

# Racial Justice for Street Vendors

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## INTRODUCTION

In 2018, the California legislature passed the Safe Sidewalk Vending Act (SSVA), which decriminalized street vending, an immigrant-dominated industry that operates within urban spaces in California and across the United States.<sup>1</sup> Shortly thereafter, Los Angeles County supervisors created a regulatory system that would create formal opportunities for street vendors to sell food products through an application and permitting system.<sup>2</sup> Street vending enjoys a long historical association with immigrant communities. Historically excluded from many types of industries, street vending presents immigrants with an economic opportunity within the informal economy. The decriminalization of street vending opened up an important economic space for immigrants with tenuous legal statuses.

Centering the example of street vending provides important insights into how immigration law has enabled and advanced the racialization of unauthorized migrants. In Los Angeles, street vending is heavily associated with Latinx migrants.<sup>3</sup> In this regard, the SSVA provides some insight into the complicated ways that federal immigration laws subordinated and control the lives of Latinx

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1. See California Senate Bill 946 (codified at California Government Code § 51036).

2. See Los Angeles Ordinance 185900 (amending Los Angeles Municipal Code § 42.13) (Nov. 30, 2018).

3. See Emir Estrada & Pierrette Hondagneu-Sotelo, *Intersectional Dignities: Latino Immigrant Street Vendor Youth in Los Angeles*, 40 *Journal of Contemporary Ethnography* 102 (2011).

residents. In this case, the complicated relationship between federal immigration officials and local law enforcement actors like the police pushed state lawmakers to pursue a strategy of decriminalization—to help ensure that minor contact with the police, which might ordinarily lead to a fine or minor jail time, does not lead to more severe consequences like removal from the country. In this regard, the story of street vending fits within a broader strand of legal scholarship that focuses on how immigration law contributes to the racialization of Latinx migrants.<sup>4</sup>

At the same time, centering the experiences of street vendors opens up new opportunities to broaden our understandings of how race informs the lives of Latinx migrants. The SSVA was designed to blunt the force of immigration policies that imbued every encounter with the police with the threat of permanent expulsion. This type of threat reflects a type of structural violence that appears in other contexts involving the police and has, in turn, formed the basis of a critique of modern policing. The most notable example is the Movement for Black Lives, which has pressed difficult but important questions about what the police should do and whether they should even continue to exist given their impact on racialized harms in the United States. But the conversations about street vending, on the one hand, and police brutality on the other, have largely unfolded parallel to one another and at a distance. Street vending provides a common context in which advocates, lawyers, and academics might merge and coordinate broader police reform efforts.

Finally, focusing on the racial justice implications of the decriminalization of street vending can deepen and broaden the critique street vending advocates have offered. While economic productivity and criminal deviance dominate policy debates about immigrants, the street vending example shows this distinction is flimsy and false. Rather than embracing the identity of “entrepreneur,” which uncritically perpetuates a capitalist economy predicated on neoliberal principles and the ethics of “individual responsibility,” analytically examining street vending can advance ideas that are more critical of the structural elements of poverty and exploitation. Because street vending was restructured to remove criminal law from the day-to-day regulation of these economic activities, analyzing street vending stimulates broader debates about criminal law reform. Critically analyzing street vending with a racial justice perspective provides the chance to link the struggle of food cart vendors in Los Angeles to the tragic death of Eric Garner, who died selling cigarettes on the streets of New York.

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4. See Jennifer M. Chacon & Susan Bibler Coutin, *Racialization Through Enforcement*, in *Race, Criminal Justice, and Migration Control: Enforcing the Boundaries of Belonging*, (edited by Mary Bosworth, Alpa Parmar & Yolanda Vázquez, Oxford Univ. Press, 2018).

I.  
DECRIMINALIZATION

Street vending operates within the informal economy, what sociologist Saskia Sassen describes as “income-generating activities occurring outside the state’s regulatory framework[.]”<sup>5</sup> While informal economic activities are sometimes understood as aberrational or secondary interests within an economy that favors formal activity, Sassen and others have argued that informal economic activity is the predictable outcome of creating formal legal structures, which inevitably leave open interstitial regulatory spaces. These spaces in which economic activity transpires just beyond the reach of law is filled by immigrants.<sup>6</sup>

Street vending has long held economic and social significance for immigrant communities. For one thing, street vending and other public markets have traditionally filled the basic consumption needs of poor workers, demonstrating how immigrants support the informal economy as both producers and consumers.<sup>7</sup> As a form of work, street vending is defined by relatively low barriers of entry at least when compared to selling goods and services within brick-and-mortar settings.

In Southern California, street vending has long been tied to migrant communities, which has, unsurprisingly, sparked strong, divergent reactions among the public. During the late nineteenth century, Chinese migrants sold produce in the streets of Los Angeles.<sup>8</sup> During this same period of time—a period marked by anti-Chinese sentiment in federal immigration policy—Los Angeleno lawmakers began creating and defining public space in narrow terms that privileged the interests of pedestrians and disregarded the interests of street vendors.<sup>9</sup> Local officials began increasing licensing fees only for vegetable peddlers, who were disproportionately Chinese. Fees for fruit peddlers, who were mostly white, did not increase. The Chinese peddlers went on strike and began challenging these ordinances in court, often successfully.<sup>10</sup>

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5. Saskia Sassen, *The Informal Economy: Between New Developments and Old Regulations*, 103 Yale L.J. 2289, 2289 (1994).

6. See Saskia Sassen, *The Informal Economy: Between New Developments and Old Regulations*, 103 Yale L.J. 2289, 2290 (1994); John Gaber, *Manhattan’s 14th Street Vendors’ Market: Informal Street Peddlers’ Complementary Relationship with New York City’s Economy*, 23 Urban Anthropology and Studies of Cultural Systems and World Economic Development 373 (1994).

7. See Sally Roever, *Informal Trade Meets Informal Governance*, 18 *Contesting the Streets* 27 (2016).

8. See Farley Elliott, *Los Angeles Street Food: A History of Tamaleros to Taco Trucks* (2015). See generally, Nichole Heil, Master’s Thesis, *Increasing Equity in Los Angeles’s New Street Vending Program: Best Practices for Implementing the City of Los Angeles’s Sidewalk Vending Ordinance* (on file with author).

9. See Renia Ehrenfeucht & Anastasia Loukaitou-Sideris, *Constructing the Sidewalks: Municipal Government and the Production of Public Space in Los Angeles, California, 1880-1920*, 33 *Journal of Human Geography* 104 (2007).

10. See *id.* at 117-118.

This battle over street vendor rights—and the social meaning of street vending—presaged a similar fight that would unfold more than a century later in East Los Angeles. As gentrification and exclusionary zoning laws began displacing poor residents of communities like Boyle Heights—a neighborhood with a significant Latinx residential population—advocates and community members began coalescing around street vendor rights as an attempt to empower themselves in the face of pending displacement.<sup>11</sup> As gentrification efforts gained momentum in urban communities of color across the country, lawmakers and brick-and-mortar business owners pressured police to target those selling food in public spaces. Police harassment of female street vendors in that community led to the LA Street Vendor Campaign that pressured lawmakers for legislative reform, first in Los Angeles and then in Sacramento.<sup>12</sup>

As was the case in nineteenth-century Los Angeles, street vending in the early twenty-first century operates within the shadow of *immigration law and enforcement policies*. For example, the immigration code prohibits employers from knowingly hiring workers lacking authorization.<sup>13</sup> Importantly, this prohibition applies to “employees,” a term that refers to workers in traditional employment relationships, and does not apply to “independent contractors.” This distinction allows immigrant entrepreneurs like street vendors to avoid the reach of modern immigration workplace enforcement policy in many instances. Immigrants can participate in the informal economy while evading the reach of a significant provision within the immigration code.

Migrants pursue street vending work against the backdrop of policies that limit capital accumulation potential and make it more difficult to become lawful, permanent U.S. residents. Unlike stories of entrepreneurialism from years past, immigrant entrepreneurs today must operate within a narrow economic and social space created by expansive and punitive immigration laws.

A greater percentage of foreign-born individuals today are unauthorized compared to previous generations.<sup>14</sup> There are a limited number of opportunities

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11. See Lorena Munoz, *Agency, Choice and Restrictions in Producing Latina/o Street-vending Landscapes in Los Angeles*, 48 *Area* 339, 341-42 (2016). See generally Karen Alpuche Caceres, *The Legalization of Street Vending in Los Angeles: Exploring the Impact on Vendors and their Livelihoods*, Pomona Senior Thesis (2019) [https://scholarship.claremont.edu/pomona\\_theses/207](https://scholarship.claremont.edu/pomona_theses/207).

12. See Ryan Cohen, *Shelter-in-Place: Reducing Displacement and Increasing Inclusion in Gentrifying Neighborhoods*, 13 *Harv. L. & Policy Rev.* 273, 298-299 (2018). See generally Caceres, *The Legalization of Street Vending in Los Angeles* *supra* n. 11 at 28, [https://scholarship.claremont.edu/pomona\\_theses/207](https://scholarship.claremont.edu/pomona_theses/207) (noting that the LA Street Vendor Campaign worked closely with California Senator Ricardo Lara in drafting the Safe Sidewalk Vending Act).

13. See 8 U.S.C. § 1324A(a)(1)(A)-(B).

14. The percentage of long-term residents within the unauthorized population has also increased. About half have been in the United States for more than ten years and another thirty percent have been here for more than twenty years. DHS, *Population Estimates: Illegal Alien Population Residing in the United States: January 2015*, Table 1, [https://www.dhs.gov/sites/default/files/publications/18\\_1214\\_PLCY\\_pops-est-report.pdf](https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf). See also Jeffrey S. Passel & D’Vera Cohn, *Unauthorized Immigrants Are More Likely to Be Long-term*

for unauthorized migrants to become lawful permanent residents. The intensification of enforcement resources at the border means that unauthorized migrants are unlikely to leave knowing that they would have to incur significant costs if they were to return in the near future. These policies have effectively marooned unauthorized migrants in the United States. Migrants are unlikely to return home to sending countries because of the costs of any return trip and unable to reunite in the United States with family members because of the absence of legal avenues to do so.<sup>15</sup>

Moreover, because migrants have transnational family members, at least some of their earnings leave the United States in the form of remittances, thereby thwarting the capital accumulation necessary to expand their entrepreneurial ambitions.<sup>16</sup> With family members staying behind in sending countries, migrants in the street vending industry not only cut into their earnings, but they are unable to take advantage of family labor—the hallmark of many immigrant small businesses in brick-and-mortar spaces.

In particular, immigrant rights advocates pointed to the disproportionate dangers posed by low-level or misdemeanor policing, a form of law enforcement commonly understood to lead to only minor outcomes.<sup>17</sup> The reality has been that even minor contact with the criminal justice system can lead to an array of immigration consequences including removal from the United States. In 2018, California Governor Jerry Brown signed into law the Safe Sidewalk Vending Act (SSVA).<sup>18</sup> This law decriminalizes sidewalk vending. Lawmakers presented this law as an important effort to protect unauthorized immigrants who work in the informal economy.

The SSVA sought to dial down the punitive aspects of the law governing street vending.<sup>19</sup> In place of criminal penalties, the new law imposes a set of escalating fines. Crucially, the law instructs regulators to take into account a person’s “ability to pay” when assessing fines and prohibits prosecutors from using criminal infractions or misdemeanors to punish those who fail to pay these fines.<sup>20</sup> In other contexts, the failure to pay fees has had a “snowballing” effect,

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*Residents, Pew Research Center* (Nov. 17, 2018), <https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigrants-are-more-likely-to-be-long-term-residents/>.

15. See Stephen Lee, *Family Separation as Slow Death*, 119 Colum. L. Rev. 2319 (2019).

16. See Stephen Lee, *The Lives and Livelihood of Migrants*, 71 Duke Law Journal \_\_\_ (forthcoming 2022).

17. For a helpful critique of this conception, see Alexandra Natapoff, *Misdemeanors*, S. Cal. L. Rev.

18. See Senate Bill 946 (Sept. 17, 2018) (codified at California Government Code § 51036).

19. For example, the new law requires prosecutors with pending charges against vendors under the previous version of the law to dismiss those charges. See California Government Code § 51039(d)(2) (“Safe Sidewalk Vending Act). The Safe Sidewalk Vending Act also gives those who had previously been convicted under local criminal laws to file a petition dismissing and sealing the prior conviction. See California Government Code § 51039(g)(1).

20. See California Government Code § 51039(c), (f).

in which minor infractions can quickly balloon into serious violations with criminal penalties.<sup>21</sup> Defanging both the substantive grounds and the enforcement mechanisms helped to clear away any brush from adjacent areas of law that might transform an administrative or civil penalty into a criminal one.<sup>22</sup>

Over the last ten years, the rise of state laws regulating immigration has challenged what had been the long-held presumption that the power to regulate immigrants and enforce immigration laws belonged to federal actors.<sup>23</sup> California's efforts to regulate immigration with a more inclusive agenda highlights the degree to which states can affect immigration enforcement policies through efforts at decriminalization. Because federal agencies so heavily depend on contact with criminal law actors, decriminalization reduces the jurisdiction of local law enforcement thereby widening the gap between the economic activities pursued by immigrants and removal proceedings overseen by federal agencies.

Decriminalizing street vending cleared the way for Los Angeles County to institute a permitting system that could incorporate street vending into the formal economy while also minimizing the punitive consequences of the law tied into the broad reach of immigration enforcement policies. California's effort to decriminalize street vending cannot be divorced from the backdrop of a more extended effort by state and local lawmakers to mitigate or opt out of the most punitive aspects of federal immigration law and policy.<sup>24</sup> Most relevantly, lawmakers passed the TRUST Act,<sup>25</sup> which severely curtailed the circumstances under which local law enforcement officers are permitted to cooperate with federal immigration enforcement efforts. The legal changes to the street vending industry reflect a similar ethos of these broader reform efforts. Transferring regulatory control over street vending from criminal law actors to civil actors helps to reduce the stigma and other punitive aspects of law.<sup>26</sup> Similarly, creating a permitting system creates opportunities for unauthorized migrants to access

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21. See Investigation of the Ferguson Police Department, U.S. Dept. of Justice, March 4, 2015, *at* [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

22. See Beth A. Colgan, *Graduating Economic Sanctions According to Ability to Pay*, 103 Iowa L. Rev. 53 (2017).

23. For a helpful discussion on this shift in constitutional law, see Pratheepan Gulasekaram & S. Karthick Ramakrishnan, *The New Immigration Federalism* (2015).

24. Over the last ten years, California lawmakers have passed laws entitling undocumented college students to tuition benefits and expanding eligibility requirements for financial aid at public universities in California. Similarly, in 2013, lawmakers ushered in a suite of benefits for unauthorized immigrants including access to licenses for driving and for law practice.

25. 2013 Cal. Stat. 4650 (codified at California Government Code §§ 7282-7282.5 (2014)).

26. See Dana Bartholomew, LA leaders move to protect immigrant street vendors amid deportation fears, Los Angeles Daily News (Nov. 23, 2016). The shift from a criminal to civil regime doesn't always remove the punitive aspects of law in the street vending context. See Ingrid V. Eagly, *Criminal Clinics in the Pursuit of Immigrant Rights: Lessons from the Loncheros*, 2 UC Irvine Law Review 91, 112-116 (2012).

labor and commercial markets that must otherwise operate within the shadow of the formal economy.

## II. RACIAL JUSTICE

The movement to decriminalize street vending in Los Angeles is grounded in a specific vision of racial justice, one that grows out of immigration enforcement policies that have historically targeted Chinese migrants and, in more recent years, Latinx migrants. A broad array of federal laws and judicial doctrines embedded within our immigration system advance this racialization project.<sup>27</sup> The decriminalization movement grows out of other movements such as the “sanctuary” movement in California—it is an effort to send the message to local lawmakers, regulators, and officials that they should not be complicit in this broader project emanating down from the federal system.<sup>28</sup> But the *decriminalization* piece points to another conversation about racial justice in another context, namely the role that police should play in the regulation of economic activity. Focusing on this component connects the struggle of mostly Latinx street vendors in Los Angeles to a broader conversation about the role of police in relation to Black communities.

A deep bench of legal scholars has documented and argued against the ability of police to investigate and punish Black Americans on account of overcriminalization<sup>29</sup> and the prioritization of low-level or misdemeanor policing.<sup>30</sup> And of course, the role of the police continues to be a central part of the debate engendered by the Movement for Black Lives with different voices calling for reforms ranging from more training and greater investment to defunding and abolition.<sup>31</sup> Linking the movement to decriminalize street vending with the broader Movement for Black Lives illustrates how public space and urban geography structures the state violence that both movements seek to eradicate.

For street vendors in Los Angeles, the expansion of the role of police has disproportionately impacted entrepreneurs operating within public spaces. The impulse to decriminalize comes from a desire to create more separation between ordinary street-level interactions with the police and the byzantine immigration system that expels hundreds of thousands of migrants each year. When basic

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27. See Jennifer M. Chacon & Susan Bibler Coutin, *Racialization through Enforcement*, in *Race, Criminal Justice, and Migration Control: Enforcing Boundaries of Belonging* (eds., Bosworth, Parmar, & Vazquez).

28. See Annie Lai & Christopher Lasch, *Crimmigration Resistance and the Case of Sanctuary City Defunding*, 57 Santa Clara L. Rev. 539 (2017).

29. See Monica C. Bell, *Anti-Segregation Policing*, 95 NYU Law Review 650, 690-696 (2020); Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 Mich. L. Rev. 946 (2001).

30. See Alexandra Natapoff, *Misdemeanors*, 85 Southern California Law Review 1313 (2012); Jenny Roberts, *Crashing the Misdemeanor System*, 70 Wash. & Lee. L. Rev. 1089 (2013).

31. See Anna A. Akbar, *Toward a Radical Imagination of Law*, 93 NYU L. Rev. 405 (2018).

economic transactions are subject to criminal enforcement, each encounter with the police creates the threat of contact with the state snowballing into an immigration nightmare. This threat of the nightmare is unique to those working within public spaces.<sup>32</sup> Constitutional protections like the Fourth Amendment impose fewer constraints on police conducting searches and seizures where officers have a reasonable articulable suspicion of illegal activity or where that illegal activity is operating in plain view.<sup>33</sup> In a pre-Safe Sidewalk Vending Act era, the police could cite or arrest food vendors or seize fruit carts.<sup>34</sup> It recognizes the invisible nature of unauthorized immigration and other forms of tenuous legal status. In many city centers, unauthorized migrants are working in plain sight.

Focusing on the unique vulnerabilities created by work in public spaces illustrates the complicated relationship between race and geography. In her study on fruit cart vendors in Los Angeles, Rocío Rosales notes: “Despite working out in the open, street vendors are often truly seen by others who move in the same space only during these [police] crackdowns. In these moments, the precarity of their social position is made highly visible.”<sup>35</sup> It is through these encounters with the police that Latinx street vendors understand their racial standing, as community members whom the police treat as “garbage.”<sup>36</sup> And from the perspective of street vendors, the penalties all bleed together—the fines, the confiscation of equipment, the jailtime, and deportation—meaning that no single collection of laws is responsible for the racialization of street vendors as criminally deviant Latinx migrants.<sup>37</sup> Rather, a constellation of laws, actors, and institutions work together to create this totalizing experience.

Compare the street vending example with work opportunities that transpire within private settings, such as within someone’s home or office space. In most instances, the police cannot enter a workplace without a warrant or the consent of the homeowner or employer.<sup>38</sup> Thus, industries filled with migrants pursuing work in private spaces—poultry processing and caregiving for example—face a reduced threat of state violence as compared to street vendors and day laborers. My point is not to diminish the real threats of *private* violence and exploitation that these types of migrants face in these settings. Rather, my point is that the

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32. Scholarship on day labor work has amply documented this phenomenon. See Scott L. Cummings, *Litigation at Work: Defending Day Labor in Los Angeles*, 58 UCLA L. Rev. 1617 (2011); Abel Valenzuela, *Day Labor Work*, 29 Annual Review of Sociology 307 (2003).

33. See *Texas v. Brown*, 460 U.S. 730 (1983); *Terry v. Ohio*, 392 U.S. 1 (1968).

34. See Emir Estrada, *Kids at Work: Latinx Families Selling Food on the Streets of Los Angeles* 52-54 (2019).

35. Rocío Rosales, *Fruteros: Street Vending, Illegality, and Ethnic Community in Los Angeles* 52 (2020).

36. *Id.* at 54.

37. See Estrada, *supra* n. 35, at 153-54.

38. One exception is where the police are facing exigent circumstances. See *Ker v. California*, 374 U.S. 23 (1963). California has also imposed limitations on federal officials accessing workplaces for immigration enforcement purposes. See A.B. 450.



process leading up to the threat of violence is subject to a different set of legal constraints and therefore unfolds differently.

Finally, street vending creates opportunities to show how violence in the immigration setting shares the same basic constitutional foundation as violence in the context of the Movement for Black Lives. An important point that often goes overlooked is that several of the notable acts of police violence and murder of Black Americans was in the context of unlawful street vending. In 2014, Eric Garner, a Black street vendor, was killed by police while being arrested for illegally selling cigarettes on the street.<sup>39</sup> Similar tragic stories have drawn attention all over the country for incidents involving Black vendors of all ages selling bottled water,<sup>40</sup> compact discs,<sup>41</sup> and candy.<sup>42</sup> Centering the experience of street vendors reveals one way that Black migrants figure into immigration law's racialization project. While street vending in Los Angeles is closely associated with Latinx communities, in other parts of the country, especially in large cities on the East Coast, Black vendors have a significant presence in this industry. And while over time, a Black migrant's identity as a *Black* American might become the identity trait on which legal actors like police will fixate,<sup>43</sup> such a reality does not remove the legal violence that flows from that migrant's tenuous immigration status.<sup>44</sup>

Indeed, the street vending experience reveals the false binary created by "Latinx entrepreneurs" and "Black victims of police violence." Immigrant entrepreneurs who are often racialized as Latinx are extolled for the economic productivity—their ability to identify, fill, and expand markets for goods and services that the public values. Street vendors like other immigrant entrepreneurs are often held up as examples of success stories that reaffirm common notions of the American dream.<sup>45</sup> The example of street vending illustrates how immigration policies and police investigatory authority combine to recast street vending in terms of criminal deviance, thereby advancing a project of

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39. See Al Baker, J. David Goodman, & Benjamin Mueller, *Beyond the Chokehold: The Path to Eric Garner's Death*, N.Y. Times, (June 13, 2015), <https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html>.

40. Niraj Chokshi, *White Woman Nicknamed 'Permit Patty' Regrets Confrontation Over Black Girl Selling Water*, N.Y. Times, (June 25, 2018), <https://www.nytimes.com/2018/06/25/us/permit-patty-black-girl-water.html>; Janice Williams, *Police in Washington D.C. Arrest Black Teens For Selling Water Bottles, Because 'Safety'*, Newsweek, (June 24, 2017), <https://www.newsweek.com/national-mall-arrest-washington-arrested-628846>.

41. Emily Badger, *Alton Sterling, Eric Garner and the Double Standard of the Side Hustle*, The Wash. Post, (July 7, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/07/07/alton-sterling-eric-garner-and-the-double-standard-of-the-side-hustle/>.

42. Vincent Barone, *Vendor Arrested for Selling Candy in the Subway Plans to Sue City*, AM New York, (Nov. 20, 2019).

43. See Devon W. Carbado, *Racial Naturalization*, 57 American Quarterly 633 (2005).

44. See Kevin R. Johnson, *Racial Profiling in the War on Drugs Meets the Immigration Removal Process: The Case of Moncrieffe v. Holder*, 48 U. Mich. J.L. Reform 967 (2015).

45. See Zulema Valdez, *Entrepreneurs and the Search for the American Dream* (2016).

racialization. The racial equity problems arising in this context differ from the kind that are commonly associated with other entrepreneurial settings. A part of what makes street vending unique as a form of work is the exposure and vulnerability that workers experience at the hands of the police. Again, competing accounts of immigrant entrepreneurialism often highlight police neglect as the primary ways that police signal to immigrants that they are racial outsiders. But in the street vending context, police harassment, aggression, and violence drive the racialization process.

### III. CRITIQUE

Embedding the movement to decriminalize street vending within broader calls for racial justice can sharpen the critique advanced by street vending advocates. A superficial review of the SSVA narrative might suggest that decriminalization provides a tidy solution to a fixable problem. At the state level, the SSVA expressly identifies a core purpose of the law is “to promote entrepreneurship and support immigrant and low-income communities.”<sup>46</sup> Framed this way, criminal laws were standing in the way of immigrants utilizing their talents and ambition to realize economic security, a kind of neoliberal fantasy. Sorely missing from this account is a broader structural critique of the relevant legal orders, governance regimes, and capitalist commitments. In this regard, the conversations unfolding around the Movement for Black Live can inform and push the conversations surrounding street vending.

Many scholarly accounts of immigrant entrepreneurialism wittingly or unwittingly perpetuate the notion that propertied interests of migrants entitle them to protection against violence. During the 1980s and 1990s, a significant literature focused on small businesses, family labor, and gaps within urban markets that immigrants filled.<sup>47</sup> For the most part, to the extent these accounts included or addressed the police, law enforcement officers did not pose the threat that they do in today’s climate in the street vending context. Rather, the police were phantoms who were largely absent and ineffective at or indifferent to the task of protecting immigrant store owners against the daily nuisances and threats posed by petty criminals. Channeling the voices of immigrant store and small business owners, this scholarship critiqued the police for failing to protect immigrants against private violence in the form of rioting or civil unrest.<sup>48</sup> Most notably, Korean immigrant store owners expressed frustration that police lined

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46. See CA Senate Bill No. 946, Safe Sidewalk Vending Act (Sept. 17, 2018).

47. See, e.g., Ivan Light & Edna Bonacich, *Immigrant Entrepreneurs: Koreans in Los Angeles, 1965-1982*; Ivan Light, *Immigration and Entrepreneurship: Culture, Capital, and Ethnic Networks* (1994); Kyeyoung Park, *The Korean American Dream: Immigrants and Small Business in New York City* (1997).

48. Park, *The Korean American Dream*, *supra* n. 48.

the streets of West Los Angeles and Hollywood to protect the interests of white home and store owners while leaving store owners in Koreatown to fend for themselves against looting. In this instance, the injustice stems from the disregard of the propertied interests of immigrants. In other words, it is the realization of material success that entitles migrants to protection.

While scholarship on street vending in the era of hyper enforcement of immigration enforcement is still in its nascent stages,<sup>49</sup> exploring this form of economic activity alongside calls for police reform or abolition can help introduce anti-capitalist critiques. In pushing for structural police reforms like abolition, Meghan McDowell and Luis Fernandez argue that the purpose of the police within a society committed to racial capitalism is to “protect the property of the capitalist class; maintain stable conditions for capitalist accumulation; and defend against any threats to these unequal conditions of rule.”<sup>50</sup>

Such a structural critique could sensibly and intuitively be extended to describe the economic conditions governing street vendors. A part of what renders the policing of street vending, not just frustrating, but also dangerous, is the degree to which migrants are teetering on the edge of economic survival. Linking the Safe Sidewalk Vending Act to this broader pattern of state violence suggests that legalizing street vending advances a set of normative commitments beyond capitalist impulses. Prior to the passage of the Act, many street vendors understood their lawbreaking as justifiable acts of resistance. But the death and harm of Black street vendors show that reform must do more than just remove barriers to vending markets. Placed within an anti-capitalist critique offered by police abolitionists, the decriminalization of street vending does not represent a culmination of movement but rather one step in a path involving many steps that pushes back against an exploitative system.

In other words, street vending can function as a form of protest. This is true in at least two senses. First, the broader campaign to decriminalize street vending illustrates how organized resistance operates within the parameters of law to usher in social change. In the related context of day labor work, which also transpires within the informal economy, Scott Cummings observes: “Day laborers are politically weak (and are therefore generally unable to prevent the passage of antisolicitation ordinances), but nonetheless possess a strong (though disputed) legal right to solicit work in public that, if protected, is self-enforcing.”<sup>51</sup> He goes on to note that day labor organizers rely on a strategy of resisting anti-solicitation ordinances, which could lay the foundation for litigation, and then over time secure the right for day laborers in court.<sup>52</sup>

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49. Notable exceptions are Rosales, *supra* n. 36, at 52 and Estrada, *supra* n. 35, at 52-54.

50. Meghan G. McDowell & Luis A. Fernandez, ‘Disband, Disempower, and Disarm’: *Amplifying the Theory and Practice of Police Abolition*, 26 *Critical Criminology* 373, 379 (2018). See also Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 *Cal. L. Rev.* 6 (2020).

51. See Scott L. Cummings, *Litigation at Work: Defending Day Labor in Los Angeles*, 58 *UCLA L. Rev.* 1617, 1621 (2011).

52. See *id.* at 1637-1638.

Advocates in the street vending context utilized a similar formula for social change which culminated in the passage of the SSVA.

Street vending can function as a form of protest in a second and subtler sense as well. Because litigation and therefore social change takes time, the act of street vending itself reflects a calculated act of defiance by the vendor. More than a quarter-century ago, legal scholar Regina Austin noted the importance of street vending to the economic survival for many black Americans. Austin observed: “In places like New York City, Washington D.C., and Philadelphia, most black street vendors work without a license and in violation of applicable vending regulations and sales tax laws. Yet, when asked about their illegal status, the vendors maintain that vending is an ‘honest living’ that they should be allowed to pursue legally.”<sup>53</sup> In other words, Black street vendors in that context questioned the legitimacy of the laws governing their livelihood by defying the laws through their commercial activity. Austin further elaborates that in the context of street-vending, which is highly regulated, many Black vendors “rightly understand that the line between the legal and the illegal in the area of economic activity is ephemeral and that the determination of the precise point at which the line is drawn is a matter of political struggle.”<sup>54</sup>

To take one example, immigrant rights activists have explicitly drawn the connection between economic activity and political resistance. Utilizing the hashtag “#undocuhustle” as a form of branding, the advocacy group, Immigrants Rising, provides “resources, knowledge and financial support for immigrant entrepreneurs, regardless of legal status” by “[providing] a comprehensive overview of the entrepreneurship landscape in the U.S.”<sup>55</sup> Such a framing not only invites lawmakers to remove legal hurdles to entrepreneurialism but also invites others to view this economic activity as a part of a comprehensive reform agenda that includes racial justice.

The SSVA reflects a victory for migrants and their advocates. Nothing in this short essay should be construed as an attempt to diminish the significance of that legal victory or the economic opportunities that law enables. The SSVA illustrates how any effort to reform our legal system in migrant-centric ways must include decriminalization strategies and a commitment to minimizing the threat of immigration consequences from police encounters. Such reforms are necessary to neutralize some of the worst racialization harms within this context. But these reforms can reach deeper and farther by reconceptualizing street vending as a precarious but valuable economic activity that is policed across

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53. See Regina Austin, “An Honest Living”: *Street Vendors, Municipal Regulation, and the Black Public Sphere*, 103 *Yale L.J.* 2119, 2120 (1994).

54. See *id.* at 2119.

55. See Immigrants Rising, *Entrepreneurship opportunities for all immigrants, regardless of immigrant status*, [https://immigrantsrising.org/wp-content/uploads/Immigrants-Rising\\_Entrepreneurship-Flyer.pdf](https://immigrantsrising.org/wp-content/uploads/Immigrants-Rising_Entrepreneurship-Flyer.pdf).

contexts and distinct racial histories. Establishing a clearer and more comprehensive picture of street vending can sharpen the moral critique embedded in the SSVA: street vendors deserve, not just the right to work free from the fear of removal, but also the right to work free from the fear of mayhem, trauma, and death at the hands of the police.