and the buses for "entertainment" that take him into nearby Santa Clara to buy toiletries he still brings home about \$200 every two weeks. [Later, he contacts me and apologizes for his memory not serving him well and informs me that the amount is most likely an overestimate.] The forty other Braceros he works with stay in army barracks that the company converted to hold the workers employed in the nearby ranches that supply this company with produce. On subsequent trips to Michigan, Ohio, and Texas he works with *el cortito* (short-handled hoe) that most likely led to his current unemployment due to back problems. He sharecropped cucumbers in Ohio and drove a tractor along with all the other tasks of picking cotton in Texas. The work was hard, but "he endured." He witnessed a few strikes over wages, deductions, or rotten food but was never an instigator. He notes that the rebel rousers were noticeably absent after a food or wage strike and assumes they were deported. The reason he gives for continuing to migrate north is that his remittances were paying for his brothers to go to school. In his recollection, he skims over the unpleasant details and focuses on his "day-on-the-town" stories. He recalls the good bosses and the contracts that went well; he also acknowledges that things often went bad, but is reluctant to elaborate. Moving on to happier topics, he talks about his children never working the fields. Even though he is currently residing in Fresno, where his sons and daughters are working in factories, his home is Colima, and his heart and loyalty are Mexicano. A few offspring have escaped to the factories of Los Angeles. His wife passed

away four years ago. During the time he migrated as a Bracero and later as an undocumented worker, his contacts in the United States were with other Mexican immigrants in similar circumstances. He speaks only Spanish to this day and has always lived in rural communities with Spanish-speaking neighborhoods. As a Bracero, he had no choice in this matter as housing was provided by the grower or the association and all facilities were consolidated to make both food and labor distribution easier and more efficient for the grower. What this translated into for the Bracero was a twenty-four-hour-a-day surveillance system where any deviation from grower expectations would be easily “solved” by a swift and immediate deportation and subsequent blackballing (inability to recontract) by government officials.

Excerpts from the life story of Don Antonio demonstrate how the recollection of memories is related to the acquiescent and subservient role expectations placed upon him during the program.

RM: The houses, how were they?

Don Antonio: The beds were like sacks, one on top of the other... That's where we were all at, all 45 of us were there...

RM: And the food?

Don Antonio: The food, we had to buy it ourselves... We cooked it ourselves. To some they would give, to others no... More people were arriving but when they had enough it was over. Many were accepted, many were not. And we would just take it, that's how it was.

RM: How were the conditions?

Don Antonio: Well the houses were pretty much like they were here. It was summertime, not wintertime, if it got too hot we would open the windows. Many of us endured, we stayed.

RM: And the bathrooms?

Don Antonio: They were like they are here.

RM: The work in the fields, what was work like?

Don Antonio: We would wake up about five and make breakfast. And then we would go to work. They would pay us by the weight or whatever we did.

RM: How many hours?

Don Antonio: Well, we would arrive and we would work all day and they would pay us about three dollars. It was by contract for how much work we did. I don't remember what was per pound [again]. We would get our lunch halfway through the day, we wouldn't take too much time because we were doing contract work. Sometimes they put us in some pretty bad places. Like cotton for example. Places where cotton was very small and those that were from here [arm gesture to knee-height], they would put them in better places. So there were still locals working here and they got the better jobs. We don't know how much they paid them. They had restrooms. Water wasn't very good, it was kinda salty. They didn't have fresh water but where could we get better water from? We would take soda...

[In response to a question regarding transportation:] The rancher would pick us up and take us where the work would be and when the work was done then the rancher would take us back. Each rancher was distinct and some were good and some were bad. I was lucky. I... with a good rancher. He was German. He saw that I didn't have nice clothes and he gave me good clothes – Army clothes. So I put it on because he gave it to me. And if I had known to speak English, I would have requested to stay with him but I didn't know. And I still don't know nothing.

RM: Why not renew?

Don Antonio: Because it was kinda bad, bad, bad. Times got bad. Things were getting bad for them and us and it was time to leave.

RM: Why didn't you apply the following year?

Don Antonio: Because one suffered much trying to get the same contract. It took a lot of effort and money to come over here again. It took a lot of effort to buy a contract to come. It's like today, we had coyotes. The government wouldn't give us a card. They would pocket the money... The last time they gave me this card [he removes his Bracero identification card from his wallet]. Yeah, but the problem here is they put the wrong date.

RM: Can we make a copy?

Don Antonio: Will this affect me in any way?

In the interview process, the amount of effort expended to elicit information on the negative aspects of the program required a great deal of persistence. Even with repeated follow-up questions, Don Antonio was never willing to elaborate upon which specific aspects were 'bad'. Even though housing was incredibly cramped and poorly ventilated, pay was barely enough to subsist, working conditions were substandard, potable water was tainted, the recruitment process was fraught with deceit and graft, and overall things were very 'bad', Don Antonio was one who endured, one who was willing to sacrifice for the chance to work. His concern over sharing his thirty-nine-year-old expired Bracero identification card is indicative of a very real and sustained fear of retribution, of being perceived as recalcitrant and paying the costs associated.

The detailed responses to certain aspects of the program's workings confirmed the findings of the established academic literature on the Bracero Program. When asked about the food, housing, and other living conditions; I was told by one respondent "*esta bien*." Instead of settling for this initial response, I further questioned:

RM: All the time? You never had problems? I've heard from others that everything was fine. Most of the time it was? What was it like when it wasn't fine?

Don Emilio: Well, they had no beds for us. We slept on the concrete floor. We were given one meal a day. There were no bathrooms.

The former Braceros I interviewed, when pressed for more detailed responses than "*esta bien*," provided the details on the specific aspects of the total racial segregation they experienced, their insertion and maintenance into the bottom levels of the capitalist agricultural labor process and the attendant deplorable working conditions,

and a set of lived experiences that could best be described as managed, controlled, and even coerced.

The sources of silence abounded but most often they centered around wages and deductions, the batch-handling of Braceros at U.S. processing centers, and labor camp conditions. The Braceros stated that they did not remember how much was deducted out of their paychecks. They rarely talked in depth about medical exams and delousing procedures they had to endure in order to enter the United States. They simply confirmed details. Since this treatment may have felt humiliating and degrading, it is likely that those who directly experienced it did not want to talk about it.

The quality of housing, food, and wages was discussed as the luck of the draw. Braceros stated that some places were good, some were bad, and it was purely by chance that they personally enjoyed favorable conditions. The major complaint registered by the Braceros was the lack of availability of work or particular camps where food was rotten. In North Carolina, Don Liberio reported that the food served in the camp occasionally would be rancid. If the workers would ban together and complain, the quality of food would temporarily improve. But this was transitory as a couple of days later, workers again would be served spoiled food. It was a continuous cycle for the month he spent there. By and large, those aspects of the program which scholars concur as the worst aspects, were not talked about by the Braceros I interviewed. We have to read the silences in order to understand why the non-issues are so relevant. For example, no respondent, even when specifically asked, broached the subject of the coercive labor practices of crew bosses, FLCs, and growers.

IV. REPARATIONS CAMPAIGNS AND ATTEMPTS AT BRACERO REDRESS

In the summer of 2002, I was contacted by legal counsel representing Braceros in a class action lawsuit.⁴⁸ Most of the media coverage centered around the Bracero mandatory savings program.⁴⁹ As the rule was explained in a 1946 Mexican government document: "In conforming with the established international rules and contracts, of the amount paid to the Mexican Braceros of their salary ten percent was

⁴⁸Isidro Jimenez de la Torre v. United States, Attorney General, Secretary of Labor, Secretary of Treasury, Secretary of State, Immigration and Naturalization Service, Secretary of Defense, Secretary of Agriculture, Republic of Mexico, Ministry of Foreign Affairs, Wells Fargo Bank, Banco de Mexico, Banco de Credito Rural. Two similar class action lawsuits, Chavez, et al. v. United States of America, et al. and Barba, et al. v. United States of America, et al., were moved from Eastern District Courts with de la Torre and consolidated in March 2002 with Senorino Cruz v. U.S., et al. to be heard in Northern California District Court by Judge Charles R. Breyer. Cruz, et al. v. United States, Nos. C 02-1942-CRB, C 02-1943-CRB, C 02-1944-CRB, C 01-00892 CRB, C 02-1942-CRB, C 02-1943-CRB, CC 02-1944-CRB, 2003 U.S. Dist. LEXIS 10948 (N.D. Cal. June 24, 2003).

⁴⁹E.g. James Smith, *Ex-Migrants Sought for Class-Action*, LOS ANGELES TIMES, Mar. 15, 2001. Sergio Bustos, *Braceros Seeking Release of Funds*, ARIZONA REPUBLIC, 2002.: Deborah Kong, *Former Mexican Guest Workers Call for Wells Fargo Boycott*, LA PRENSA, at <http://www.laprensatoledo.com/PDF/September%204,%202002.pdf> (last visited September 4, 2002).

deposited into a savings fund [in Mexican National Banks] for each worker.”⁵⁰ This money would not be returned to the Bracero until he fulfilled the conditions of his contract and had returned to Mexico. What many Braceros found upon returning was that their money was not available at *Banco Nacional de Credito Agricola*, *Banco de Mexico* (where the Braceros’ funds were transferred from Wells Fargo Bank), or the other Mexican federal banks designated as holders of the Braceros’ mandatory savings deductions.

To recoup losses suffered by Braceros during the Program, the struggle for redress is still in the beginning stages. In 2000, one bill was introduced into Congress by Rep. Luis Gutierrez (D-IL). Yet recognition of the bill, let alone broad based support, has been illusive up to this point. The lack of consistent lobbying efforts certainly makes the Braceros reparations case less tenable. Much of the work has been in the courts and that struggle still continues. Finally, the grassroots mobilization, particularly by former Braceros themselves, represents the most important impetus for igniting this issue into the public consciousness of not only the United States but also Mexico.

The Bracero Justice Act of 2002 (H.R. 4918), introduced by Rep. Luis Gutierrez (D-IL) is to date the only congressional acknowledgement of the role that the United States played in the savings program debacle. The bill, which will most likely remain and whither in committee, sought to extend the statutes of limitations and waive U.S. sovereign immunity claims. If this action is going to be thrust onto the public stage, there is no question that it needs broader multiracial support and further reach in terms of not only the savings claim but also allowing for peonage and breach of contract suits. From my research, I contend that the ten percent savings program was just the tip of the iceberg in the ways that Braceros were consistently cheated out of wages and subject to illegal deductions. At this point the biggest barrier is silence. Placing the claims of former Braceros into public forums might break the silence both in the United States and Mexico.

The major Latino-serving organizations have been duly silent in their support for Bracero claims. The largest organization representing Latinos, the National Council of La Raza (NLCR), has offered letters in support of local Bracero justice campaigns but a full brief and a commitment to the issue is to date still lacking. Other organizations, such as the League of United Latin American Citizens (LULAC), can certainly do much more to rectify its historical neglect of Mexican immigration issues and improve its service and credibility to more than Hispanic middle and upper class by lobbying on behalf of Bracero claims. The Congressional Hispanic Caucus needs the support from Latino lobbying organizations as well as coalitional support from civil rights and immigrant rights organizations. This would help to focus the issue on larger human rights concerns.

But the majority of the movement on behalf of Braceros has been in the courts. The recent consolidation of cases and the ruling certainly bring us directly back to the insights of Mari Matsuda and the reparations challenges to liberal law standards. The savings program suits are interesting and warrant attention but a neglected set of allegations in *de la Torre v. U.S. et al.* relate to peonage and indentured servitude.

⁵⁰Direccion de Prevision Social. *Los Braceros* 88 (Cuidad Mexico: Secretaria del Trabajo y Prevision Social, Direccion de Prevision Social. Mexican Government Document, 1946) (author translation).

My research documented that some Braceros were required to work beyond their contracted work period, workers were consistently subjected to physical and legal coercion as a precondition for work, the terms of the individual work contract were broken by almost every grower, enforcement of living and working conditions was nonexistent, the grievance procedure was cumbersome if not impossible, and work was marked by complete social isolation. A total of thirty-one counts were filed in the peonage suit, yet the district judge only discussed peonage in terms of those parties not accountable (in particular Wells Fargo Bank). On August 23, 2002 a ruling by U.S. District Judge Charles Breyer stated:

The Court does not doubt that many braceros never received Savings Fund withholdings to which they were entitled. The Court is sympathetic to the Braceros' situation. However, just as a court's power to correct injustice is derived from the law, a court's power is circumscribed by the law as well. The plaintiffs are not entitled to any relief from the Mexican Defendants or Wells Fargo in a United States court of law. As currently pled, plaintiffs are not entitled to relief from the United States because their claims are time-barred. The motions to dismiss of the Mexican Defendants and Wells Fargo are hereby GRANTED. The United States' motion to dismiss is hereby GRANTED without leave to amend with respect to the claim for breach of fiduciary; the motion is GRANTED with leave to amend with regard to all other claims.

Matsuda notes that reparations claims do not require all plaintiffs to be similarly situated due to the historical aspect of past wrongs. In his oral explanation of the ruling, Judge Breyer dismissed the claim on technicalities, claiming before co-counsel and the defendants that it would be difficult, if not impossible, to prove that the claimants had similar experiences to constitute a class. The application of statutes of limitations refers to the other major liberal challenge to reparations claims. The defense lawyer for the U.S. government stated upon arrival at the hearing how disappointed he was to be called in on events that happened fifty years ago.⁵¹ As Breyer states in his ruling:

In fact, the complaint indicates just the opposite. The complaint alleges that plaintiffs did not know "the amount of money deducted from their wages." This language implies that plaintiffs did, in fact, know that some money was being deducted, just not how much. The other complaints also fail to allege that the braceros were ignorant of the fact that a portion of their wages was being withheld. In short, the complaints allege that the braceros knew that a portion of their wages was being withheld. Plaintiffs knew that money was withheld and that it was never refunded. That is, the braceros knew the facts underlying their injury and its cause. See *Alvarez-Machain*, 107 F.3d at 700. This knowledge is all that is required for the statute of limitations to begin to run. Given this knowledge, it is of no consequence that plaintiffs may not have fully understood their legal

⁵¹E-mails from Patricia Ryan, Esq., Co-Counsel for Plaintiff (on file with author). All oral comments in district court are based on these e-mail communications..

rights or the available legal remedies, even if such ignorance was the result of unsophistication or illiteracy.⁵²

Simply stated, if the plaintiffs knew they were being cheated out of wages, then the statutes of limitations would bar the plaintiffs from seeking redress. Most of my research, not on the savings program, makes it quite clear that Braceros were unaware of what was being deducted from their paychecks (particularly when paystubs were in English and the Spanish speaking Bracero may not have even been able to read in their native language). No Bracero could recollect in any detail how much they were charged for mandatory deductions, nor could they specify what those deductions were. Breaches of contract were so numerous (from being required to stay beyond contracted period, underpaying workers, overcharging for items such as food and blankets, charging for non-chargeable items such as housing and transportation) there was no question that the peonage claim should have been duly considered above and beyond the savings deduction debacle. Judge Breyer felt the need to dismiss most claims of peonage against all parties but it is important to remember that no grower, association, or food processor was named in the list of defendants. This might not be the most prudent course of legal action, but on the other hand it might serve to embarrass corporations to the point of providing forms of restitution to meet the needs of Mexican immigrants.

Further pressure on behalf of Braceros comes directly from the former contract workers themselves. In the past two years, Braceros have been mobilizing in the Coachella Valley of California with the assistance of labor organizer Ventura Gutierrez.⁵³ In Mexico, a march on capital of Mexico City first brought the savings program issue to the Mexican public (who are much more cognizant as a whole of the abuse that Braceros endured from 1942 to 1964). A more recent pilgrimage to the border, like the former march to the original soccer stadium where Braceros were processed during World War II, followed the earlier tracks north to the border recruitment centers. Though numbers of protestors are small, a critical mass is crucial to the success of social movements in not only organizing communities but also shedding a public eye by requiring increased media attention on this historical wrong. Hopefully this movement will move beyond just the savings program and shed light on all the ways in which the rights of Braceros were systematically denied.

The Bracero reparations claim can also learn from the Japanese internment experience with reparations. From the Japanese American efforts, we get a scholarly blueprint of how to engage the movement from four nodes of pressure (lobbying, legislative action, litigation, and grassroots pressure from below). I honestly do not believe a single Japanese American legal scholar believes that the fight is over with the one successful internment claim. The call for multiracial coalitions and the work of Matsuda and Yamamoto certainly attests to the willingness of sharing of lessons learned.

From the African American slavery case we learn not only the persistence of racism and the virulence with which white privilege (both within and beyond the legal system) is maintained, we also learn from a history of resistance, that even in

⁵²See *Barrow v. New Orleans Steamship Ass'n*, 932 F.2d 473, 478 (5th Cir. 1991).

⁵³Smith, *supra* note 49.

the most dismal times we find freedom suits, slave pensions, civil rights, and eventually reparations claims. There is no question that Braceros will persevere; my only hope is that they finally receive the redress they seek and see their struggle as part and parcel of the larger struggle for racial equality.