
NOTE

Undocumented Immigrants and Workers' Compensation: Rejecting Federal Preemption of the California Workers' Compensation Act

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INTRODUCTION

Jose Rodriguez was a skilled construction worker.¹ While working at a job site, Jose lost his balance and fell off a ramp. He suffered injuries that permanently disabled him, forcing him to stop working. Although Jose's injuries happened at work, his employers refused to pay his medical bills because he had been working in the country illegally.

Individuals like Jose account for over four percent of the nation's labor force.² Numbering in the millions, these undocumented immigrants work in various low-wage, high-risk occupations.³ Because of dangerous workplace conditions and employers' frequent labor law violations, thousands of undocumented workers are hurt on the job every year.⁴

¹ This scenario is based on the facts of *Balbuena v. IDR Realty LLC*, 845 N.E.2d 1246, 1251 (N.Y. 2006) (granting illegal worker's claim for lost wages after worker sustained injuries at workplace).

² JEFFREY S. PASSEL, PEW HISPANIC CTR., UNAUTHORIZED MIGRANTS: NUMBERS AND CHARACTERISTICS 26 (2005), available at <http://www.pewhispanic.org/files/reports/46.pdf> (describing demographics of unauthorized migrants currently working and living in United States).

³ MICHAEL HOEFER ET AL., OFFICE OF IMMIGRATION STATISTICS, DEP'T OF HOMELAND SEC., ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2006, at 1 (2007), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ill_pe_2006.pdf (estimating 11.6 million unauthorized immigrants reside in United States as of January 2006); Robert I. Corrales, *Workers' Compensation and Vocational Rehabilitation Benefits for Undocumented Workers*, 81 DENV. U. L. REV. 347, 347 (2003) (noting concentration of undocumented workers in low-pay, high-risk occupations); see PASSEL, *supra* note 2, at 26 (observing most unauthorized workers have occupations requiring little education and no licensing requirements); see also Victor Narro, *Impacting Next Wave Organizing: Creative Campaign Strategies of the Los Angeles Worker Centers*, 50 N.Y.L. SCH. L. REV. 465, 465-66 (2006) (noting circumstances that force immigrant workers to take on most dangerous and lowest-paying jobs). See generally REBECCA SMITH & AMY SUGIMORI, NAT'L EMPLOYMENT LAW PROJECT, UNDOCUMENTED WORKERS: PRESERVING RIGHTS AND REMEDIES AFTER *HOFFMAN PLASTIC COMPOUNDS v. NLRB* 2 (2003), available at <http://www.nelp.org/docUploads/wlghoff040303%2Epdf> (noting extremely high and increasing number of injuries and deaths among Latino workers engaged in hazardous employment); Press Release, Bureau of Labor Statistics, National Census of Fatal Occupational Injuries in 2006 (Aug. 9, 2007), available at <http://www.bls.gov/news.release/cfoi.nr0.htm> (recognizing fatal injuries and deaths among Latino workers is at all-time high despite decrease in overall fatality rate).

⁴ See Press Release, *supra* note 3 (noting overall decrease in fatalities among foreign-born workers, despite fatal work injuries involving Hispanic workers being at all-time high in 2006). Since the mid-1990s, the share of fatal occupational injuries for foreign-born workers has increased by 43%. Katherine Loh & Scott Richardson, *Foreign-Born Workers: Trends in Fatal Occupational Injuries 1996-2001*, MONTHLY LAB.

Many states have adjusted their workers' compensation systems to recognize the presence of undocumented workers in our society.⁵ Indeed, state legislatures have explicitly included undocumented workers in defining who constitutes an "employee" for statutory purposes.⁶ This recognition, however, has not eliminated the uncertainty of undocumented workers' entitlements under existing federal and state labor laws.⁷ Some state statutes ignore the issue altogether, while others leave open the question of whether coverage extends only to "legal aliens."⁸

Despite protections afforded by state workers' compensation laws, federal law restricts benefits available to undocumented workers.⁹ Congress enacted the Immigration Reform and Control Act of 1986

REV., June 2004, at 42, available at <http://www.bls.gov/opub/mlr/2004/06/art3full.pdf>. See generally AFL-CIO, IMMIGRANT WORKERS AT RISK: THE URGENT NEED FOR IMPROVED WORKPLACE SAFETY AND HEALTH POLICIES AND PROGRAMS 3-7 (2005), available at http://www.aflcio.org/issues/safety/upload/immigrant_risk.pdf (noting fatality rate of 5.4% per 100,000 workers among foreign-born Hispanic workers).

⁵ See *Champion Auto Body v. Indus. Claim Appeals Office*, 950 P.2d 671, 673 (Colo. Ct. App. 1997) (defining "employee" to include "aliens" without distinguishing between legal and illegal aliens for workers' compensation purposes); *Dowling v. Slotnik*, 712 A.2d 396, 411 (Conn. 1998) (holding Immigration Reform Act does not preempt state authority to award workers' compensation benefits to undocumented workers); *Dynasty Sample Co. v. Beltran*, 479 S.E.2d 773, 775 (Ga. Ct. App. 1996) (affirming benefits award despite claimant's intentional misrepresentations regarding illegal status); *Gayton v. Gage Carolina Metals Inc.*, 560 S.E.2d 870, 874-75 (N.C. Ct. App. 2002) (affirming workers' compensation award because defendant failed to prove that "but for" plaintiff's illegal status he could return to suitable work).

⁶ Most state statutes use the term "aliens" to describe foreign-born individuals. See, e.g., ARIZ. REV. STAT. § 23-901(6)(b) (2007) (including legal and illegal aliens in defining "employee" for workers' compensation coverage); CAL. LAB. CODE § 3351(a) (West 2003) (defining "employee" as every person, including aliens and minors, serving employer under appointment or contract); FLA. STAT. § 440.02(15)(a) (2002) (defining "employee" as including aliens and minors, whether lawfully or unlawfully employed).

⁷ See Jason Schumann, Note, *Working in the Shadows: Illegal Aliens' Entitlement to State Workers' Compensation*, 89 IOWA L. REV. 709, 711-12 (2004) (providing overview of current state workers' compensation laws in light of federal statutory and case law).

⁸ See ALA. CODE § 25-5-1(5) (2000) (stating aliens are employees without specifying whether definition includes illegal aliens); 820 ILL. COMP. STAT. ANN. 305/1-b (2000); MINN. STAT. § 176.011 subdiv. 9 (West 2000) (same); see also GA. CODE ANN. § 34-9-1(2) (1998) (ignoring issue of whether aliens are employees); IOWA CODE § 85.61(11) (2001) (same); MO. REV. STAT. § 287.020(1) (2000) (same).

⁹ See generally BETSY COOPER & KEVIN O'NEIL, MIGRATION POLICY INST., LESSONS FROM THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, at 4-8 (2005), available at http://www.migrationpolicy.org/pubs/PolicyBrief_No3_Aug05.pdf (discussing various effects of IRCA).

(“IRCA”) to rein in undocumented immigration.¹⁰ The U.S. Supreme Court held that IRCA limits public benefits available to undocumented workers in *Hoffman Plastic Compounds, Inc. v. NLRB*.¹¹ Although the Court discerned a policy barring important remedies to undocumented workers, courts have yet to fully test *Hoffman*’s application to state workers’ compensation systems.¹²

A California Court of Appeal recently ruled undocumented workers are entitled to workers’ compensation benefits in *Farmers Bros. Coffee v. Workers Compensation Appeals Board*.¹³ The *Farmers Bros.* court recognized Congress’s intent to maintain existing state labor protections for workers in enacting IRCA.¹⁴ In holding federal immigration controls do not preempt state workers’ compensation laws, the court affirmed a worker’s entitlement to workers’ compensation benefits regardless of his immigration status.¹⁵

This Note argues the *Farmers Bros.* court correctly applied preemption principles to preserve the goals of California’s workers’ compensation system.¹⁶ Part I explores statutory and case law governing immigration and entitlements for undocumented workers. It then describes the preemption principles used in resolving purported conflicts between federal and state law. Part II discusses the facts, rationale, and holding of *Farmers Bros.* Part III argues federal immigration law does not preempt California’s workers’ compensation

¹⁰ See 8 U.S.C. § 1324a (2000); Jimmy Gomez & Walter Ewing, *Learning from IRCA: Lessons for Comprehensive Immigration Reform*, IMMIGR. POL’Y IN FOCUS (Immigration Policy Ctr., Wash., D.C.), May 2006, at 2, available at http://www.gcir.org/system/files/learning_from_IRCA.pdf. For an overview of IRCA, see discussion *infra* Part I.A.

¹¹ Anne Marie O’Donovan, *Immigrant Workers and Workers’ Compensation After Hoffman Plastic Compounds, Inc. v. NLRB*, 30 N.Y.U. REV. L. & SOC. CHANGE 299, 299 (2006). See generally *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 140 (2002) (denying backpay award to undocumented worker under National Labor Relations Act (“NLRA”). For a detailed discussion of the case, see discussion *infra* Part I.B.

¹² See *Hoffman*, 535 U.S. at 150 (noting backpay award to undocumented worker trivializes immigration laws and encourages future violations); Christopher Ho & Jennifer Chang, *Drawing the Line After Hoffman Plastic Compounds, Inc. v. NLRB: Strategies for Protecting Undocumented Workers in the Title VII Context and Beyond*, 22 HOFSTRA LAB. & EMP. L.J. 473, 473 (2005) (noting *Hoffman* discerned congressional policy to bar important remedies for undocumented workers under NLRA).

¹³ 35 Cal. Rptr. 3d 23, 27-30 (Ct. App. 2005). Parts II and III of this Note discuss the case in detail.

¹⁴ *Id.* at 27-29.

¹⁵ *Id.* at 27.

¹⁶ See discussion *infra* Part III.

laws. First, *Farmers Bros.* correctly holds IRCA's construction and regulation scheme are insufficient to support preemption. Second, *Farmers Bros.* is consistent with the Supreme Court's decision in *Hoffman*. Finally, *Farmer Bros.* protects the state's interest in maintaining a safe workplace without undermining federal immigration policy goals.

I. BACKGROUND

The considerable presence of undocumented immigrants in the workforce underscores the need to define what labor protections are available to them under existing laws.¹⁷ Workers' compensation benefits are an important resource for injured immigrant workers who lack health insurance and are otherwise unable to afford health care.¹⁸ Recent developments in the law make these benefits less accessible at a time when unprecedented numbers of immigrant workers are being injured on the job.¹⁹ Analyzing these developments clarifies how *Farmers Bros.* purports to resolve conflicts between federal and state laws.²⁰

¹⁷ See generally DANIEL ROTHENBERG, WITH THESE HANDS: THE HIDDEN WORLD OF MIGRANT FARMWORKERS TODAY 144 (2000) (discussing society's growing fear that immigrants abuse public services); Correales, *supra* note 3, at 353-57 (recognizing importance of understanding lives and interactions of undocumented immigrants in analyzing whether states should provide workplace protections); Ho & Chang, *supra* note 12, at 478 (noting great consequences in principled delineation of undocumented workers' legal rights).

¹⁸ See PASSEL, *supra* note 2, at 35. More than half of migrant adults do not have health insurance. *Id.* Fifty-nine percent of unauthorized migrants lack health insurance. *Id.* In addition, 61% of workers in blue-collar occupations and 25% of those in service occupations do not receive employment-based health care benefits. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, NEW ESTIMATES FOR MARCH 2003 HEALTH CARE BENEFITS ACCESS AND PARTICIPATION, <http://www.bls.gov/ncs/ebs/sp/nr2003table1.pdf> (last visited Feb. 22, 2008). See generally Press Release, U.S. Dep't of Labor, Foreign Born Workers: Labor Force Characteristics in 2007, at 2 (Mar. 26, 2008), available at <http://www.bls.gov/news.release/pdf/forbrn.pdf> (noting foreign-born workers are more likely to work in low-wage service occupations than their native-born counterparts).

¹⁹ See AFL-CIO, *supra* note 4, at 3; see also Nurith Aizenman, *Harsh Reward for Hard Labor*, WASH. POST, Dec. 29, 2002, at C1 (reporting foreign-born Latino men are more likely to die from workplace injuries than average U.S. worker); Justin Pritchard, *Dying to Work*, ASSOCIATED PRESS ONLINE, Mar. 14, 2004, <http://www.ap.org> (search "Archive Search" for "Dying to Work"; then follow "Click here for complete article" hyperlink under "Dying to Work") (reporting rising death rates among Mexican laborers since mid-1990s).

²⁰ See generally Ho & Chang, *supra* note 12, at 475 (noting evolving judicial interpretations of federal labor and civil rights statutes).

A. *The Immigration Reform and Control Act of 1986*

Congress passed IRCA in response to the wave of illegal immigration into the United States.²¹ It sought to reduce the flow of illegal immigration by removing the “employment magnet” drawing undocumented workers into the country.²² Congress’s ultimate goal was to reduce incentives for hiring illegal immigrants by imposing penalties on employers who refuse to comply with IRCA.²³ It concluded that penalizing those who hired illegal aliens was the most humane, credible, and effective way to address the immigration problem.²⁴

IRCA prohibits employers from knowingly hiring individuals not authorized to work in the United States.²⁵ It also forbids the continued employment of those who have become unauthorized to work.²⁶ In addition, IRCA expressly preempts state laws that impose civil or criminal sanctions on those who employ unauthorized aliens.²⁷

IRCA provides a three-pronged approach to addressing undocumented immigration.²⁸ First, IRCA legalized most

²¹ See *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 481 (1991) (characterizing IRCA as response to growing shadow population of illegal immigrants in United States); H.R. REP. NO. 99-1000, pt. 1, at 85 (1986), as reprinted in 1986 U.S.C.C.A.N. 5840, 5840 (stating conferees’ intention to effectively control unauthorized immigration by enacting IRCA); H.R. REP. NO. 99-682, pt. 1, at 45 (1986), as reprinted in 1986 U.S.C.C.A.N. 5649, 5649-50 (noting IRCA’s purpose of controlling illegal immigration).

²² See *Montero v. INS*, 124 F.3d 381, 384 (2d Cir. 1997) (citing H.R. REP. NO. 99-682, pt. 1, at 45-46) (stating IRCA establishes penalties for employers who knowingly hire undocumented aliens to reduce incentives for hiring such workers).

²³ See *id.* See generally *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 231 (2d Cir. 2006) (recognizing Congress’s view that penalizing employers was most humane, credible, and effective way of dealing with large influx of illegal aliens); *Dowling v. Slotnik*, 712 A.2d 396, 402 (Conn. 1998) (recognizing IRCA’s goal of reducing incentives for employers to hire illegal aliens).

²⁴ See H.R. REP. NO. 99-682, pt. 1, at 46. The House Committee on the Judiciary noted IRCA’s intended goal of ultimately deterring aliens from entering the United States illegally. *Id.*; see also *id.* at 49 (stating imposing sanctions is most cost-effective and practical way to reduce illegal immigration).

²⁵ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, 3359 (codified as amended at 8 U.S.C. §§ 1101, 1324a (2000)).

²⁶ 8 U.S.C. § 1324a (2000); see also ALISON M. SMITH, CONG. RESEARCH SERV., Order Code RS22180, UNAUTHORIZED EMPLOYMENT OF ALIENS: BASICS OF EMPLOYER SANCTIONS I (2005).

²⁷ § 1324a.

²⁸ See *Gomez & Ewing*, *supra* note 10, at 2 (discussing IRCA provisions related to employee verification and employer sanctions); see also SMITH, *supra* note 26, at 1 (discussing three types of conduct IRCA specifically prohibits).

undocumented immigrants living in the United States at the time of its enactment.²⁹ Next, it established an employment verification system that imposes monetary penalties for employers who violate verification requirements.³⁰ Lastly, it enhanced border patrol enforcement and other inspection activities to deter illegal aliens from entering the country.³¹

The employment verification system is the keystone of IRCA.³² IRCA requires job applicants to present proof of identity and work authorization.³³ Employers must examine these documents and attest to their genuine appearance.³⁴ If a document on its face does not reasonably appear genuine, the employer may not accept it.³⁵

IRCA provides various employer sanctions to safeguard against hiring undocumented workers.³⁶ Employers who fail to check their workers' immigration status or keep eligibility records face civil fines.³⁷ Likewise, IRCA imposes criminal penalties on those who knowingly employ undocumented workers.³⁸ Thus, IRCA discourages illegal immigration by making it harder for undocumented workers to find work in the United States.³⁹

²⁹ 8 U.S.C. §§ 1160, 1255a (2000); *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 482-83 (1991).

³⁰ § 1324a (setting forth procedure for issuing cease and desist orders with civil money penalties for hiring, recruiting, and referral violations).

³¹ 8 U.S.C. § 1101 (2000) (expanding INS activities). Following IRCA's enactment, Congress increased Border Patrol staffing by 50%. COOPER & O'NEIL, *supra* note 9, at 3.

³² COOPER & O'NEIL, *supra* note 9, at 2 (calling verification system keystone of IRCA); *see also* *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147-48 (2002) (recognizing verification system as critical to IRCA regime); *INS v. Nat'l Ctr. for Immigrants' Rights, Inc.*, 502 U.S. 183, 194 n.8 (1991) (noting IRCA forcefully made combating employment of illegal aliens central to federal immigration policy).

³³ § 1324a. An individual may use a U.S. passport, a resident alien card, or an alien registration card to prove both identity and employment eligibility. *Id.* Likewise, one may use a Social Security card to prove he or she has authorization to work in the United States. *Id.*

³⁴ *Id.*; SMITH, *supra* note 26, at 2.

³⁵ SMITH, *supra* note 26, at 2. *See generally* § 1324a (noting compliance when employer attests it has examined eligible document that appears reasonably genuine).

³⁶ § 1324a; *see also* *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 231 (2d Cir. 2006) (noting IRCA mandates verification of legal status).

³⁷ § 1324a.

³⁸ *Id.*

³⁹ *See id.* (enumerating penalty provisions for employing undocumented workers). *See generally* sources cited *supra* notes 21-24 and accompanying text (noting congressional intent in enacting IRCA).

B. *Hoffman Plastic Compounds, Inc. v. NLRB*

The Supreme Court has also recognized the importance of discouraging illegal immigration.⁴⁰ Its decision in *Hoffman* supplemented immigration goals by diminishing protections for undocumented workers in the United States.⁴¹ *Hoffman* involved Jose Castro, a factory worker fired by his employer, Hoffman Plastic Compounds (“HPC”), for his involvement in union-organizing activities.⁴² Castro and other fired employees sued HPC, arguing HPC violated the National Labor Relations Act (“NLRA”) by denying their right to self-organization.⁴³ In response, the National Labor Relations Board (“NLRB”) ordered HPC to cease and desist from further NLRA violations.⁴⁴ NLRB also ordered HPC to offer reinstatement and backpay to affected employees.⁴⁵

During an administrative compliance hearing, Castro admitted he had used falsified documents to qualify for employment.⁴⁶ He further testified that he had never received authorization to work in the country.⁴⁷ The judge ruled Castro could not receive backpay because the award conflicted with IRCA’s goal of preventing illegal employment.⁴⁸

The NLRB reversed the judge’s decision and found Castro was entitled to backpay.⁴⁹ HPC filed a petition for review of the NLRB’s order in the U.S. Court of Appeals for the D.C. Circuit.⁵⁰ The court

⁴⁰ See discussion *infra* Part I.B (discussing Court’s decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002)).

⁴¹ See *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 137 (2002); see also MEXICAN AM. LEGAL DEF. & EDUC. FUND (MALDEF), *USED AND ABUSED: THE TREATMENT OF UNDOCUMENTED VICTIMS OF LABOR LAW VIOLATIONS SINCE HOFFMAN PLASTIC COMPOUNDS V. NLRB 1* (2003), available at <http://www.nelp.org/docUploads/Used%20and%20Abused%20101003%2Epdf> [hereinafter MALDEF] (discussing *Hoffman*’s impact on workers and employers); O’Donovan, *supra* note 11, at 304 (recognizing uncertainty in undocumented workers’ ability to obtain work compensation benefits).

⁴² *Hoffman*, 535 U.S. at 140.

⁴³ See *id.* The NLRA protects workers’ rights of free association and self-organization to collectively bargain with employers. See 29 U.S.C. § 151 (2000).

⁴⁴ *Hoffman*, 535 U.S. at 140.

⁴⁵ *Id.*

⁴⁶ *Id.* at 141.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 140-42.

⁵⁰ *Id.* at 142.

denied the petition and enforced the NLRB's order.⁵¹ On appeal, the Supreme Court reversed the order, holding that the NLRB could not award Castro backpay because he was not authorized to work.⁵²

The Court held an employee not authorized to work in the United States is not entitled to backpay remedies provided by the NLRA.⁵³ Castro obtained his employment using fraudulent documents and maintained his illegal status for years.⁵⁴ Accordingly, the Court found awarding him backpay ran counter to policies underlying IRCA.⁵⁵

Since the *Hoffman* decision, courts have struggled to reconcile workplace safety and employment laws with federal immigration policy.⁵⁶ Until *Hoffman*, courts consistently found no conflict between IRCA's ban on hiring undocumented workers and state workers' compensation requirements.⁵⁷ Indeed, an overwhelming majority of courts consistently found that state workers' compensation systems provided coverage to undocumented workers.⁵⁸ After *Hoffman*,

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 151.

⁵⁴ *See id.* at 149.

⁵⁵ *Id.*

⁵⁶ *See Madeira v. Affordable Hous. Found.*, 469 F.3d 219, 254-55 (2d Cir. 2006) (Walker, J., concurring) (emphasizing concern regarding Congress's decision to leave policy decisions to judges). The *Madeira* court held IRCA does not preempt a compensatory damages award to an undocumented worker for personal injury under New York labor laws. *Id.* at 249; *see also Dowling v. Slotnik*, 712 A.2d 396, 409 (Conn. 1998) (holding IRCA does not preempt state authority to award workers' compensation benefits to undocumented aliens); *Balbuena v. IDR Realty LLC*, 845 N.E.2d 1246, 1246, 1255 (N.Y. 2006) (holding IRCA does not preempt state laws regarding permissible scope of recovery in personal injury actions).

⁵⁷ *See, e.g., Champion Auto Body v. Indus. Claim Appeals Office*, 950 P.2d 671, 673 (Colo. Ct. App. 1997) (holding IRCA provisions did not create legal disability precluding claimant from proving entitlement to workers' compensation benefits); *Dowling*, 712 A.2d at 409 (holding IRCA does not preempt eligibility of undocumented workers to receive workers' compensation benefits); *see also Tarango v. State Indus. Ins. Sys.*, 25 P.3d 175, 177 (Nev. 2001) (affirming award of permanent partial disability benefits notwithstanding IRCA); *cf. Iowa Erosion Control, Inc. v. Sanchez*, 599 N.W.2d 711, 715 (Iowa 1999) (finding IRCA did not preclude award to undocumented dependent of deceased worker).

⁵⁸ *See, e.g., Del Taco v. Workers' Comp. Appeals Bd.*, 94 Cal. Rptr. 2d 825, 828 (Ct. App. 2000); *Dynasty Sample Co. v. Beltran*, 479 S.E.2d 773, 773 (Ga. 1996); *Artiga v. M.A. Patout & Son*, 95-1412, p. 87 (La. App. 3 Cir. 4/3/96); 671 So. 2d 1138, 1139; *Mendoza v. Monmouth Recycling Corp.*, 672 A.2d 221, 223-24 (N.J. Super. Ct. App. Div. 1996); *Gayton v. Gage Carolina Metals, Inc.*, 560 S.E.2d 870, 870 (N.C. Ct. App. 2002); *Rivera v. Trapp*, 519 S.E.2d 777, 781 (N.C. Ct. App. 1999); *Lang v. Landeros*, 918 P.2d 404, 405-06 (Okla. Civ. App. 1996).

however, the ability of undocumented workers to bring workers' compensation claims has become less certain.⁵⁹

C. *The California Workers' Compensation Act*

Hoffman's decision to deny benefits based on immigration status conflicts with the no-fault rationale underlying California's workers' compensation system.⁶⁰ The California Legislature created the workers' compensation system to support workers injured or disabled during the course of employment.⁶¹ The California Workers' Compensation Act ("WCA") makes employers liable for injuries sustained on the job regardless of fault.⁶² The WCA provides comprehensive coverage for medical, surgical, and other remedial treatment to cure employment-related injuries or relieve their effects.⁶³ It affords workers a quick determination of their claims without regard to the employer's liability or negligence.⁶⁴

⁵⁹ See Ho & Chang, *supra* note 12, at 473 (noting laws affecting immigrant workers are undergoing rapid change and uncertainty in light of *Hoffman*); O'Donovan, *supra* note 11, at 304; see also *Hoffman*, 535 U.S. at 152 (noting need for congressional action to address perceived deficiencies in NLRA's existing arsenal). The Court also left open the question of whether awarding backpay to undocumented aliens constitutes a prohibited punitive remedy. See *id.*

⁶⁰ The California Legislature created the workers' compensation system to compensate all workers for injuries suffered on the job, regardless of fault. See CAL. CONST. art. XIV, § 4.

⁶¹ *Id.* (vesting legislature with plenary power to create and enforce complete system of workers' compensation). The workers' compensation system aims to compensate all workers for injuries and disabilities sustained while working. *Id.*; see also CAL. LAB. CODE § 3207 (West 2003) (defining "compensation" to include every benefit paid to injured employee regardless of negligence). See generally *id.* § 3202 (West 2003) (construing workers' compensation laws liberally to cover all persons injured during course of employment).

⁶² CAL. CONST. art. XIV, § 4; cf. CAL. LAB. CODE § 4600 (West 2003 & Supp. 2008) (recognizing employer's duty to provide treatment to injured workers and enumerating employee's rights to workers' compensation benefits).

⁶³ § 4600 (providing that injured employee can claim medical, surgical, chiropractic, acupuncture, and hospital treatment required to cure injuries incurred during employment); see also *Sea-Land Serv., Inc. v. Workers' Comp. Appeals Bd.*, 925 P.2d 1309, 1314 (Cal. 1996) (noting WCA's purpose of furnishing complete workers' compensation system). The system includes full provisions for medical, surgical, hospital, and other remedial treatment. *Id.*

⁶⁴ See *Portillo v. G.T. Price Prod., Inc.*, 182 Cal. Rptr. 291, 293 (Ct. App. 1982) (noting state legislature designed WCA to afford workers quick determination of injury claims).

The goals of the WCA are remedial and humanitarian.⁶⁵ The California Legislature designed the WCA to protect workers from economic hardships posed by industrial injuries.⁶⁶ From its inception, the WCA's principal purpose has been to eliminate employers' defenses preventing recovery for injuries sustained on the job.⁶⁷

In 2003, the California Legislature amended the WCA in response to *Hoffman*.⁶⁸ It enacted section 1171.5 of the California Labor Code to limit *Hoffman*'s potential effect on state labor and civil rights laws.⁶⁹ Under this section, immigration status is irrelevant to an employer's obligation to compensate an injured employee.⁷⁰ Section 1171.5 also prohibits using a person's immigration status as a basis for denying remedies.⁷¹ Finally, it provides an exception to this prohibition when inquiry into the worker's status is necessary to comply with federal immigration law.⁷²

Section 1171.5 strengthens the position of undocumented workers against employers who rely on *Hoffman* to avoid workplace violation claims and workers' compensation awards.⁷³ Following the Court's decision in *Hoffman*, employers argued undocumented workers were

⁶⁵ See *Bartlett Hayward Co. v. Indus. Accident Comm'n*, 265 P. 195, 198 (Cal. 1928). See generally *Livitsanos v. Superior Court*, 828 P.2d 1195, 1201 (Cal. 1992) (noting WCA's basic purpose of compensating for disabled worker's diminished ability to compete in open labor market); *Laeng v. Workers' Comp. Appeals Bd.*, 494 P.2d 1, 8 (Cal. 1972) (noting WCA's fundamental purpose to provide protection against special risks of employment).

⁶⁶ See *Republic Indem. Co. of Am. v. Workers' Comp. Appeals Bd.*, 187 Cal. Rptr. 636, 639 (Ct. App. 1982) (noting purpose of workers' compensation scheme to impose duty of compensating employees as cost of doing business).

⁶⁷ See *Hisel v. County of L.A.*, 238 Cal. Rptr. 678, 682 (Ct. App. 1987) (recognizing principal purpose of workers' compensation is to eliminate common law defenses preventing recovery for work-related injuries).

⁶⁸ See *Undocumented Workers: Hearing on S.B. 1818 Before the S. Comm. on Labor and Industrial Relations*, 107th Cong. 1 (2002) [hereinafter *Undocumented Workers Hearing*] (statement of Patrick W. Henning, Consultant, Sen. Comm. on Labor and Industrial Relations), available at http://www.leginfo.ca.gov/pub/01-02/bill/sen/sb_1801-1850/sb_1818_cfa_20020514_164726_sen_comm.html (noting WCA's purpose to limit potential effects of *Hoffman*). California later codified Senate Bill 1818 as California Labor Code § 1171.5. *Accord Farmers Bros. Coffee v. Workers' Comp. Appeals Bd.*, 35 Cal. Rptr. 3d 23, 28-29 (Ct. App. 2005); see *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1073 (9th Cir. 2004).

⁶⁹ See *Undocumented Workers Hearing*, *supra* note 68, at 1.

⁷⁰ CAL. LAB. CODE § 1171.5(b) (West 2003).

⁷¹ *Id.*; see also *Undocumented Workers Hearing*, *supra* note 68, at 2.

⁷² § 1171.5(b).

⁷³ See generally *Undocumented Workers Hearing*, *supra* note 68, at 2 (noting *Hoffman*'s potential effect of undercutting state remedies for illegal labor practices).

no longer entitled to labor rights in the workplace.⁷⁴ By expressly forbidding an inquiry into a person's immigration status, section 1171.5 preserves not only entitlements but also civil remedies for all workers.⁷⁵

D. *The Supremacy Clause and Preemption Principles*

The broad authority of states to enact general welfare laws is subject to federal intrusion in certain instances.⁷⁶ The Constitution's Supremacy Clause requires courts to disregard state law if it contradicts a rule established by federal law.⁷⁷ It provides valid federal laws take precedence over all other laws.⁷⁸ Under preemption principles, a state law must yield to the federal statute when the state law conflicts with the federal statute.⁷⁹ Preemption ultimately depends on Congress's intent in enacting a federal statute.⁸⁰ Unless preemption is the clear and manifest purpose of Congress, courts presume a federal statute does not supersede a state's broad power to legislate.⁸¹

⁷⁴ MALDEF, *supra* note 41, at 2-7 (detailing post-*Hoffman* employer challenges to labor law protections for undocumented workers); *see, e.g.*, *Renteria v. Italia Foods*, No. 02-C-495, 2003 WL 21995190, at *6 (N.D. Ill. Aug. 21, 2003) (noting undocumented workers cannot recover under Fair Labor Standards Act); *In re Tuv Taam Corp.*, 340 N.L.R.B. 756, 761 (2003) (rejecting employer's claim that social security no-match letter proved immigration fraud and limited worker's remedies under NLRA); *see also* Nancy Cleeland, *Employers Test Ruling on Immigrants*, L.A. TIMES, Apr. 22, 2002, at C1 (noting employers are testing *Hoffman's* limits and using it to avoid workers' compensation awards).

⁷⁵ *Undocumented Workers Hearing*, *supra* note 68, at 2.

⁷⁶ *See, e.g.*, *Miller v. Bd. of Pub. Works of L.A.*, 234 P. 381, 383 (Cal. 1925) (recognizing state's police power as indispensable, although not illimitable, prerogative of sovereignty); *Frost v. City of L.A.*, 183 P. 342, 345 (Cal. 1919) (holding constitutional provisions limit state legislature's police power); *see also* *State Bd. of Dry Cleaners v. Thrift-D-Lux Cleaners, Inc.*, 254 P.2d 29, 31 (Cal. 1953) (suggesting state can impose police powers only when legislative purpose for public good exists).

⁷⁷ *See* U.S. CONST. art. VI, cl. 2; *see also* Caleb Nelson, *Preemption*, 86 VA. L. REV. 225, 260 (2000) (providing extensive discussion and analysis of Supremacy Clause and preemption doctrines).

⁷⁸ U.S. CONST. art. VI, cl. 2.

⁷⁹ *Id.*; *Correales*, *supra* note 3, at 371-72; *see* *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 237-38 (2d Cir. 2006).

⁸⁰ *Correales*, *supra* note 3, at 372; *see also* *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

⁸¹ *See* *Cippolone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992); *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978); *cf.* *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963) (stating Congress may displace state power under its commerce power).

Congress can preempt state law either by express statutory language or by establishing a federal scheme that implicitly preempts state law.⁸² Express preemption occurs when Congress includes a preemption clause in the federal statute.⁸³ By using explicit preemptive language, Congress directly manifests its intent to supersede state law.⁸⁴ In doing so, it indicates its intent to limit preemptive reach while still allowing courts to look beyond statutory language to determine legislative intent when such language is ambiguous.⁸⁵

Implied preemption, on the other hand, involves analyzing in its totality the federal statute's language and legislative history.⁸⁶ The Supreme Court has set forth three tests to determine if a federal statute implicitly preempts state law.⁸⁷ First, courts ask whether the federal regulation scheme is so pervasive that one can reasonably infer Congress left no room for supplemental state action.⁸⁸ Second, courts determine whether the federal statute touches a field where the federal interest is so dominant that it precludes state laws on the same

⁸² See *Jones*, 430 U.S. at 525. See generally *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654 (1996) (noting Supremacy Clause may entail preemption by express provision or implication); *Balbuena v. IDR Realty LLC*, 845 N.E.2d 1246, 1255-57 (N.Y. 2006) (discussing principles of express preemption, field preemption, and conflict preemption).

⁸³ *Correales*, *supra* note 3, at 372; see, e.g., *Sprietsma v. Mercury Marine*, 537 U.S. 51, 62-63 (2002) (stating court must focus on plain wording of clause because it contains best evidence of Congress's preemptive intent); *Ass'n of Int'l Auto. Mfrs., Inc. v. Abrams*, 84 F.3d 602, 607 (2d Cir. 1996) (noting express preemption occurs when federal statute expressly ousts state law from certain fields).

⁸⁴ See *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 31 (1996).

⁸⁵ See *O'Donovan*, *supra* note 11, at 311 (observing express preemption clause supports inference that Congress did not intend to preempt other matters, although possibility of implied preemption was not entirely foreclosed (citing *Freightliner Corp. v. Myrick*, 514 U.S. 280, 288-89 (1995))); see also *Cal. Fed. Savs. & Loan Ass'n v. Guerra*, 479 U.S. 272, 282 (1987); *Malone*, 435 U.S. at 505.

⁸⁶ *Correales*, *supra* note 3, at 372; see *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 251-56 (1984). See generally *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 605 (1991) (noting possible implications of Congress's intent to supersede state law).

⁸⁷ See generally *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (recognizing congressional command compels federal preemption whether such command is explicitly stated in statute or implicitly contained in structure); *Wis. Pub. Intervenor*, 501 U.S. at 605 (suggesting one can implicitly draw congressional preemptive intent from various factors); *Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 581 (1987) (holding federal law preempts state law if Congress signifies intent to occupy entire field or if state law conflicts with federal law).

⁸⁸ See *Cippolone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992); *Wis. Pub. Intervenor*, 501 U.S. at 605; *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 239 (2d Cir. 2006).

subject.⁸⁹ Lastly, courts inquire whether enforcing the state statute presents a serious conflict with administering the federal program.⁹⁰

In interpreting statutory language, courts generally presume that no preemption exists in areas traditionally occupied by states.⁹¹ States possess broad authority to regulate employment relationships and protect workers within their jurisdiction.⁹² This authority includes the power to enact laws in areas of local concern such as occupational health and safety.⁹³ The Court has stated that in the absence of persuasive reasons, courts should not deem federal laws preemptive of such state regulatory power.⁹⁴

In employing canons of statutory construction, courts also give statutes their plain and ordinary meaning unless it is clear Congress intended a different meaning.⁹⁵ Courts must construe a plainly

⁸⁹ See *Pennsylvania v. Nelson*, 350 U.S. 497, 504 (1956); see also *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990); *Madeira*, 469 F.3d at 239.

⁹⁰ *Nelson*, 350 U.S. at 505; see *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963); see also *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941).

⁹¹ See *Dowling v. Slotnik*, 712 A.2d 396, 404 (Conn. 1998) (citing *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989)); see also *N.Y. Tel. Co. v. N.Y. State Dep't of Labor*, 440 U.S. 519, 540 (1979) (stating courts will not infer deprivation of state's power to legislate unless compelling congressional direction exists); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (acknowledging assumption that federal acts do not supersede state police powers unless Congress clearly manifests such purpose).

⁹² See *De Canas v. Bica*, 424 U.S. 351, 356 (1976). See generally *Jones*, 430 U.S. at 525 (suggesting states have broad historic powers to legislate on matters involving public safety); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (stating courts assume federal acts do not supersede broad historic police powers of states).

⁹³ *Balbuena v. IDR Realty LLC*, 845 N.E.2d 1246, 1255 (N.Y. 2006); see *Dowling*, 712 A.2d at 404; see also *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985); cf. *Rice*, 331 U.S. at 230, 237 (noting Congress legislated in field traditionally occupied by states in enacting Federal Warehouse Act). See generally *O'Donovan*, *supra* note 11, at 308 (noting state has authority to regulate health and safety).

⁹⁴ See *Fla. Lime & Avocado Growers*, 373 U.S. at 142. See generally *N.Y. Tel. Co.*, 440 U.S. at 540 (noting courts will not infer deprivation of states' power to legislate without compelling congressional direction); *Jones*, 430 U.S. at 525 (assuming no federal preemption exists absent clear congressional intent in cases involving states' historic police powers).

⁹⁵ See *ERC Contractor Yard & Sales v. Robertson*, 977 S.W.2d 212, 215 (Ark. 1998); see also *Dodd v. United States*, 545 U.S. 353, 357, 359 (2005); *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183-84 (2004); *Collazos v. United States*, 368 F.3d 190, 196 (2d Cir. 2004); *Alpha Beta Acme Mkts., Inc. v. City of Whittier*, 68 Cal. Rptr. 327, 331 (Ct. App. 1968). See generally *White v. Ultramar, Inc.*, 981 P.2d 944, 950-51 (Cal. 1999) (stating court must use settled canons of construction to ascertain legislative intent and give statutory words their usual and ordinary meaning); *Glaser v. Rothschild*, 120 S.W. 1, 12 (Mo. 1909) (noting all canons of construction rest on common principle that court must ascertain legislative intent); *State v. Gen. Daniel*

worded statute without using forced or subtle interpretations to extend or limit its scope.⁹⁶ They look to legislative intent only when rational disposition requires further interpretation of statutory language.⁹⁷ Thus, courts use these settled canons of statutory construction to ascertain the true intent of Congress in enacting IRCA.⁹⁸

State courts that have analyzed the potential conflict between IRCA and state workers' compensation laws have consistently concluded that IRCA does not preempt state law.⁹⁹ In deciding *Farmers Bros.*, the Second District of the California Court of Appeal joined other states in recognizing undocumented workers' entitlement to workers' compensation benefits.¹⁰⁰ It upheld a construction of the state workers' compensation scheme that provided coverage for all employees injured on the job.¹⁰¹

Morgan Post No. 548, 107 S.E.2d 353, 358 (W. Va. 1959) (noting legislative intent controls statutory interpretation, and courts must ascertain intent from statutory provisions using sound, well-established canons of construction).

⁹⁶ See *Tucker v. Fireman's Fund Ins. Co.*, 517 A.2d 730, 732 (Md. 1986) (recognizing no need for canons of construction or clarification where statutory provisions are clear and unambiguous); *Lombardi v. Montgomery County*, 673 A.2d 762, 766 (Md. Ct. Spec. App. 1996) (requiring courts to construe plainly worded statutes without forced or subtle interpretations extending or limiting scope). See generally cases cited *supra* note 95 (noting courts give unambiguous statutes their plain and ordinary meaning).

⁹⁷ See *Pickering v. Pickering*, 706 N.W.2d 835, 839 (Mich. Ct. App. 2005) (noting impermissibility of judicial construction when legislature unambiguously conveys intent in statute); see also *In re Orso*, 283 F.3d 686, 693 (5th Cir. 2002) (stating courts need not go behind statute's terms to ascertain legislative intent when statute is unambiguous); *Can. Life Assurance Co. v. Converium Ruckerversicherung AG*, 210 F. Supp. 2d 322, 326 (S.D.N.Y. 2002) (stating courts may apply canons of statutory interpretation and review legislative history to resolve ambiguity).

⁹⁸ See *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 231-33 (2d Cir. 2006); *Farmers Bros. Coffee v. Workers' Comp. Appeals Bd.*, 35 Cal. Rptr. 3d 23, 27 (Ct. App. 2005); *Dowling*, 712 A.2d at 410-11.

⁹⁹ See cases cited *supra* notes 57-58 (finding workers' compensation coverage extends to undocumented workers); see also *Farmers Bros.*, 35 Cal. Rptr. 3d at 27; *Dowling*, 712 A.2d at 405; *Reinforced Earth Co. v. Workers' Comp. Appeals Bd.*, 749 A.2d 1036, 1038 (Pa. Commw. Ct. 2000), *superseded by statute*, 77 PA. CONS. STAT. ANN. § 512 (West 2004), *as recognized in* *DDP Contracting, Inc. v. Workers' Comp. Appeals Bd.*, 808 A.2d 592, 595 n.7 (Pa. Commw. Ct. 2002).

¹⁰⁰ See cases cited *supra* note 5 (noting similar decisions upholding coverage of undocumented workers in other states); discussion *infra* Part II (discussing facts, procedural posture, holding, and rationale in *Farmers Bros.*); see also *Dowling*, 712 A.2d at 403; *DDP Contracting*, 808 A.2d at 595-96.

¹⁰¹ See *Smith v. Workers' Comp. Appeals Bd.*, 116 Cal. Rptr. 2d 728, 740 (Ct. App. 2002) (recognizing that courts should construe workers' compensation scheme in

II. *FARMERS BROS. COFFEE V. WORKERS' COMPENSATION APPEALS BOARD*

The *Farmers Bros.* decision confronted the tension between federal immigration policy and state labor laws.¹⁰² The Second District of the California Court of Appeal determined IRCA did not preempt sections 1171.5 and 3351 of the California Labor Code.¹⁰³ It also clarified the statutory definition of “employee” for state workers’ compensation purposes.¹⁰⁴

The factual background of *Farmers Bros.* highlights the disputes that have become common since the Supreme Court’s decision in *Hoffman*.¹⁰⁵ Rafael Ruiz, a worker who had entered the United States illegally, claimed to suffer multiple injuries from repeatedly lifting heavy coffee bean sacks.¹⁰⁶ Ruiz’s employer, Farmers Brothers Coffee (“FBC”), denied him workers’ compensation benefits and refused to pay his medical bills.¹⁰⁷ FBC argued Ruiz was not entitled to benefits because he was working illegally and thus was not an employee for statutory purposes.¹⁰⁸ The Workers’ Compensation Appeals Board (“Board”) disagreed, ruling Ruiz was an employee under sections 3351(a) and 3357 of the California Labor Code.¹⁰⁹

FBC then filed a petition for reconsideration with the Board.¹¹⁰ It argued that IRCA superseded the California Labor Code provision making immigration status irrelevant to the issue of liability under state labor laws.¹¹¹ FBC further contended Ruiz had violated section 1871.4 of the California Insurance Code by fraudulently obtaining

favor of coverage whenever possible).

¹⁰² See generally *Farmers Bros.*, 35 Cal. Rptr. 3d at 23; discussion *infra* Part II (discussing decision of *Farmers Bros.*).

¹⁰³ *Farmers Bros.*, 35 Cal. Rptr. 3d at 25. The Labor Code sections at issue in *Farmers Bros.*, collectively known as the Workers’ Compensation Act (“WCA”), specifically address workers’ compensation for undocumented workers in California. See CAL. LAB. CODE §§ 3351(a), 3357 (West 2003).

¹⁰⁴ *Farmers Bros.*, 35 Cal. Rptr. 3d at 30-31.

¹⁰⁵ See sources cited *supra* note 74 (noting various arguments used to extend *Hoffman*’s application beyond NLRA backpay awards).

¹⁰⁶ *Farmers Bros.*, 35 Cal. Rptr. 3d at 25.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*; see also CAL. LAB. CODE §§ 3351(a), 3357 (West 2003). Section 3351(a) states “employee” includes every person serving an employer under any appointment or contract. It specifically includes aliens and minors. § 3351(a). Section 3357 presumes any person rendering services for another to be an employee unless such person is an independent contractor. § 3357.

¹¹⁰ *Farmers Bros.*, 35 Cal. Rptr. 3d at 25.

¹¹¹ *Id.*; see also CAL. LAB. CODE § 1171.5 (West 2003).

employment.¹¹² The Board rejected FBC's contentions and denied the petition.¹¹³ FBC appealed the Board's order and the court of appeal granted review.¹¹⁴

The court held that IRCA does not preempt an undocumented worker's eligibility for benefits under state labor law.¹¹⁵ Congress plainly stated that IRCA preempts state laws imposing civil and criminal sanctions.¹¹⁶ The court concluded the relevant state law does not conflict with IRCA's express preemption provision because none of the relevant California Labor Code provisions impose civil or criminal sanctions.¹¹⁷

The court noted Congress did not intend IRCA's employer sanction provisions to undermine state labor protections.¹¹⁸ Recognizing congressional purpose as the ultimate touchstone of preemption analysis, the court looked to committee reports to ascertain congressional intent.¹¹⁹ Pointing to Congress's statement that IRCA is not aimed at limiting states' ability to remedy unfair practices, the court found no clear preemptive intent.¹²⁰

Moreover, the *Farmers Bros.* court affirmed the view that the Constitution clearly recognizes the supremacy of federal powers in regulating immigration.¹²¹ The court noted that regulating immigration is unquestionably an exclusive federal power.¹²² It cautioned, however, that the mere fact a state statute covers immigrants does not render it a regulation of immigration.¹²³ Specifically, the court found Congress had not occupied the legislative

¹¹² *Farmers Bros.*, 35 Cal. Rptr. 3d at 25; see also CAL. INS. CODE § 1871.4 (West 2005) (criminalizing act of knowingly false or fraudulent material representation to obtain workers' compensation benefits).

¹¹³ *Farmers Bros.*, 35 Cal. Rptr. 3d at 25-26.

¹¹⁴ *Id.* at 26.

¹¹⁵ *Id.* at 27.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 230 (2d Cir. 2006); see, e.g., *United Shoe Mach. Corp. v. United States*, 347 U.S. 521, 521 (1954) (recognizing Congress's plenary power to regulate immigration and set standards for aliens, even if standards would be constitutionally suspect in domestic policy setting); *Rodriguez v. INS*, 9 F.3d 408, 413 (5th Cir. 1993) (recognizing Congress's unbounded power in regulating immigration).

¹²² *Farmers Bros.*, 35 Cal. Rptr. 3d at 28 (citing *De Canas v. Bica*, 424 U.S. 351, 354-55 (1976)).

¹²³ *Id.*

field of workers' compensation because IRCA neither prohibits nor provides compensation for injured workers.¹²⁴

The court also noted the state legislature sought to avoid any conflict by making an employee's immigration status irrelevant to his workers' compensation claim.¹²⁵ If compensation benefits depended on employees' work authorization, courts could deny benefits based solely on immigration status.¹²⁶ The court stated such a system would frustrate the remedial purposes of workers' compensation laws.¹²⁷

In concluding federal immigration law does not preempt the WCA, the *Farmers Bros.* court focused on the effects of section 1171.5.¹²⁸ Section 1171.5 allows an inquiry into immigration status only when necessary to comply with federal law.¹²⁹ Providing this exception shows the WCA's compliance with IRCA.¹³⁰ The court held that the WCA comports with IRCA's goal of reducing incentives for hiring undocumented workers by permitting inquiries to uphold federal law.¹³¹

III. ANALYSIS

The California Court of Appeal correctly decided *Farmers Bros.* for several reasons.¹³² First, a reasonable construction of IRCA does not support preemption of state workers' compensation laws because its language fails to reveal clear preemptive intent. Second, the court's decision is consistent with *Hoffman's* central holding and intended effects. A plain reading of *Hoffman* does not put IRCA in conflict with the WCA. Finally, the court's decision protects California's interest in maintaining a safe workplace without undermining federal immigration policy goals. Therefore, the application of preemption principles in *Farmers Bros.* reveals IRCA does not preempt the WCA.

¹²⁴ *Id.*

¹²⁵ *Id.* at 27-29; see *Undocumented Workers Hearing*, note 68, at 1.

¹²⁶ *Farmers Bros.*, 35 Cal. Rptr. 3d at 28.

¹²⁷ *Id.*

¹²⁸ *Id.* at 28-30.

¹²⁹ CAL. LAB. CODE § 1171.5 (West 2003).

¹³⁰ *Farmers Bros.*, 35 Cal. Rptr. 3d at 28-29.

¹³¹ *Id.*

¹³² See discussion *infra* Part III (arguing IRCA does not preempt WCA).

A. Farmer Bros. *Correctly Holds IRCA's Construction Does Not Preempt the WCA*

IRCA's structure gives no indication Congress intended to preempt state laws that benefit undocumented workers.¹³³ Congress has repeatedly acknowledged states' authority to regulate labor practices.¹³⁴ It considered the consequences of creating an unprotected secondary workforce in enacting IRCA.¹³⁵ In doing so, Congress refused to limit a state's power to remedy violations of state labor laws.¹³⁶ It maintained labor protections for undocumented workers by limiting the scope of IRCA's express preemption provision to state-imposed civil and criminal sanctions.¹³⁷

IRCA does not expressly preempt workers' compensation claims because its preemption provision applies only to penalties imposed for hiring undocumented workers.¹³⁸ IRCA's express provision preempts state laws that impose civil or criminal sanctions upon employers who hire unauthorized workers.¹³⁹ Plainly, this provision only preempts states from punishing employers who hire undocumented workers.¹⁴⁰ It does not prevent states from imposing penalties for other

¹³³ See *NLRB v. Fuel Oil Buyers Group, Inc.*, 134 F.3d 50, 55 (2d Cir. 1997), *abrogated by* *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002); *see also* *United States v. Todd Corp.*, 900 F.2d 164, 165 (9th Cir. 1990) (recognizing Congress's desire to protect persons already residing in United States for many years regardless of unlawful status).

¹³⁴ See *Dowling v. Slotnik*, 712 A.2d 396, 403 (Conn. 1998); H.R. REP. NO. 99-682, pt. 1, at 58 (1986), *as reprinted in* 1986 U.S.C.A.N. 5649, 5662 (stating House Committee on Judiciary's intention not to reduce existing labor protections for workers).

¹³⁵ H.R. REP. NO. 99-682, pt. 1 at 58; *see Fuel Oil Buyers*, 134 F.3d at 55 (recognizing IRCA's legislative history shows intent to preserve state labor protections); *see also Todd Corp.*, 900 F.2d at 165.

¹³⁶ See H.R. REP. NO. 99-682, pt. 1, at 58.

¹³⁷ See *id.* (stating IRCA preempts only state or local laws providing fines and criminal sanctions for hiring, recruiting, and referring undocumented aliens).

¹³⁸ See *Dowling*, 712 A.2d at 403 (noting IRCA's express preemption provision only prohibits states from imposing civil sanctions upon those who employ undocumented workers).

¹³⁹ 8 U.S.C. § 1324a (2000 & Supp. V 2005).

¹⁴⁰ See *Dowling*, 712 A.2d at 403; *see also Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 237-38 (2d Cir. 2006) (finding no basis for concluding Congress intended to preempt state law allowing compensation of lost earnings in personal injury cases); *Farmers Bros. Coffee v. Workers' Comp. Appeals Bd.*, 35 Cal. Rptr. 3d 23, 27 (Ct. App. 2005) (noting IRCA contains no preemption language expressly affecting state workers' compensation laws).

purposes.¹⁴¹ Indeed, IRCA is silent as to its preemptive effect with respect to other state laws.¹⁴²

IRCA preempts state sanctions imposed “upon” those who employ undocumented aliens.¹⁴³ “Upon” is synonymous with “on,” a preposition indicating “connection, association, or cooperation with” a specific event.¹⁴⁴ “Upon” also signifies an event occurring “on the occasion of” some other situation.¹⁴⁵ In using “upon,” Congress signaled its intent to limit IRCA’s preemption provision to state sanctions addressing the employment of undocumented workers.¹⁴⁶ Read in this context, IRCA’s preemption provision does not supersede state sanctions imposed for other reasons.¹⁴⁷

Construing IRCA’s express preemption provision otherwise would lead to absurd results.¹⁴⁸ If courts read IRCA to prohibit state sanctions on those who employ undocumented workers for other purposes, IRCA would effectively bar states from imposing many other fines on employers.¹⁴⁹ For instance, if IRCA preempted state sanctions imposed for other reasons besides unlawful hiring, it would forbid penalties on a

¹⁴¹ See *supra* note 140.

¹⁴² See *Madeira*, 469 F.3d at 231-32.

¹⁴³ § 1324a.

¹⁴⁴ AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1890 (4th ed. 2000).

¹⁴⁵ *Id.*

¹⁴⁶ Although courts have not used this argument widely, the Connecticut Supreme Court used a similar argument in reversing denial of workers’ compensation to illegal aliens. See *Dowling v. Slotnik*, 712 A.2d 396, 403 (Conn. 1998). See generally *Owasso Indep. Sch. Dist. v. Falvo*, 534 U.S. 426 (2002) (recognizing courts must read words of statute in light of their place in overall statutory scheme); *United States v. Awadallah*, 349 F.3d 42 (2d Cir. 2003) (noting plain meaning of statute controls construction when statutory language is clear).

¹⁴⁷ § 1324a. This statement follows logically from the statutory language when one plainly and narrowly interprets IRCA. See generally *id.* (stating preemption provision applies to state or local laws imposing sanctions on employers for hiring unauthorized aliens).

¹⁴⁸ See *Dowling*, 712 A.2d at 403 (noting alternate construction would prevent state official from imposing traffic fine on person who employs undocumented workers). See generally *NLRB v. Wheeling Elec. Co.*, 444 F.2d 783, 787 (4th Cir. 1971) (suggesting courts should avoid statutory construction that produces absurd results); *O’Donovan*, *supra* note 11, at 308-15 (alluding to implausible results if courts construe IRCA in favor of preempting state workers’ compensation laws).

¹⁴⁹ This hypothetical follows from the example provided by the court in *Dowling*, 712 A.2d at 403.

negligent employer.¹⁵⁰ Such a result would clearly contradict congressional statements about IRCA's limited preemptive reach.¹⁵¹

IRCA's preemption provision is inapplicable to workers' compensation benefits because one cannot reasonably describe such benefits as a "sanction."¹⁵² A sanction is a penalty or coercive measure resulting from one's failure to comply with a rule or law.¹⁵³ The California Legislature created the WCA to compensate workers for injuries arising from employment without regard to fault.¹⁵⁴ It awards workers' compensation benefits to encourage workplace safety by providing injured employees a prompt guarantee of subsistence.¹⁵⁵ These compensatory remedies differ from sanctions in purpose and function; therefore, no clear and direct preemption of the WCA exists.¹⁵⁶

IRCA's regulation scheme does not support preemption of state labor laws because it deals with only one narrow aspect of immigrant employment.¹⁵⁷ IRCA simply prohibits the hiring of undocumented

¹⁵⁰ This scenario has not occurred to my knowledge. Broadly construing IRCA's preemption provision would bar states from imposing sanctions on those employing undocumented workers even if sanctions were unrelated to unlawful hiring. *See id.* at 403. This result is untenable. *See generally id.* (noting proscription of benefits to undocumented workers is unpersuasive in workers' compensation context).

¹⁵¹ *See* discussions *supra* Parts I.A, III.A (discussing legislative history of IRCA); *see also* H.R. REP. NO. 99-682, pt. 1, at 58 (1986), *as reprinted in* 1986 U.S.C.C.A.N. 5649, 5662. The committee report further manifested Congress's intent that IRCA penalties preempt only a narrow class of state laws. *See id.*

¹⁵² *See generally infra* notes 153-56 and accompanying text (arguing workers' compensation benefits are distinguishable from sanctions).

¹⁵³ BLACK'S LAW DICTIONARY 1368 (8th ed. 2004). *See generally* 5 U.S.C. § 551 (2000) (defining sanction as prohibition, requirement, or limitation affecting personal freedom; withholding relief; or imposition of penalty or fine). The *American Heritage Dictionary* defines "sanction" as a penalty in the form of moral pressure ensuring compliance or conformity. AMERICAN HERITAGE DICTIONARY, *supra* note 144, at 1827.

¹⁵⁴ *See* CAL. CONST. art. XIV, § 4.

¹⁵⁵ *See* 65.1 CAL. JUR. 3D *Work Injury Compensation* § 2 (2006). *See generally* *Claxton v. Waters*, 96 P.3d 496 (Cal. 2004) (noting legislature founded workers' compensation law on no-fault rationale to ensure state quickly provides industrial relief to injured workers); *Lopez v. C.G.M. Dev., Inc.*, 124 Cal. Rptr. 2d 227, 235 (Ct. App. 2002) (recognizing workers' compensation system shifts cost of industrial injuries to employer and provides employee with prompt, limited compensation).

¹⁵⁶ *See generally* *Dowling v. Slotnik*, 712 A.2d 396, 403 (Conn. 1998) (concluding IRCA's express provision does not preempt workers' compensation awards).

¹⁵⁷ *See* O'Donovan, *supra* note 11, at 309. *See generally* *Farmers Bros. Coffee v. Workers' Comp. Appeals Bd.*, 35 Cal. Rptr. 3d 23, 28 (Ct. App. 2005) (finding IRCA does not preempt WCA because IRCA neither provides nor prohibits compensation for injured workers); *Dowling*, 712 A.2d at 403 (concluding IRCA does not impliedly preempt state labor laws).

workers.¹⁵⁸ Furthermore, it provides no penalties for undocumented workers who accept employment in the United States.¹⁵⁹ Thus, IRCA does not directly preempt state workers' compensation laws; it regulates only immigration and not labor.¹⁶⁰

Some argue that IRCA's regulation scheme reasonably supports a finding of implied preemption.¹⁶¹ They maintain that IRCA does not foreclose preemption simply because it contains no express provision preempting state workers' compensation laws.¹⁶² Congress left no doubt it sought to curtail the employment of undocumented workers in enacting IRCA.¹⁶³ Under IRCA's regime, it is therefore impossible for an undocumented worker to obtain employment without directly contravening congressional policies.¹⁶⁴

¹⁵⁸ See *supra* note 157.

¹⁵⁹ See *supra* note 157.

¹⁶⁰ See discussion *supra* Part I.A (discussing goals and purpose of IRCA); *cf.* *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 481 (1991) (recognizing IRCA constituted major response to problem of illegal immigration); *Montero v. INS*, 124 F.3d 381, 384 (2d Cir. 1997) (noting IRCA's goal of reducing illegal immigration into United States); *Etuk v. Slattery*, 936 F.2d 1433, 1437 (2d Cir. 1991) (finding IRCA partly regulates participation in federal programs); *Patel v. Quality Inn S.*, 846 F.2d 700, 704 (11th Cir. 1988) (stating IRCA regulates immigration and eliminates economic incentive to hire undocumented aliens). See generally 8 U.S.C. §§ 1101, 1324a (2000) (outlining general penalty provisions for unlawful employment of unauthorized aliens).

¹⁶¹ See *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (finding implied preemption where complying with both federal and state requirements is impossible). See generally *Dowling*, 712 A.2d at 415 (McDonald, J., dissenting) (arguing compensation benefit award to undocumented worker runs counter to IRCA policies); *Balbuena v. IDC Realty LLC*, 845 N.E.2d 1246, 1263-65 (N.Y. 2006) (Smith, J., dissenting) (arguing court should not provide workers' compensation benefits to illegal workers because IRCA preempts state workers' compensation law).

¹⁶² See *Dowling*, 712 A.2d at 415 (McDonald, J., dissenting) (noting possibility of implied preemption). See generally *Freightliner*, 514 U.S. at 287 (finding implied preemption of state labor law); *Balbuena*, 845 N.E.2d at 1263-65 (Smith, J., dissenting) (suggesting IRCA preempts state workers' compensation law).

¹⁶³ See discussion *supra* Part I.A (noting IRCA's ultimate goal of reducing incentives to hire illegal aliens); see also *McNary*, 498 U.S. at 481; H.R. REP. NO. 99-1000, pt. 1, at 85 (1986), as reprinted in U.S.C.C.A.N. 5840, 5840; H.R. REP. NO. 99-682, pt. 1, at 45 (1986), as reprinted in 1986 U.S.C.C.A.N. 5649, 5649-50.

¹⁶⁴ See *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 140-48 (2002) (awarding compensation benefits to undocumented workers contravenes federal immigration policy); *Balbuena*, 845 N.E.2d at 1260 (noting undocumented worker subverts IRCA's enforcement mechanism by tendering fraudulent identification). See generally *Dowling*, 712 A.2d at 415 (McDonald, J., dissenting) (arguing workers' compensation award to undocumented worker undermines federal immigration policy).

Courts find implied preemption when state law stands as an obstacle to accomplishing the objectives of Congress.¹⁶⁵ Those who support a finding of implied preemption point to subversion of IRCA's enforcement mechanism when a worker provides fraudulent authorization documents.¹⁶⁶ An employer likewise ignores his IRCA obligations when he hires an undocumented worker.¹⁶⁷ In these situations both parties contradict the policies underlying IRCA and undermine its ultimate goal of reducing illegal immigration.¹⁶⁸ Thus, supporters of implied preemption argue that IRCA preempts workers' compensation laws because these laws hinder Congress from effectively reducing illegal immigration.¹⁶⁹

Supporters of implied preemption further argue that allowing recovery for workers' compensation under such circumstances rewards a person for violating immigration law.¹⁷⁰ The *Hoffman* Court emphasized federal immigration policy forecloses certain awards to undocumented workers because federal laws prevent them from legally obtaining work.¹⁷¹ Awarding workers' compensation benefits to undocumented workers contradicts federal immigration policy because it provides recovery for unlawfully acquired work.¹⁷²

¹⁶⁵ See *Gade v. Nat'l Solid Waste Mgmt. Ass'n*, 505 U.S. 88, 98 (1992); *Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 598 (1991); *Cal. Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 581 (1987).

¹⁶⁶ See *Hoffman*, 535 U.S. at 148; see also *Balbuena*, 845 N.E.2d at 1264 (Smith, J., dissenting) (noting undocumented worker contravenes federal immigration policy when tendering fraudulent documents). See generally 8 U.S.C. § 1324c (2000) (penalizing individuals who subvert employment verification system by tendering fraudulent documents).

¹⁶⁷ See generally *supra* note 166 (noting workers' compensation awards to unauthorized aliens conflicts with federal immigration policy).

¹⁶⁸ See *Hoffman*, 535 U.S. at 148-49; see also discussion *supra* Part I.A (discussing goals and policies of IRCA). See generally *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 231 (2d Cir. 2006) (recognizing IRCA effectively solves illegal immigration problem); *Dowling*, 712 A.2d at 402 (recognizing IRCA's goal of reducing incentives for employers to hire illegal aliens).

¹⁶⁹ See *Hoffman*, 535 U.S. at 148-49. See generally *supra* note 166 (awarding workers' compensation benefits to undocumented workers conflicts with federal immigration policy).

¹⁷⁰ See generally *Balbuena*, 845 N.E.2d at 1261, 1263-65 (Smith, J., dissenting) (describing how awarding benefits to undocumented workers undermines federal immigration policy).

¹⁷¹ See *id.* at 1264-65; see also *Hoffman*, 535 U.S. at 148-49.

¹⁷² See *Hoffman*, 535 U.S. at 148-49. See generally note 166 (discussing arguments for implied preemption of state workers' compensation laws).

Therefore, IRCA impliedly preempts state workers' compensation laws because such laws defeat congressional objectives.¹⁷³

An implied preemption argument ultimately fails for two reasons. First, no implied preemption exists because the WCA does not produce results that conflict with IRCA's objectives.¹⁷⁴ California provides workers' compensation benefits to relieve the effects of industrial injuries regardless of fault.¹⁷⁵ These benefits do not conflict with IRCA because they do not depend on how an injured worker acquired his job.¹⁷⁶ Furthermore, the WCA explicitly allows an inquiry into the worker's immigration status when necessary to comply with federal immigration law.¹⁷⁷ Thus, there is no difficulty in reconciling the WCA's remedial and humanitarian purpose with IRCA's immigration objectives.¹⁷⁸

Second, finding implied preemption is unreasonable because enforcing workers' compensation laws does not conflict with administering the federal immigration scheme.¹⁷⁹ Congress enacted IRCA to remove incentives in hiring undocumented workers.¹⁸⁰ Eligibility for workers' compensation benefits is not a realistic incentive for aliens to enter the country illegally.¹⁸¹ Indeed, courts

¹⁷³ See *supra* notes 166-72 and accompanying text.

¹⁷⁴ See *Farmers Bros. Coffee v. Workers' Comp. Appeals Bd.*, 35 Cal. Rptr. 3d 23, 28-29 (Ct. App. 2005); see also *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 241-42 (2d Cir. 2006); *Balbuena*, 845 N.E.2d at 1256-58.

¹⁷⁵ CAL. CONST. art. XIV, § 4; CAL. LAB. CODE § 3600 (West 2006); cf. *Claxton v. Waters*, 96 P.3d 496 (Cal. 2004) (noting workers' compensation law ensures quick relief for injured workers).

¹⁷⁶ See generally CAL. LAB. CODE § 3600 (omitting requirement that worker obtain job lawfully as condition for compensation); *McLandrich v. S. Cal. Edison Co.*, 917 F. Supp. 723, 731 (S.D. Cal. 1996) (enumerating relevant factors in determining employment status for workers' compensation purposes without requiring worker to obtain job lawfully); *Vacanti v. State Comp. Ins. Fund*, 14 P.3d 234, 243-44 (Cal. 2001) (outlining steps for filing workers' compensation claim with no mention of lawful employment status requirement).

¹⁷⁷ CAL. LAB. CODE § 1171.5(b) (West 2003).

¹⁷⁸ See generally discussion *supra* Parts I.A, I.D (explaining goals and purposes of IRCA and WCA).

¹⁷⁹ See *Farmers Bros.*, 35 Cal. Rptr. 3d at 26-29; see also *Madeira*, 469 F.3d at 241-42 (finding no implied preemption because compliance with both IRCA and state labor law is not physically impossible); *Balbuena*, 845 N.E.2d at 1256-58 (finding no conflict between state labor law and federal immigration law).

¹⁸⁰ See discussion *supra* Part I.A.

¹⁸¹ See *Dowling v. Slotnik*, 712 A.2d 396, 403 (Conn. 1998); see also *Patel v. Quality Inn S.*, 846 F.2d 700, 704 (11th Cir. 1988) (noting procurement of employment at any wage, not prospect of job-related protections, attracts illegal immigrants). See generally *Montero v. INS*, 124 F.3d 381, 384 (2d Cir. 1997) (providing workers' compensation

have found that providing compensation benefits to undocumented workers does not attract illegal immigrants.¹⁸² Thus, IRCA does not preempt the WCA.¹⁸³

B. *Farmer Bros. Is Consistent with Hoffman's Central Holding and Intended Effects*

The *Farmer Bros.* decision comports with *Hoffman* and supports a finding that IRCA does not preempt state workers' compensation laws.¹⁸⁴ Workers' compensation benefits differ from backpay awards foreclosed by the Supreme Court's decision in *Hoffman*.¹⁸⁵ The *Hoffman* Court noted backpay awards subvert IRCA's policies because they provide wages the undocumented worker could not have lawfully earned.¹⁸⁶ This reasoning is unpersuasive in the workers' compensation context because benefit awards are fundamentally distinct from backpay under the NLRA.¹⁸⁷

Workers' compensation benefits reflect a deeply rooted public policy to deter workplace safety violations and spread the costs of accidents.¹⁸⁸ They arise from employers' affirmative duty to maintain a

benefits does not impede removal of employment magnet drawing undocumented aliens into United States); *Mendoza v. Monmouth Recycling Corp.*, 672 A.2d 221, 225 (N.J. Super. Ct. App. Div. 1996) (noting immunity under workers' compensation law may encourage employers to hire illegal aliens).

¹⁸² See *supra* note 181.

¹⁸³ See generally *Cippolone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (finding implied preemption only when state law actually conflicts with federal law); *Madeira*, 469 F.3d at 242 (holding state law permits award of workers' compensation benefits to undocumented aliens); *Farmers Bros.*, 35 Cal. Rptr. 3d at 26-29 (concluding IRCA does not prevent states from awarding workers' compensation benefits to undocumented workers); *Dowling*, 712 A.2d at 404 (holding IRCA does not preempt state workers' compensation laws expressly or impliedly).

¹⁸⁴ See generally *Farmers Bros.*, 35 Cal. Rptr. 3d at 27-30 (holding WCA comports with *Hoffman* and IRCA).

¹⁸⁵ See O'Donovan, *supra* note 11, at 312.

¹⁸⁶ *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 149-50 (2002) (holding IRCA foreclosed NLRB from awarding backpay to undocumented alien).

¹⁸⁷ See O'Donovan, *supra* note 11, at 312; see also JAMES HARRINGTON BOYD, WORKMEN'S COMPENSATION 67, 155 (1913) (explaining difference between backpay awards and state workers' compensation benefits). See generally *Del Rey Tortilleria, Inc. v. NLRB*, 976 F.2d 1115, 1122 n.7 (7th Cir. 1992) (distinguishing between backpay for labor not performed and unpaid wages for work actually performed).

¹⁸⁸ See O'Donovan, *supra* note 11, at 310 (noting goal of workers' compensation to deter employers from committing workplace safety violations (citing ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW 1.01, 1.03 (2004))). See generally *Claxton v. Waters*, 96 P.3d 496 (Cal. 2004) (noting state legislature founded workers' compensation system on liability without fault to relieve effects of industrial

safe workplace for their employees.¹⁸⁹ State legislatures provide these benefits based on a broad social interest in the safety and lives of employees engaged in hazardous occupations.¹⁹⁰ Thus, a workers' compensation award is not an earned right; it vests as the work is performed.¹⁹¹

As the Court noted in *Hoffman*, backpay under the NLRA depends on the employee's lawful employment status.¹⁹² The backpay proscribed in *Hoffman* presumed that the undocumented worker would have continued his employment but for the employer's violation of labor laws.¹⁹³ This contradicted the employer's IRCA obligations because it provided an undocumented worker continued employment in direct violation of IRCA.¹⁹⁴ Awarding backpay to such a worker effectively constitutes an award to the employer despite his NLRA violations, thus subverting federal immigration laws.¹⁹⁵ Workers' compensation benefits, however, are distinguishable from backpay awards because they are not an earned right dependent on lawful employment status.¹⁹⁶ Therefore, awarding workers'

injury); *Lopez v. C.G.M. Dev., Inc.*, 124 Cal. Rptr. 2d 227 (Ct. App. 2002) (recognizing workers' compensation system shifts cost of industrial injuries to employer, deters employers from committing workplace violations, and provides employee with prompt compensation).

¹⁸⁹ CAL. LAB. CODE § 6400 (West 2006); see *Bonner v. Workers' Comp. Appeals Bd.*, 275 Cal. Rptr. 337, 339 (Ct. App. 1990). See generally CAL. LAB. CODE § 6300 (West 2006) (enacting California Occupational Safety and Health Act to ensure safe working conditions for all workers).

¹⁹⁰ See *Madera Sugar Pine Co. v. Indus. Accidental Comm'n of Cal.*, 262 U.S. 499, 502 (1923); see also *Arriaga v. County of Alameda*, 892 P.2d 150, 159 (Cal. 1995) (observing purpose of workers' compensation is to protect individuals against special risks of employment); *Davidson v. Indus. Accidental Comm'n*, 50 Cal. Rptr. 76, 77-78 (Ct. App. 1966) (noting broad purpose of workers' compensation is to secure worker seasonable cure or relief to facilitate return to work at earliest possible time).

¹⁹¹ See *O'Donovan*, *supra* note 11, at 312; see also *BOYD*, *supra* note 187, at 155 (distinguishing between backpay awards and state workers' compensation benefits). See generally *Del Rey Tortilleria*, 976 F.2d at 1122 n.7 (explaining difference between backpay and unpaid wages).

¹⁹² See *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 138 (2002).

¹⁹³ See *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 242 (2d Cir. 2006) (distinguishing disallowance of backpay in *Hoffman* from workers' compensation benefits).

¹⁹⁴ 8 U.S.C. § 1324a (2000) (making continued employment of alien unlawful when employer knows alien cannot legally work).

¹⁹⁵ See *Hoffman*, 535 U.S. at 148-50.

¹⁹⁶ See sources cited *supra* note 191.

compensation benefits to undocumented workers does not conflict with IRCA's foreclosure of backpay in *Hoffman*.¹⁹⁷

A strict reading of *Hoffman* limits its holding to foreclosing NLRA backpay awards to undocumented workers.¹⁹⁸ Such a construction, however, does not affect remedies provided by state workers' compensation laws.¹⁹⁹ The *Hoffman* Court held IRCA precludes backpay awards under the NLRA because such awards unduly encroach upon statutory prohibitions of immigration law.²⁰⁰ Accordingly, because workers' compensation is distinguishable from back pay, *Hoffman* does not foreclose workers' compensation benefits to undocumented workers.²⁰¹

Moreover, the *Hoffman* Court acknowledged undocumented workers are still employees within the meaning of the NLRA.²⁰² The majority of courts interpreting *Hoffman* have confined its application to claims of lost earnings.²⁰³ Courts conclude, therefore, that *Hoffman* merely limits the type of benefits available to undocumented workers

¹⁹⁷ See generally *Madeira*, 469 F.3d at 242 (holding state law permits award of workers' compensation benefits to undocumented aliens); *Farmers Bros. Coffee v. Workers' Comp. Appeals Bd.*, 35 Cal. Rptr. 3d 23, 26-29 (Ct. App. 2005) (concluding IRCA does not prevent states from awarding workers' compensation benefits to undocumented workers); *Dowling v. Slotnik*, 712 A.2d 396, 415 (Conn. 1998) (holding IRCA does not expressly or impliedly preempt state workers' compensation laws).

¹⁹⁸ See *Rivera v. NIBCO*, 364 F.3d 1057, 1067 (9th Cir. 2004) (doubting *Hoffman* is as broadly applicable as defendant contends in discussing claim); see also *Escobar v. Spartan Sec. Servs.*, 281 F. Supp. 2d 895, 897 (S.D. Tex. 2003).

¹⁹⁹ See cases cited *supra* note 197.

²⁰⁰ See *Hoffman*, 535 U.S. at 151.

²⁰¹ See *id.* at 147-52 (holding IRCA prevents NLRB from awarding backpay to undocumented workers). See generally *Madeira*, 469 F.3d at 233-37 (distinguishing *Hoffman* and holding IRCA does not foreclose workers' compensation awards to undocumented workers); *Farmers Bros.*, 35 Cal. Rptr. 3d at 26-29 (concluding IRCA does not preempt workers' compensation awards to undocumented workers despite *Hoffman* decision).

²⁰² See *O'Donovan*, *supra* note 11, at 313; see also *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 891 (1984) (recognizing NLRB consistently includes undocumented aliens in defining "employee"). See generally *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 234-35 (1963) (giving deference to NLRB's interpretation of "employee"); *NLRB v. Hearst Publ'ns*, 322 U.S. 111, 130 (1944) (recognizing that Congress assigned task of defining "employee" to agency created to administer federal act).

²⁰³ See *Rivera*, 364 F.3d at 1066-70 (recognizing plaintiffs' eligibility or ineligibility for benefits is irrelevant to resolving whether NIBCO violated Title VII); *Escobar*, 281 F. Supp. 2d at 897 (stating *Hoffman* decision only compels conclusion that worker is ineligible for backpay claims under Title VII); *De La Rosa v. N. Harvest Furniture*, 210 F.R.D. 237, 238 (C.D. Ill. 2002) (noting *Hoffman* is not dispositive despite similarities between remedial language of NLRA and Title VII claims).

without foreclosing labor protections currently available to them under state law.²⁰⁴

Some argue, however, for a broader and more liberal reading of *Hoffman*.²⁰⁵ They claim awarding any benefits to undocumented workers contravenes federal immigration policy under IRCA.²⁰⁶ In precluding the NLRA backpay award, *Hoffman* suggests courts should prohibit any benefits that run counter to the policies underlying IRCA.²⁰⁷ Workers' compensation awards are similar to backpay awards because both stem from work that the worker unlawfully obtained.²⁰⁸ If IRCA forecloses undocumented workers from receiving backpay under the NLRA, it should also foreclose other awards resulting from their unlawful employment.²⁰⁹ Thus, some argue a broader reading of *Hoffman* is necessary to preserve IRCA's goals of eliminating incentives for undocumented workers to obtain work unlawfully.²¹⁰

These arguments for a broad construction fail, however, because Congress plainly stated its intention not to preempt states from

²⁰⁴ See generally O'Donovan, *supra* note 11, at 314 (noting *Hoffman* does not preclude awarding benefits to undocumented workers); cases cited *supra* note 197 (finding IRCA does not preempt state workers' compensation laws).

²⁰⁵ See *Dowling v. Slotnik*, 712 A.2d 396, 415 (Conn. 1998) (MacDonald, J., dissenting); *Balbuena v. IDR Realty LLC*, 845 N.E.2d 1246, 1261 (N.Y. 2006) (Smith, J., dissenting). See generally SMITH & SUGIMORI, *supra* note 3, at 7-16 (discussing arguments for extending *Hoffman* to personal injury cases and claims for EEOC and FLSA relief).

²⁰⁶ See *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (finding implied preemption because state requirements conflict with federal law). See generally *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 140 (2002) (finding undocumented workers are not eligible for some benefits); *Dowling*, 712 A.2d at 415 (McDonald, J., dissenting) (arguing compensation benefit award is impermissible because it runs counter to federal immigration policy).

²⁰⁷ See *Hoffman*, 535 U.S. at 152; see also *Freightliner*, 514 U.S. at 287 (finding implied preemption because state requirements conflict with federal law); *Dowling*, 712 A.2d at 415 (McDonald, J., dissenting) (awarding workers' compensation to undocumented worker runs counter to federal immigration policy).

²⁰⁸ See generally *Hoffman*, 535 U.S. at 152 (noting federal immigration policy prohibits NLRA awards to undocumented workers because such awards amount to compensation for work not lawfully obtained); *Dowling*, 712 A.2d at 415 (McDonald, J., dissenting) (arguing compensation benefit award to undocumented worker runs counter to IRCA policies); *Balbuena*, 845 N.E.2d at 1261 (Smith, J., dissenting) (arguing workers' compensation awards to illegal workers undermine federal immigration goals).

²⁰⁹ See generally cases cited *supra* note 208 (stating IRCA should preempt state laws allowing benefits that undermine federal immigration laws).

²¹⁰ See generally cases cited *supra* note 208 (noting courts should not permit awards that undermine federal immigration goals).

exercising their broad regulatory powers.²¹¹ Congress was reluctant to characterize IRCA as a reduction of state labor protections for undocumented workers.²¹² It narrowed the application of IRCA's preemption provision and reaffirmed IRCA's limited preemptive reach.²¹³ A narrow reading of *Hoffman*, therefore, is appropriate because it respects Congress's intent to limit the preemptive effect of IRCA.²¹⁴

C. *Farmer Bros. Protects the State's Interest in Maintaining a Safe Workplace for All Employees*

The WCA is a valid exercise of California's historic police powers to promote the health and safety of its citizens.²¹⁵ It aims to secure workplace safety and protect individuals from the risks associated with employment.²¹⁶ By outlining employers' general duties in the

²¹¹ See H.R. REP. NO. 99-682, pt. 1, at 45 (1986), as reprinted in 1986 U.S.C.A.N. 5649, 5649; see also discussion *supra* Part I.A (discussing legislative history of IRCA). See generally *NLRB v. Fuel Oil Buyers Group, Inc.*, 134 F.3d 50, 55 (2d Cir. 1997) (noting IRCA's legislative history demonstrates intent to preserve protections and remedies for undocumented workers); *United States v. Todd Corp.*, 900 F.2d 164, 165 (9th Cir. 1990) (recognizing Congress' desire to protect persons already residing in United States for many years regardless of unlawful status).

²¹² See H.R. REP. NO. 99-682 pt. 1, at 58 (stating Congress did not intend to use IRCA provisions to undermine existing laws); see also *Farmers Bros. Coffee v. Workers' Comp. App. Bd.*, 35 Cal. Rptr. 3d 23, 27 (Ct. App. 2005) (noting Congress did not intend to undermine existing labor protections by enacting IRCA). See generally *Montero v. INS*, 124 F.3d 381, 385 (2d Cir. 1997) (rejecting argument that permitting deportation under Immigration and Naturalization Act will significantly undermine labor protections).

²¹³ See sources cited *supra* notes 211-12. See generally *Earth First Grading v. Gutierrez*, 606 S.E.2d 332, 334 (Ga. Ct. App. 2004) (concluding neither *Hoffman* nor IRCA intended to prohibit awarding workers' compensation benefits to illegal aliens); *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324, 329 (Minn. 2003) (holding IRCA, as written, does not prohibit unauthorized aliens from receiving workers' compensation benefits generally).

²¹⁴ See sources cited *supra* note 211.

²¹⁵ See *W. Indem. Co. v. Pillsbury*, 151 P. 398, 401 (Cal. 1915) (stating WCA is legitimate exercise of state police powers promoting health, peace, morals, and good order); see also *Madera Sugar Pine Co. v. Ind. Accidental Comm'n of Cal.*, 262 U.S. 499, 502 (1923) (noting state may provide for loss of employee's earning power by exercising police power to enact workers' compensation laws); *Pac. Emp. Ins. Co. v. Indus. Comm'n*, 33 Cal. Rptr. 442, 445 (Ct. App. 1963) (noting WCA is valid exercise of state's police power).

²¹⁶ See *Arriaga v. County of Alameda*, 892 P.2d 150, 152 (Cal. 1995) (recognizing right to recover workers' compensation benefits as employee's sole and exclusive remedy for work-related injury); *Farmers Bros.*, 35 Cal. Rptr. 3d at 26-27.

workplace, the California Labor Code establishes a comprehensive scheme for regulating conditions in places of employment.²¹⁷ Furthermore, it authorizes the enforcement of effective occupational health and safety standards to protect workers.²¹⁸

Farmers Bros. effectively recognizes the adverse consequences of withholding workers' compensation from undocumented workers.²¹⁹ Barring undocumented workers from claiming benefits actually increases illegal employment levels because it lessens employers' potential liability.²²⁰ Once employers realize they may violate labor laws affecting undocumented workers without consequence, their incentive to hire such workers will increase.²²¹ Denying workers' compensation benefits to undocumented workers eviscerates state law coverage of legitimate workplace injuries.²²² Furthermore, it distorts the deterrent functions of workers' compensation laws by providing a windfall to insurers and employers who pay insurance premiums.²²³

²¹⁷ See 41 CAL. JUR. 3D, *supra* note 155, § 123; see also *Sea-Land Serv., Inc. v. Workers' Comp. Appeals Bd.*, 925 P.2d 1309, 1314 (Cal. 1996) (noting legislature enacted WCA to furnish complete system of compensation); *Hazelwerdt v. Indus. Indem. Exch.*, 321 P.2d 831, 833 (Cal. Ct. App. 1958) (stating WCA substitutes new system of rights and obligations for common law rules governing liability of employers for workers' injuries); *Pac. Indem. Co. v. Cal. Elec. Works*, 84 P.2d 313, 316 (Cal. Ct. App. 1938) (noting WCA manifests intent to change whole scheme of employers' legal responsibility).

²¹⁸ CAL. LAB. CODE § 6300 (West 2003).

²¹⁹ See *Dowling v. Slotnik*, 712 A.2d 396, 404 (Conn. 1998) (recognizing denial of benefits to undocumented workers increases incentives to hire them). See generally *Madeira v. Affordable Hous. Found., Inc.*, 469 F.3d 219, 245-47 (2d Cir. 2006) (denying benefits to unauthorized workers may provide windfalls to employers); *Farmers Bros.*, 35 Cal. Rptr. 3d at 26-28 (finding no preemption because WCA does not stand as obstacle to congressional objectives).

²²⁰ See *Dowling*, 712 A.2d at 415 (MacDonald, J., dissenting); *Balbuena v. IDR Realty LLC*, 845 N.E.2d 1246, 1261 (N.Y. 2006) (Smith, J., dissenting). See generally *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 912 (1984) (withholding backpay increases illegal immigration).

²²¹ See *Sure-Tan*, 467 U.S. at 912 (noting incentives to hiring undocumented workers will increase once employers realize they can violate NLRA with respect to such workers); see also *Dowling*, 712 A.2d at 404-05 (recognizing incentives to hire undocumented workers will increase if court denies workers' compensation benefits). See generally *Balbuena*, 845 N.E.2d at 1260 (holding IRCA does not preclude lost wage claims of undocumented workers).

²²² See O'Donovan, *supra* note 11, at 314 (denying workers' compensation to undocumented workers forecloses existing state labor protections). See generally cases cited *supra* note 221 (denying benefits to unauthorized aliens provides incentives for employers to hire such workers).

²²³ See O'Donovan, *supra* note 11, at 315-16. See generally *Town Planning & Eng'g Assocs., Inc. v. Amesbury Specialty Co.*, 342 N.E.2d 706, 711 (Mass. 1976) (noting

The *Farmer Bros.* decision acknowledges that the WCA discourages employers from engaging in unscrupulous practices by holding them accountable for work-related injuries.²²⁴ It also recognizes that denying benefits to undocumented workers makes it cheaper for employers to hire them.²²⁵ The availability of cheaper labor makes violating IRCA less consequential for employers because their potential cost savings may outweigh the risk of penalty.²²⁶ *Farmer Bros.* echoes previous findings that denying benefits to undocumented workers actually undermines federal immigration goals.²²⁷ In doing so, *Farmer Bros.* promotes the important federal immigration policy of discouraging employers from hiring undocumented workers.²²⁸

CONCLUSION

A reasonable construction of IRCA does not support a finding of preemption because its statutory language fails to reveal clear preemptive intent.²²⁹ IRCA's regulation scheme does not support a reasonable inference that Congress left no room for supplementary state labor law.²³⁰ Specifically, awarding workers' compensation

plaintiff's recovery depends partly on the extent to which justice allows windfalls to defendants); *Medellin Case*, No. 03324300, 2003 WL 23100186, at *5 (Mass. Dep't Industrial Accidents Dec. 23, 2003) (recognizing that denying benefits to worker provides windfall to insurer in employer-collected premiums).

²²⁴ See *Farmers Bros.*, 35 Cal. Rptr. 3d at 26-27.

²²⁵ See *id.* at 28. The court's reasoning parallels Justice Breyer's dissent in *Hoffman* suggesting denial of backpay to undocumented workers lowers employer's costs of an initial labor violation. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 155 (2002) (Breyer, J., dissenting). Lower costs, in turn, increase the employer's incentive to hire illegal immigrants. *Id.*

²²⁶ Although no one has made this argument to my knowledge, we should not ignore the economic consequences of such a result. See generally *Hoffman*, 535 U.S. at 155 (recognizing possible incentives to hiring undocumented workers); *Correales*, *supra* note 3, at 352 (arguing public policy supports providing benefits to undocumented workers); *O'Donovan*, *supra* note 11, at 314-16 (stating reasons for continuing workers' compensation coverage of undocumented workers).

²²⁷ See *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324, 331 (Minn. 2003) (denying unauthorized aliens benefits predicated on diligent job search does not serve purposes underlying IRCA); see also *O'Donovan*, *supra* note 11, at 314 (denying benefits to undocumented workers provides incentives to employers). See generally *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 912 (1984) (withholding backpay increases illegal immigration).

²²⁸ See *supra* notes 21-23 and accompanying text.

²²⁹ See *supra* Part III.A (stating why current immigration law does not reveal clear preemptive intent).

²³⁰ See *supra* Part III.B (discussing limitations of IRCA).

benefits to undocumented workers does not undermine the federal goal of deterring illegal immigration.²³¹ By recognizing the real human consequences of federal immigration laws on undocumented workers, *Farmer Bros.* ensures society gives their contributions due notice and consideration.

²³¹ See *supra* Part III.C (explaining complementary federal and state policy goals).