

WHO GETS TO MAKE A LIVING? STREET VENDING IN AMERICA

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ABSTRACT

Street vending has long provided those at the margins of American society with the opportunity for economic advancement. A key segment of the informal economy, street vending has low barriers of entry and attracts entrepreneurs who lack the resources, ability, or desire to start brick-and-mortar businesses or work for someone else. Street vending also contributes to the vitality and safety of urban America.

Despite the pivotal role that street vending plays, cities around the country criminalize vending by treating the violation of street vending regulations as a criminal offense. Recent high-profile vendor arrests in New York City and Washington, DC touched off protests and advocacy to decriminalize street vending. By attaching criminal violations to micro-enterprises like hot dog carts or fruit stands, localities place higher regulatory burdens on the smallest businesses in our communities. Criminalization carries with it collateral consequences such as the increased risk of deportation or loss of immigration status. Further, criminalization leads to unnecessary interactions with armed police officers that disproportionately affect vulnerable populations: low-income individuals, immigrants, both documented and undocumented, and returning citizens. Street vending provides entrepreneurial opportunities for these individuals when barriers to legal vending are not prohibitive but presents substantial risks when criminalized.

Protecting the rights of street vendors has taken on new urgency during the COVID-19 public health crisis. Many vendors have not been able to vend on city streets or have seen large reductions in business due to local stay-at-home orders. Street vendors around the country have joined the ranks of excluded workers. Unable to earn a living, many have been barred from programs meant to support individuals and small businesses on account of immigration status or because they operate a cash business.

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This Article explores the state of sidewalk vending in America. Special focus is given to Washington, DC, which has a small but robust street vending culture. Vending without a license in Washington, DC is a crime, and police heavily enforce this prohibition. The city has had a permitting regime for vendors for a long time, but costs and other permitting requirements render licenses unobtainable for many street vendors.

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INTRODUCTION

The Columbia Heights neighborhood in Washington, DC is one of the densest and most diverse neighborhoods in the city. Streets around the Columbia Heights Metro Station bustle with commuters, shoppers, and locals. The businesses on 14th Street Northwest, which runs through the heart of Columbia Heights, match the demographics of the diverse but changing neighborhood. Big box stores, a vegan bakery, pupuserías, corner stores, and Latino and Ethiopian groceries all share this busy commercial corridor. The neighborhood is also home to a large number of street vendors. Most days, vendors set up tables and carts on sidewalks and sell bottled drinks, food, and assorted items to passersby. Pedestrians can buy refreshing agua fresca during sweaty DC summers and warm atol de elote on cold winter days. Some of the vendors specialize in homemade tamales and taquitos; others sell hats, t-shirts, and, in 2020, bottles of hand sanitizer and masks.

In November 2015, 15-year-old Genesis Lemus finished school and went to watch her mother’s vending table on 14th Street while her mother stepped away to run errands. Genesis’s brother sat nearby doing his homework and playing with friends. The children’s mother, Ana, was selling plantain chips and atol de elote that day, as she had been doing for years. While Ana was away, a Metropolitan Police Officer approached Genesis and told her that she had to leave. Vending without a license was a crime, the officer said, and was grounds to call the Department of Children and Family Services and take Genesis’s brother away from her. The officer grabbed Genesis’s brother. Ana tried to protect her brother and cried for the officer to stop. A video, captured by a bystander and posted to social media, shows the officer shoving Genesis to the ground. Injured and traumatized, Genesis had to be taken to the hospital.¹

The video of the incident went viral, local media picked up the story, and community outrage ensued. But, as outrageous as the officer’s conduct was, his description of the law in DC was correct. Street vending without a license is a crime in the District, punishable by up to ninety days in prison. Indeed,

1. Peter Hermann & Marissa J. Lang, *D.C. Police Stopped a Teen Selling Street Food. Now There’s an Investigation into the Incident*, WASH. POST (Nov. 20, 2019), <https://perma.cc/7LXJ-5C7H>.

street vendors complained that they have endured police harassment and have been cited and arrested for vending for years. In the following weeks, a group of vendors organized themselves into a group called *Vendedores Unidos* to advocate on behalf of DC street vendors.² Ana continues to vend on 14th Street.

Street vending has long provided those at the margins of society with the opportunity for economic advancement. A key segment of the informal economy, street vending has low barriers to entry and attracts those entrepreneurs who lack the resources, ability, or desire to start brick-and-mortar businesses or work for someone else. Street vending also contributes to the vitality and safety of urban America. Despite the pivotal role that street vending places, cities around the country criminalize vendors.

While few American cities completely outlaw street vending, many treat the violation of street vending regulations as criminal, either instead of or in addition to civil penalties. Hard-to-obtain licenses and byzantine regulations make licensed vending inaccessible to many vendors, especially low-income and immigrant vendors. The results of this criminalization can be dire. Vendors vend under constant fear of being cited or arrested and having their equipment and goods impounded by police. Immigrant vendors may find themselves in deportation proceedings or barred from certain forms of immigration relief. Vending statutes are used to arrest people for actions as minor as selling loose cigarettes on city streets.

High-profile vendor arrests in New York City and Washington, DC in 2019 touched off protests and advocacy around street vending in those cities.³ Prohibition of street vending and the treatment of violations of street vending regulations as criminal offenses is an example of the criminalization of micro-enterprise. By attaching criminal violations to micro-enterprises like street vendors, localities place high regulatory burdens on the smallest businesses in our communities. These burdens lead to collateral effects that disproportionately affect vulnerable populations: low-income individuals, immigrants, both documented and undocumented, and returning citizens who face higher barriers to entering the formal economy. Street vending presents entrepreneurial opportunities for these individuals, but also substantial risks when criminalized.

Street vending regulation reflects the double-sided nature of vending. Some see vending as a way to provide opportunities to poor and marginalized individuals, a form of entrepreneurship, or an amenity of urban life. Others see vendors as a nuisance, a public health hazard, or unfair competition to

2. John Henry, *"There Shouldn't Be This Much Red Tape": Work Continues to Streamline Street Vending Licensing in DC*, WUSA (Dec. 3, 2019), <https://perma.cc/FE8E-GS8T>.

3. See Hermann & Lang, *supra* note 1; Azi Paybarah, *Police Face a Backlash After Woman Selling Churros Is Handcuffed*, N.Y. TIMES (Nov. 11, 2019), <https://perma.cc/5MCN-FMVX>. A Thanksgiving dinner served on a New York City subway, on the other hand, did not attract any arrests. Jason Kottke, *Thanksgiving Dinner Served on the L Train*, KOTTKE.ORG (Nov. 26, 2019), <https://perma.cc/E3BB-6YPC>.

legitimate brick and mortar retailers. How governments view street vending is often determined by who is doing the vending, and both positive and negative views can exist at the same time and in the same place.⁴

This Article explores the state of sidewalk vending in America. Washington, DC's treatment of street vending serves as a case study in how cities regulate street vending and who bears the burden of—or benefits from—that regulation. Washington, DC's vendor population is relatively small, and while vending without a license in Washington, DC is a crime, the city has for a long time had a permitting regime for vendors. The article also looks at other cities with rich histories of street vending culture and movements to both crack down on and deregulate and decriminalize street vending, such as Los Angeles, New York City, and Portland, Oregon.

Part I presents a history of street vending and street vending regulation in the United States. Street vending in American cities has tended to coincide with large waves of immigration, the first being in the late nineteenth and the early twentieth centuries with the arrival of immigrants from Southern and Eastern Europe to northern cities and immigrants from China and Mexico to western cities. In the decades that followed, cities passed laws to cut the number of street vendors, limit their ability to vend, and move workers from the streets into burgeoning industrial sectors. Street vending enjoyed another spike in the late twentieth century as another wave of immigrants, largely from Latin America and Asia, brought vending with them to urban areas. The 1980s and 1990s saw further restrictions on street vending enacted around the country. In the last two decades, the so-called “urban revival” brought a vibrant street culture back to many American cities. Cities began to pass laws allowing for food trucks and farmers' markets; however, many of these laws continue to exclude poor, marginalized vendors in favor of vending business owned and patronized by whiter, wealthier people.

Part II gives an overview of the array of laws limiting street vending, be it state law, municipal ordinances, or county laws, and details the criminalization, penalties, fees, and complex permitting structures of sidewalk vending. Governments at each of these three levels around the country have laws that address street vending, and a vendor in any one location can find themselves subject to a dizzying array of overlapping laws. They can also find themselves under the jurisdiction of various city, county, and state agencies.

Part III explores the enforcement of these laws in Washington, DC. Through Freedom of Information Act (FOIA) requests, I am gathering information on numbers of licenses issued and denied, numbers and locations of citations, and criminal cases filed against street vendors. These data present a picture of a licensing and enforcement regime that is disproportionately punitive against street vendors as compared to similar businesses.

4. One's view of vending can also depend on how one views appropriate uses of public space, as well as cultural values.

Part IV examines the consequences of criminalization faced by vendors and explores various analytical frameworks for these laws. Cities tend to rely on public health rationale for criminalizing street vending. However, these laws are not always justified by public health data. These laws also reflect attempts by cities to control and subordinate populations that engage in vending and patronize street vendors. By criminalizing an activity like vending, local governments delegitimize groups of people. These laws are often passed as a response to the unwelcome presence of immigrants in a city, for example. Street vending laws are also part of larger attempts to criminalize poverty through the use of vagrancy laws. Finally, street vending regulations factor into the complicated dynamics within cities among established brick-and-mortar businesses, gentrifiers, and low-income residents.

Part V assesses proposed and newly enacted reforms to street vending laws. Special attention is given to reforming biased, complaint-driven systems. Some reform efforts aimed to allow food trucks and farmers markets or to create higher barriers for low-income vendors to enter the formal economy. In California, for example, a recent statewide decriminalization law accompanied licensing reform that, while opening the door to some vendors, kept intact many parts of an expensive and complicated regulatory regime. Successful efforts employ a “fix don’t fine” approach in which city governments conduct vendor outreach to identify risks to the public and ways to mitigate those risks collaboratively with vendors rather than through issuing fines and citations.

I. THE CURRENT STREET VENDING LANDSCAPE

A. *What Is Street Vending?*

Street vending is an umbrella term that describes the setting more than it does a type of economic activity. Street vending is the selling of food or goods from a public or private space such as streets, sidewalks, parks, or parking lots from impermanent or mobile structures.⁵ Street vendors as discussed in this Article vend goods from tables, carts, or blankets on the sidewalks and streets. Food trucks are subject to separate regulations and are not included as street vendors in this Article, though some cities apply the same rules to both carts and trucks.⁶ This definition of street vending discusses both food vendors and other vendors.⁷

5. See Sylvain Racaud, Jackson Kago & Samuel Owuor, *Introduction, Contested Street: Informal Street Vending and Its Contradictions*, ARTÍCULO J. URBAN RSCH. (2018); Ryan Thomas Devlin, *Informal Urbanism: Legal Ambiguity, Uncertainty, and the Management of Street Vending in New York City* 134 (2010) (Ph.D. dissertation, University of California, Berkeley) (on file with the California Digital Library).

6. For a discussion of food truck vending laws, see Section II, below.

7. Food vendors are often subject to higher levels of health regulations than vendors selling other goods, though both largely fall under the same regulatory regimes governing uses of public space. For a discussion of the content of street vending laws, see Section II, Part D, below.

Much of street vending in the United States takes place in the informal economy. The informal economy refers to activities that take place outside of the law—either those that are designed to avoid legal requirements or those that operate in direct violation of the law.⁸ Informality does not depend on the nature of the underlying activity, but rather is a political decision reflected in the regulation of an activity.⁹ An activity that is informal in one place can be legal and, therefore, formal in another. Informal activity has often been viewed as occupying the lowest level in the “hierarchy of types of employment.”¹⁰

Street vending is, in fact, an archetypal informal economic activity—the term likely conjures up images of sidewalk fruit stands, pushcarts with hot foods, or sundries laid out on a blanket on a busy urban street. Scholars have examined street vending as informal economic activity both in the United States¹¹ and around the world. As discussed below, many American jurisdictions have chosen to craft laws to provide that that street vending is or at least can be unlawful and even criminal absent a license. Much of American street vending, therefore, takes place outside the law but can be distinguished from the illegal economy—activities that violate laws outline accepted forms of commerce—as well as from the unreported economy—activities that result in income that is not reported to tax authorities.¹² Street vending also exhibits other hallmarks of informal economic activity, such as operating in cash only.¹³

Street vending is also an entrepreneurial activity. Magnus Henrekson defines entrepreneurship as having three characteristics: (1) activity that actively contributes to renewal and change in the economy by creating economic opportunity; (2) functions carried out by individuals acting through

8. Gregg W. Kettles, *Regulating Vending in the Sidewalk Commons*, 77 TEMP. L. REV. 1, 28 (2004).

9. See Ginny Browne, Will Dominie & Kate Mayerson, “Keep Your Wheels On”: *Mediating Informality in the Food Cart Industry*, in THE INFORMAL AMERICAN CITY 243, (Vinit Mukhija & Anastasia Loukaitou-Sideris eds., MIT Press 2014) (“[T]he planning and legal apparatus of the state has the power to determine when to enact this suspension [of order], to determine what is informal and what is not, and to determine which forms of informality will thrive and which will disappear.”) (internal citations omitted).

10. *Characteristics of the Informal Economy*, *supra* note 8, at 60. Street vending fits the specific niche of micro-enterprise, often defined as business with a small number of workers and organized as either a sole proprietorship or family business. R. H. Tipton III, *Microenterprise through Microfinance and Microlending: The Missing Piece in the Overall Tribal Economic Development Puzzle*, 29 AM. INDIAN L. REV. 173, 177–78 (2004).

11. See, e.g., Browne, Dominie & Mayerson, *supra* note 10; Kettles, *supra* note 9; Regina Austin, *An Honest Living: Street Vendors, Municipal Regulation, and the Black Public Sphere Symposium: The Informal Economy*, 103 YALE L.J. 2119 (1994).

12. Guillermo Javier Vuletin, *Measuring the Informal Economy in Latin America and the Caribbean* 3 (Int’l Monetary Fund, Working Paper No. 08/102, 2008).

13. Other studies show that most informal transactions take place in cash. Dan Andrews, Aida Caldera Sánchez & Asa Johnson, *Towards a Better Understanding of the Informal Economy* (Org. for Econ. Co-operation & Dev., Econ. Dep’t, Working Paper No. 873, 2011). Anecdotally, many vendors in Washington, DC started to use apps like CashApp and Venmo as they began to return to the street in 2020. These apps facilitate cashless payments and are seen as a safer alternative to cash. Many of these apps are most commonly used with a banking account, though some have workarounds that allow unbanked to collect payments.

their own volition; and (3) activity that individuals expect will lead to high return. Sander Wennekens and A. Roy Thurik add that entrepreneurship “perceives and creates new economic opportunities” and makes decisions on the location, form, and use of resources.¹⁴

Street vending fits these definitions of entrepreneurial activity. Street vendors are primarily owners rather than employees.¹⁵ The ability to engage in activities like street vending is a particularly important avenue for the creation of economic activity for many communities that engage in street vending, and the nature of vending is such that vendors have great flexibility in what and where they vend.

Further, vendors often choose to vend because it can result in higher returns than wage employment. Many street vendors are low or unskilled workers and could only find wage work in jobs that are physically demanding, insecure, and pay low wages. These industries are prone to wage theft and labor violations; even if employers follow prevailing wage and hour laws, a wage can be as low as \$7.25 in parts of the country.¹⁶ To many workers, street vending is an attractive alternative to temporary farm work, dangerous construction jobs, or jobs in industries like the garment industry in Los Angeles that are rife with labor violations.¹⁷ Entrepreneurship creates opportunities for those leery of being exploited in the wage economy or who simply want control and flexibility that low-wage jobs don’t provide. For that reason, many entrepreneurs turn to street vending despite its legal status. They make the calculus that owning and operating their own business, even at the risk of being fined or ticketed, getting their equipment impounded, or other collateral consequences, is still better than other jobs.¹⁸

Finally, vending plays an important role in supply chains, connecting products with consumers on a scale smaller even than that of independently owned shops.¹⁹ Many vendors operate in neighborhoods that lack access to food or goods. So-called food deserts are notorious for their lack of fresh and healthy food.²⁰ Nimble street vendors can open in or move to these

14. Magnus Henrekson, *Entrepreneurship and Institutions*, 28 COMP. LAB. L. & POL’Y J. 717, 720 (2007).

15. See Dick M. Carpenter, *Upwardly Mobile Street Vending and the American Dream*, INST. FOR JUST. 1, 8 (2015), <https://perma.cc/C9GY-VR8L>.

16. See Rocio Rosales, *Hidden Economies in Public Spaces: A Study of Fruit Vendors in Los Angeles* (2012) (Ph.D. dissertation, University of California, Los Angeles) (on file with UCLA Electronic Theses and Dissertations).

17. See Rocio Rosales, *Survival, Economic Mobility and Community among Los Angeles Fruit Vendors*, 39 J. ETHNIC & MIGRATION STUD. 697, 707 (2013).

18. Gourmet food truck owners may see themselves more readily as entrepreneurs, but vendors all along the spectrum of street vending engage in entrepreneurial activity. See JULIAN AGYEMAN, CAITLIN MATTHEWS & HANNAH SOBEL, *FOOD TRUCKS, CULTURAL IDENTITY, AND SOCIAL JUSTICE: FROM LONCHERAS TO LOBSTA LOVE* 48 (2017).

19. See Austin, *supra* note 12, at 2125–26. Not all vendors are entrepreneurs. Some work as employees of cart owners; others vend as a way to pay off exploitative coyotes who assisted their entry into the county. See Kettles, *supra* note 10, at 24 (2004).

20. Steven Cummins and Sally Macintyre first coined the term “food desert” in the 1990s to refer to urban areas with limited access to affordable, health food. See Steven Cummins & Sally Macintyre,

neighborhoods to compensate for the failure of the formal market.²¹ The potential for street vendors to expand access to fresh, healthy food is so great that the New York City GreenCarts initiative, launched in 2008, works with existing street vendor networks to provide fresh fruit and vegetables in neighborhoods with low consumption of fresh produce.²²

Other vendors serve clients in neighborhoods with access to food and shopping that is too expensive or not culturally appropriate for many of the residents who live there. This is especially true when immigrant communities or communities of color find their neighborhood gentrifying—new shops and restaurants may be available but cater mainly to wealthier, whiter newcomers. Street vending allows those residents to access affordable, culturally appropriate food that they otherwise would not have access to in gentrifying neighborhoods.²³

B. *Who Are Street Vendors?*

American street vendors are a diverse population and hail disproportionately from a variety of marginalized communities—specifically, street vendors are largely low-income people of color and immigrants.²⁴ In 2015, the nongovernmental organization Institute for Justice surveyed 763 street vendors in the 50 largest cities in the United States and produced the largest known study of street vendors in the country. The report, titled *Upwardly Mobile: Street Vending and the American Dream*, produced demographic and economic data on this population. The Institute for Justice found that 51 percent of street vendors are immigrants, that 62 percent of street vendors are people of color, and that 35 percent are Hispanic. The report found that, while 72 percent of vendors completed high school, 63 percent had no specialized training. Over two-thirds of street vendors are men, a higher proportion of street vendors are veterans than the general population, and a significant percentage of veteran vendors have disabilities.²⁵ Street vendors come to vending from an array of other jobs, spanning from service professionals to low-wage and seasonal manual laborers, and a third of vendors vend in addition to another job.²⁶

“Food Deserts”—Evidence and Assumption in Health Policy Making, 325 *BRITISH MED. J.* 436, 436 (2002). Some scholars refer instead to “food apartheid” to reflect the purposeful and racialized structures that create this phenomenon. See Joshua Sbicca, *Growing Food Justice By Planting an Anti-Oppression Foundation: Opportunities and Obstacles for a Budding Social Movement*, 29 *AGRIC. HUM. VALUES* 455, 461 (2012).

21. See AGYEMAN, MATTHEWS & SOBEL, *supra* note 19, at 275; see also Robert Baird, David C. Sloane, Gabriel N. Stover & Gwendolyn Flynn, *A Step Toward a Healthier South Los Angeles: Improving Student Food Options Through Healthy Sidewalk Vendor Legalization*, 18 *CITYSCAPE* 109, 119 (2016).

22. See OFF. OF DISEASE PREVENTION & HEALTH PROMOTION, *Pushing Produce in New York City’s Neighborhoods: The Green Carts Initiative*, <https://perma.cc/S5F9-XYB4> (last visited Sept. 26, 2021).

23. See Erin Glenn, *Taco Trucks on the Street: Where Food and Social Justice Meet*, 3 *L.A. PUB. INT. L.J.* 51, 58–59 (2011).

24. See AGYEMAN, MATTHEWS & SOBEL, *supra* note 19, at 48.

25. See Carpenter *supra* note 16, at 5, 25.

26. See *id.* at 15–16.

The Institute for Justice's survey included the so-called "new generation" of street vendors—educated, wealthier entrepreneurs starting food trucks to appeal to a hip, young urban clientele. However, the survey focused exclusively on licensed vendors in the cities it studied, leaving out vendors operating outside of vending license regimes.²⁷ Many of these vendors, like Ana, tend to be lower-income and have less education, and are more likely to be immigrants, both documented and undocumented,²⁸ and people of color. This report may also have undercounted the number of women who street vend. At least one study found that the majority of street vendors in Los Angeles are women,²⁹ and scholars have written about women in the informal economy and the relationship between street vending and feminism.³⁰ While demonstrating that American street vendors comprise a diverse, heavily immigrant population, data that exists around street vending likely undercounts vendors of color and others who lack the resources or ability to comply with vending laws.

Street vending is an attractive alternative to the formal wage economy for many in these communities. Some vendors, particularly women, turn to vending for the flexibility it offers. These vendors can schedule workdays in a way that allows them to care for children and even bring children with them to vend.³¹ Further, vending can be an alternative to a labor market rife with exploitation and that offers little opportunity for economic advancement.³² For all of these individuals, vending provides an opportunity for economic advancement that, despite its informal status, can be more lucrative and more stable than employment in other formal sectors.³³ Vendors often represent those at the fringes of even these marginalized communities.³⁴ Street vending presents opportunities for queer people,³⁵ and those with disabilities³⁶ for whom cultural and legal barriers to entry to job markets and discrimination and exploitation in those job markets are particularly severe.³⁷

It is not surprising that many immigrants turn to street vending to create economic opportunity, and the presence of large groups of immigrants has

27. See Dick M. Carpenter, *Street Vending in the United States: A Unique Dataset from a Survey of Street Vendors in America's Largest Cities*, 20 CITYSCAPE 245 (2018).

28. See Fazila Bhimji, *Struggles, Urban Citizenship, and Belonging: The Experience of Undocumented Street Vendors and Food Truck Owners in Los Angeles*, 39 URB. ANTHROPOLOGY & STUD. CULTURAL SYS. & WORLD ECON. DEV. 455, 458 (2010).

29. Sara Bruene & Moshoula Capous-Desyllas, *Legalizing Street Vending in Los Angeles: Reframing a Movement During the Fourth Wave of Feminism*, CRITICAL SOCIO. 4 (2020).

30. See, e.g., *id.* at 5; Bhimji, *supra* note 29; Lorena Munoz, *Entangled Sidewalks: Queer Street Vendors in Los Angeles*, 68 PROFESSIONAL GEOGRAPHER 302–08 (2016).

31. Bruene & Capous-Desyllas, *supra* note 31, at 4.

32. Rosales, *supra* note 19, at 700–01.

33. See Browne, Dominie & Mayerson, *supra* note 10.

34. Austin, *supra* note 12, at 2123.

35. Munoz, *supra* note 31, at 302–08 (2016) (discussing the experiences of queer street vendors in Los Angeles).

36. Carpenter, *supra* note 16, at 25 (The Institute for Justice found a significant number of vendors with disabilities within the population they studied).

37. Kettles, *supra* note 9, at 22–23.

been associated with vending and other informal economic activity.³⁸ In addition to requiring relatively little startup capital, street vending allows vendors and their customers to draw on customs from their home countries. In Los Angeles, for example, the first generation of lonchera truck owners were often street vendors in Latin America and brought that skill set to Latino neighborhoods or sites frequented by Latino customers.³⁹ Customers in these places, many of whom were accustomed to eating street food, flocked to these businesses.⁴⁰ In this way, street vending provides culturally appropriate, affordable food and wares to communities who may otherwise struggle to access food and items from their home county.

Street vending is also common in urban Black communities and plays an important role in Black communities, through the experience of Black street vendors has been written about less than the experience of immigrant vendors. In her essay, “‘An Honest Living’: Street Vendors, Municipal Regulation, and the Black Public Sphere,” Regina Austin lays out the cultural and economic functions of Black street vendors in Black spaces. In addition to creating jobs for vendors, street vending provides Black consumers with culturally appropriate jobs, promotes and maintains Black culture in diverse urban spaces,⁴¹ and serves as a training ground for those seeking to move into the formal sector.⁴²

C. *Who Regulates Street Vending?*

Street vending in the United States is regulated primarily at the local level. Most large American cities have municipal ordinances that restrict street vending, create licensing regimes for street vendors, and place civil and/or criminal sanctions on vendors operating in violation of local law.⁴³ Many counties also regulate street vending. This is especially true in jurisdictions where health departments are run by the county, rather than the city.⁴⁴ Finally, some states also place regulations on street vending, though many of these apply to specific classes of street vendors like blind or veteran vendors.⁴⁵ The result of this is that vendors are subject to a variety of overlapping

38. Saskia Sassen, *The Informal Economy: Between New Developments and Old Regulations*, 103 *YALE L.J.* 2289, 2293 (1994).

39. Glenn, *supra* note 24, at 53.

40. *Id.*

41. Austin, *supra* note 12, at 2124.

42. *Id.*

43. Erin Norman, Robert Frommer, Bert Gall & Lisa Knepper, *Streets of Dreams*, INST. FOR JUST. (2011), <https://perma.cc/55C8-HARS>.

44. Both Los Angeles County and the City of Los Angeles, for example, have enacted laws that govern street vending. *See* L.A., CAL., CNTY. CODE OF ORDINANCES ch. 7.62; L.A., CAL., MUN. CODE §. 42.00.

45. *See, e.g.*, Alaska Stat. Ann. § 23.15.133 (West 2021) (“The agency shall issue a license for the operation of a vending facility on public property to a blind person or a person with a severe disability”); Wis. Stat. Ann. § 440.51 (West 2021) (“Any ex-soldier of the United States in any war, who has a 25 percent disability or more or has a cardiac disability recognized by the U.S. department of veterans affairs, and any person disabled to the extent of the loss of one arm or one leg or more or who has been declared blind as defined under Title XVI of the social security act, shall, upon presenting the department proof of these conditions, be granted a special statewide peddler’s license without payment of any fee.”).

regulations at the local, county, and possibly state levels, each of which may have its own requirements, license or permit process, and penalties. These local laws and regulations also define the contours of the formal economy and can vary from jurisdiction to jurisdiction.

Perhaps nowhere in the country demonstrates this complicated maze of regulations more than Los Angeles, California. The City of Los Angeles is but one of 88 cities in the county.⁴⁶ Los Angeles has a well-deserved reputation for its late-night street fare. On any given day in Los Angeles, some 50,000 Angelenos sell food and other items on the street.⁴⁷ These street vendors sell tortillas, pupusas, tacos, fresh fruit, and other items all around the city. While carnitas burritos and al pastor tacos from lonchera trucks may get top billing, “danger dog” hot dogs are the street meat of choice for many. As described by the late Jonathan Gold, a “danger dog” is a “mayo-slathered, chile-slliced, grilled onion–smothered bacon-wrapped [wonder] bought from bootleg griddle masters.”⁴⁸ On any breezy Los Angeles evening, carts selling danger dogs can be found outside just about any concert hall, arena, club, or strip of bars. Vendors in and around Los Angeles face a complicated web of regulations and overlapping local, state, and county jurisdiction. The City of Los Angeles’s Bureau of Street Services issues sidewalk and park vendor permits.⁴⁹ But, Los Angeles food vendors also need to secure a public health permit from the County of Los Angeles Department of Public Health.⁵⁰ Some vendors also fall under the jurisdiction of the California Vehicle Code,⁵¹ and, as of 2018, California law contains requirements that all cities and counties must follow when licensing street vendors.⁵² The result can be a complicated and sometimes contradictory system of rules and agencies that vendors are forced to navigate. Regulations may vary from one side of the street to another, and compliance with the Department of Public Health’s requirements does not necessarily guarantee compliance with the Bureau of Street Services’ rules.

Los Angeles is an extreme example, but vendors in many other cities are subject to overlapping jurisdiction at the city, county, and state levels. Every one of the fifty largest cities in the country contains some municipal law governing street vending, while only twenty of the largest counties in the state contain laws specific to vending, and thirty-nine states have laws specific to street vending.⁵³ The

46. Cnty. of Los Angeles, *Cities and Communities*, <https://perma.cc/LQ4R-US87> (last visited Sept. 8, 2018).

47. Lucas K. Peterson, *Column: L.A.’s Reopening Plan Is Leaving Our Street Vendors in the Dark*, L.A. TIMES (June 4, 2020), <https://perma.cc/2BWG-XGUG>.

48. Jonathan Gold, *Best Hot Dog: L.A. Street Dog at Fab’s*, L.A. WEEKLY (Oct. 1, 2008), <https://perma.cc/VU4S-5HEP>.

49. Bureau of Street Services, *Making LA’s Street Network Safe, Mobile, and Sustainable through Innovation, Integration and Inclusion*, <https://perma.cc/3LME-25DN> (last visited Oct. 3, 2021).

50. *Id.*

51. Ernesto Hernandez-Lopez, *LA’s Taco Truck War: How Law Cooks Food Culture Contests*, 43 INTER-AM. L. REV. 233, 240 (2010).

52. S. 946, 110th Cong. (2018) (enacted).

53. Though a state or county may not have laws specific to street vending, many have laws of general applicability that apply to street vendors. County health departments may have food service rules that apply to food street vendors as well as restaurants, and state traffic laws may govern street vendors’

following Section examines what the codes say, with particular attention given to the extent to which penalties for street vending without a license or otherwise in violation of street vending laws are treated as a criminal or civil offense.

D. *What Street Vending Laws Say*

As set forth in Section I, Part B above, cities, counties, and states all regulate, to varying degrees. While not every state or county have laws specific to street vending laws, many jurisdictions follow similar patterns of who regulates various aspects of street vending. Ginette Wessel describes the division of street vending regulation as follows:

State governments establish vehicle and traffic codes and determine what activities can occur in public rights-of-way (including streets and sidewalks). They also provide vendors with driver's licenses and vehicle registrations. County governments, on the other hand, inspect and permit vendors to ensure compliance with public health standards, including vending equipment requirements, disability accommodations, sanitation standards, and proper food handling. Municipalities develop the most comprehensive and often restrictive set of policies for vending on public and private property, such as time durations and proximity bans from residential neighborhoods and commercial areas. County health inspectors, clerks, and local police officers enforce food vending regulations.⁵⁴

This Section analyzes the content of these laws. In analyzing these laws, I pulled relevant statutes from (a) the fifty largest cities in the country; (b) the fifty largest counties in the country;⁵⁵ and (c) all fifty states.

Particular attention is paid in this Section to whether each of these three levels of government treats violations of these laws as a criminal or civil violation. The content of street vending regulations around the country has been studied in the past, but the extent to which street vending is criminalized has yet to be fully explored. As explained in Section III, below, criminalization is important for two principal reasons. First, criminalization entails collateral consequences, such as ineligibility for certain forms of immigration relief and effects on employability and the ability to obtain housing, among others, that civil offenses largely do not. Second, criminalization allows for the creation of a two-tiered enforcement system wherein sidewalk vending is handled by the police and other types of vendors governed under similar statutes, including food trucks, are not.

abilities to utilize public space. Some states have laws specific to all street vendors or specific classes of street vendors, while others merely delegate the power to regulate street vending to local authorities.

54. Ginette Wessel, *Relaxing Regulatory Controls: Vendor Advocacy and Rights in Mobile Food Vending*, in *FOOD TRUCKS, CULTURAL IDENTITY, AND SOCIAL JUSTICE: FROM LONCHERAS TO LOBSTA LOVE 23* (Julian Agyeman, Caitlin Matthews & Hannah Sobel eds., 2017).

55. Some cities and counties, like San Francisco, are merged. Where this is the case, the combined jurisdiction is counted as both a city and a county.

1. *Content of Regulations*

Great variation exists among American cities' street vending statutes, even within the categories described above. Some of these laws and regulations place clear limits on when, where, and in what matter vendors can vend; others include provisions whose enforcement is left to the discretion of the law enforcement or regulatory agency tasked with enforcing these laws.⁵⁶ As mentioned above, the nature of the regulations placed on street vendors in individual cities and around the country has been the subject of some study.⁵⁷ Among the regulations placed on street vendors are expensive license fees, time and place restrictions, health code requirements that can be difficult to meet without access to a professional kitchen, and caps on the number of licenses, among others.⁵⁸

The following list is an example of common regulations placed on street vendors:

- a. Time Restrictions: Laws may require that vendors only operate between certain hours or impose vending curfews. Others limit the amount of time that a vendor can stay in one location.⁵⁹
- b. Place Restrictions: Some laws require that vendors only operate in certain areas, like central business districts or special vending zones. Alternatively, laws may prohibit street vending in specific areas such as within five hundred feet of a school⁶⁰ or on public property altogether.⁶¹
- c. Training Requirements: Some cities require that food vendors obtain food handling licenses or go through special training for food handlers.⁶²
- d. Commercial Kitchen Requirements: Many laws require that street vendors who sell food prepare that food in a commissary licensed commercial kitchen or obtain a special permit to prepare food in their own homes.⁶³
- e. Limits on Numbers of Licenses: Some cities place strict limits on the number of street vending permits that they give out.⁶⁴

56. Gregg Kettles, *Crystals, Mud, and Space: Street Vending Informality*, in *THE INFORMAL AMERICAN CITY* 227 (Vivit Mukhija & Anastasia Loukaitou-Sideris eds., 2014). Kettles analyzed over fifty New York City laws that regulated street vending, categorizing them as either “mud”—those that are applied subjectively or “crystal”—those that are applied objectively. Kettles further classified each law as “administrative” to refer to spatial regulations and “health” to refer to nonspatial regulations.

57. June M. Tester, Stephanie A. Stevens & Irene H. Yen & Barbara A. Laraia, *An Analysis of Public Health Policy and Legal Issues Relevant to Mobile Food Vending*, 100 AM. J. PUB. HEALTH 2038 (2010); Wessel, *supra* note 55; Norman, Frommer, Gall & Knepper, *supra* note 44.

58. Tester, Stevens, Yen & Laraia, *supra* note 58, at 2039–43.

59. *Id.* at 2042; Norman, Frommer, Gall & Knepper, *supra* note 44, at 22.

60. Tester, Stevens, Yen & Laraia, *supra* note 58, at 2041.

61. Norman, Frommer, Gall & Knepper, *supra* note 44, at 15.

62. Tester, Stevens, Yen & Laraia, *supra* note 58, at 2040.

63. *Id.* at 2039.

64. *Id.* at 2043; Norman, Frommer, Gall & Knepper, *supra* note 44, at 25.

- f. Inspections: Street vendors selling food in many cities are required to undergo regular inspections.⁶⁵

There are nearly as many definitions of street vending in these laws as there are jurisdictions that regulate street vending. Some cities use archaic terminology—San Diego’s statute refers to “solicitors,” “hawkers,” “salesmen,” and “peddlers.”⁶⁶ Others simply describe the activity. A vendor in Dallas is someone who “engages in a business of selling or offering for sale goods or services from any structure or vehicle that is not affixed to the ground or from no structure or vehicle.”⁶⁷ Some take both approaches. New York defines “vend” as “to hawk, peddle, sell, lease, offer to sell or lease, at retail, goods or services other than food in a public space.”⁶⁸

Food street vending is often regulated separately from sales of merchandise and other types of vending. Additional health and safety regulations are often placed on food vendors, and many food vendors are subject to additional inspection requirements. Food trucks are also treated differently than sidewalk vending in many cities. Many cities now have separate licensing regimes for food trucks than for sidewalk vending. Houston, for example, includes food trucks in its definition of street vendors;⁶⁹ Chicago does not.⁷⁰ In most cities with separate rules for food trucks, laws were passed since 2008 or so to create new rules in response to the rise in food truck popularity in cities around the country.⁷¹ As a result, food trucks, which were previously subject to rules that covered sidewalk vendors as well, now operate under separate regimes.

2. Penalties

Analyses of street vending laws around the country have focused on the nature of the restrictions put on street vendors but not on penalties assessed

65. Tester, Stevens, Yen & Laraia, *supra* note 58, at 2039; Norman, Frommer, Gall & Knepper, *supra* note 44, at 32.

66. San Diego, CAL., MUN. CODE § 33.1401(a).

67. DALL., TEX., CITY CODE § 50-157(14).

68. N.Y.C., N.Y., ADMIN. CODE § 20-452 (h).

69. “Street vendor means any person, as well as any agent or employee of the person, who is not required to have a certificate of occupancy and who engages in the temporary or transient business in the city of selling, or offering for sale, any goods or merchandise, or exhibiting the same for sale, or exhibiting the same for the purpose of taking orders for the sale thereof, and who, for the purpose of carrying on such business or conducting such exhibits thereof, displays, exhibits, sells or offers for sale such goods or merchandise upon or from a truck, a cart, or other vehicle on non-residential property located in the city, or who hires, rents, leases or occupies any room or space in any building, structure, other enclosure, vacant lot or any other property whatever in the city that does not require a certificate of occupancy through or from which any goods or merchandise may be sold, offered for sale, exhibited for sale or exhibited for the purpose of taking orders for the sale thereof.” Houston, TEX., CODE OF ORDINANCES § 22-1.

70. “‘Peddler’ or ‘street peddler’ means any individual who, going from place to place, whether on private property or on the public way, sells, offers for sale, sells and delivers, barter or exchanges any goods, wares, merchandise, wood, fruits, vegetables or produce from a vehicle or otherwise. The term “peddler” does not include . . . any mobile food dispenser within the meaning of Chapter 4-8 of this Code, or (iv) any mobile merchant within the meaning of Section 4-6-330 of this Code.” CHI., ILL., MUN. CODE § 4-244-010.

71. Wessel, *supra* note 55.

against street vendors for violating those rules.⁷² An examination of these laws finds that there is a range in the treatment of violations of street vending laws but that criminalization of vending without a license or otherwise in violation of local street vending regulations is common.⁷³

Street vending laws exist on a spectrum of criminalization around the country, and penalties for vending without a license or otherwise in violation of those laws range from simple civil fines and the revocation of a license⁷⁴ to the possibility of jail time.⁷⁵ On one end of that spectrum is the outright criminalization of street vending, which was previously the law in Los Angeles⁷⁶ and Chicago.⁷⁷ While smaller cities around the country have similar bans on street vending,⁷⁸ no other large city in America completely prohibits street vending. Many cities permit street vending for licensed vendors but criminalize vending without a license or in violation of a license, and the penalty for vending without a license or in violation of the street vending laws is a misdemeanor and may include jail time.⁷⁹ Others treat these violations as civil offenses only, punishing vending without a license or otherwise vending in violation of licensing laws by a fine and/or revocation of a permit.⁸⁰

The following charts display the extent to which cities, counties, and states criminalize vending without a license or otherwise in violation of street vending laws. A detailed chart of street vending statutes around the country can be accessed at <https://perma.cc/VCE8-6H6T>.

72. See, e.g., Kettles, *supra* note 9.

73. For purposes of this Article, I define “criminalization” as any statute that explicitly labels a violation as a misdemeanor and/or provides for jail time for a violation of a vending statute. Civil offenses are those violations for which the penalty is a monetary fine only. The nature of the divide between criminal and civil offenses has been the subject of significant debate. See, e.g., Rollin M. Perkins, *The Civil Offense*, 100 U. PA. L. REV. 832, 832 (1952); Kenneth Mann, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law Symposium: Punishment*, 101 YALE L.J. 1795, 1798 (1992); Franklin E. Zimring, *The Multiple Middlegrounds Between Civil and Criminal Law Symposium: Punishment*, 101 YALE L.J. 1901, 1901 (1992); John C. Coffee, *Paradigms Lost: The Blurring of the Criminal and Civil Law Models. And What Can Be Done about It*, 101 YALE L.J. 1875, 1875 (1992). The existence of prison time is often used to distinguish misdemeanor and felony convictions in federal law. Federal Rule of Criminal Procedure 7, for example, defines a misdemeanor as “an offense punishable by imprisonment for one year or less” and a felony as one punishable “by imprisonment for more than one year.” FED. R. CRIM. P. 7. Immigration law, which ties certain immigration outcomes to criminal procedures, also uses the possibility of jail time as a distinguishing factor between types of offenses. Immigration law defines a misdemeanor as a crime punishable by more than five days but fewer than one year and a felony as a crime punishable by more than one year of imprisonment. 8 U.S.C. § 1255a(a)(4)(B). As discussed in Section II, Part E below, a street vending conviction that comes with the potential of more than five days of jail time can have negative immigration consequences.

74. PHILA., PA., CODE § 9-203(12) (2021).

75. DENV., COLO., ORDINANCE § 49-578; DENV., COLO., ORDINANCE § 1-13 (2021).

76. Samantha Helou Hernandez, *Making It Official: How L.A. Street Vending Became Legal*, KCET (July 3, 2019), <https://perma.cc/V96E-FKQZ>.

77. *Breaking: Chicago Lifts Decades Old Ban on Food Carts*, ILL. POL’Y (Sept. 24, 2015), <https://perma.cc/T2W6-DHF5>.

78. Jefferson Paris, Louisiana banned street vending in the years after Hurricane Katrina.

79. See, e.g., D.C. CODE § 37-131.08(b) (2009).

80. See, e.g., JACKSONVILLE, FLA., CODE OF ORDINANCES § 609.105 (2021).

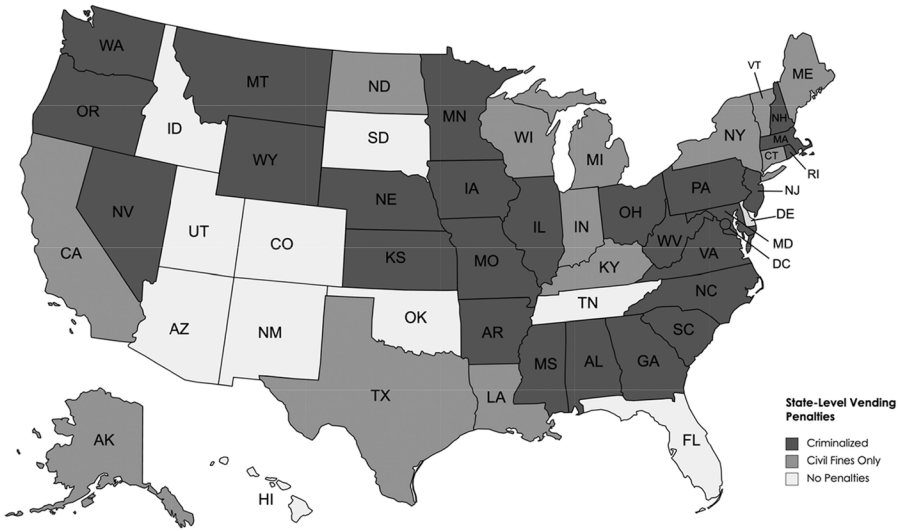


Figure 1. State Street Vending Criminalization.

Cities with Criminal Penalties	Cities with Only Civil Penalties
Albuquerque, New Mexico	Chicago, Illinois
Arlington, Texas	Dallas, Texas
Austin, Texas	El Paso, Texas
Baltimore, Maryland	Fresno, California
Boston, Massachusetts	Indianapolis Marion County, Indiana
Charlotte, North Carolina	Las Vegas, Nevada
City of Houston, Texas	Los Angeles, California
Cleveland, Ohio	Mesa, Arizona
Colorado Springs, Colorado	Metro Government of Nashville and Davidson County, Tennessee
Columbus, Ohio	Milwaukee, Wisconsin
Denver, Colorado	Minneapolis, Minnesota
Detroit, Michigan	New Orleans, Louisiana
Jacksonville, Florida	Oakland, California
Louisville-Jefferson County, Kentucky	Philadelphia, Pennsylvania
Mesa, Arizona	Phoenix, Arizona
Miami, Florida	Sacramento, California
New York City, New York	San Diego, California
Omaha, Nebraska	San Francisco, California
Portland, Oregon	San Jose, California
Raleigh, North Carolina	
San Antonio, Texas	
Seattle, Washington	
Tucson, Arizona	
Tulsa, Oklahoma	
Virginia Beach, Virginia	
Washington, District of Columbia	
Wichita, Kansas	

Figure 2. City Street Vending Criminalization.

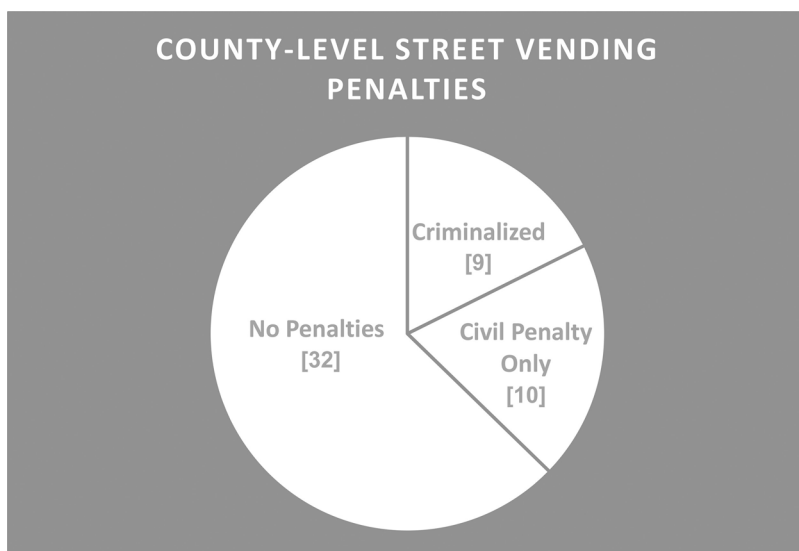


Figure 3. County Street Vending Criminalization.

E. *Effects of Criminalization*

Criminalization of street vending as described can have a range of negative effects on individual street vendors beyond inhibiting their ability to earn a living by vending. Attachment of criminal penalties specifically carries collateral consequences not found with civil violations. A list of some common such consequences follows:

- A criminal conviction or citation for vending without a license can be a bar to obtaining a vending license or other business or professional license in the future.⁸¹
- Housing, cash assistance, and other programs may not be available for people with an arrest or criminal conviction, or even for those who are known to be engaging in criminal activity.⁸²
- Individuals convicted for street vending offenses may have trouble finding employment in the formal wage economy. Employers commonly look at applicants' criminal history and many jurisdictions specifically discourage the hiring of applicants with criminal histories.⁸³

81. Amy P. Meek, *Street Vendors, Taxicabs, and Exclusion Zones: The Impact of Collateral Consequences of Criminal Convictions at the Local Level*, 75 OHIO ST. L.J. 1, 19 (2014). Civil citations and convictions may also bar individuals from obtaining business licenses. See D.C. MUN. REGS. 504.3 (2021).

82. See Meek, *supra* note 82, at 15. Anecdotally, I have heard of halfway houses telling residents that, because vending without a license is a criminal offense, anyone who vends without a license will be evicted.

83. *Id.* at 39.

- While street vending presents an alternative avenue for work for returning citizens and individuals with criminal records, vending could also violate parole or other terms of release.
- Similarly, undocumented immigrants or immigrants with statuses such as Deferred Action for Childhood Arrivals (DACA) or Temporary Protected Status (TPS) risk losing status or being barred from adjusting their immigration to permanent residency or seeking citizenship because of a criminal conviction.⁸⁴

As has been highlighted in recent years by the Black Lives Matter movement, criminalizing an activity can lead to increased interactions between police officers and communities of color, sometimes with deadly consequences.⁸⁵ The street vending population in the United States is a diverse community that is disproportionately made up of Black, Latino, and other people of color⁸⁶ and is therefore vulnerable to incidents of police brutality. Genesis's story is one example of a violent incident between a police officer and a street vendor. Eric Garner, choked to death on Staten Island by a police officer in New York City after being accused by police officers of selling loose cigarettes, is another.⁸⁷ Black Lives Matter activists have called for the decriminalization of other nonviolent crimes, including sex work, to lower the number of interactions between police officers and community members, with the expectation that doing so will result in fewer deaths and injuries at the hands of police.⁸⁸

Complaint-based systems, in which police enforcement is driven by police discretion and in response to community complaints, result in arbitrary and often discriminatory police practices. Elizabeth Kregor observed this in Chicago, noting that police in some neighborhoods constantly harassed tamale vendors while others left street vendors alone.⁸⁹ Vending laws that regulate every aspect of a street vendor's business ensure that, if someone makes a complaint and if a police officer wants to act, violations are all but guaranteed to be found.⁹⁰

84. Jason A. Cade, *The Plea-Bargain Crisis for Noncitizens in Misdemeanor Court*, 34 CARDOZO L. REV. 1751, 1762 (2012).

85. Frank Edwards, Hedwig Lee & Michael Esposito, *Risk of Being Killed by Police Use of Force in the United States by Age, Race–Ethnicity, and Sex*, 116 PNAS 16793, 16793 (2019) (finding that “African American men and women, American Indian/Alaska Native men and women, and Latino men face higher lifetime risk of being killed by police than do their white peers”).

86. See *supra* Section I, Part B.

87. 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://perma.cc/ZRJ3-6BLN>.

88. See, e.g., Martin Austermuhle, *Here's What Black Lives Matter D.C. Is Calling For, and Where the City Stands*, NPR (June 9, 2020), <https://perma.cc/TG62-U33E>.

89. Elizabeth Kregor, *How Do You Formalize a Tamale?: How to Ease Street Vendors' Transition Out of the Shadow Economy*, 7 U.C. IRVINE L. REV. 453, 462 (2017).

90. *Id.*

II. HISTORY OF STREET VENDING REGULATIONS

The history of street vending in the United States is in many ways the story of immigration, assimilation, and the evolution of American cities. The local political, racial, development, and socio-economic dynamics of cities vary, but certain trends are identifiable across places. Waves of migration bring immigrants eager to take the first step toward the American dream. These immigrants are drawn to street vending, usually in urban areas, because street vending offers a low barrier to entry alternative to low-wage work. Many come from places where street vending is common and serve immigrant customers used to patronizing street vendors. Individuals also turn to vending during times of economic turmoil when other opportunities are rare. These trends affect and are reflected in the local regulation of street vending. Local governments, in the name of public health and safety, tend to pass restrictive vending laws when vendors and their customers are deemed undesirable and accommodate vendors when they are not.

The phenomenon of street vending in America, and the regulation of street vending in American cities, predates the founding of the country. Street vendors have been a fixture in New York City, for example, since at least the early seventeenth century. In 1691, New York City's colonial government enacted an ordinance that forbade vendors from operating until public markets were open for two hours "in response to complaints from merchants about itinerant Scottish peddlers who had been doing brisk businesses on the streets outside the markets."⁹¹ A 1702 law specifically banned enslaved people from "huckstering" and the city banned street vendors completely in 1707, but street vending endured in New York nonetheless.⁹²

Street vending grew in the nineteenth century as cities around the country experienced massive growth in population. Waves of immigrants from Ireland, and later Eastern and Southern Europe, in northern cities and immigrants from China and Mexico to western and southwestern cities brought with them vendors looking to make a living and consumers seeking out affordable, familiar food and goods.⁹³ Wandering "tamale men" sold tamales on the streets of San Francisco, Chicago, and New York.⁹⁴ Pushcart vendors, most of whom were Jews from Eastern Europe, were first sighted in New York in the late 1880s.⁹⁵ "Chili Queens" in San Antonio sold chili, coffee, tamales, and wares from tables set up in city plazas.⁹⁶

91. Ryan Devlin, *Illegibility, Uncertainty and the Management of Street Vending in New York City*, DEP'T OF CITY & REG'L PLANNING, U.C. BERKELEY 1, 2 (Apr. 14, 2006) <https://perma.cc/W8QD-J7JR>.

92. *See id.* at 19.

93. Kettles, *supra* note 9, at 8.

94. Mark Vallianatos, *A More Delicious City: How to Legalize Street Food*, in *THE INFORMAL AMERICAN CITY* 209, 211 (Vinit Mukhija & Anastasia Loukaitou-Sideris eds., 2014).

95. *Pushcarts: The Hustle to the American Dream*, MUSEUM AT ELDRIDGE STREET (June 26, 2018), <https://perma.cc/WP7B-BYBN>.

96. *The Chili Queens of San Antonio*, NPR, <https://perma.cc/5UHC-24K5> (last visited July 20, 2020).

Street vending also provided an opportunity for newly emancipated Black people to make money, a phenomenon explored by Michelle Branch. For many Black Americans, street vending and street markets represented an opportunity both for economic advancement and to join public life in ways that slavery and racist laws prohibited. Eighteenth century laws in New York, for example, banned nonwhite New Yorkers from vending, among other trades. Some free Black city dwellers were able to vend in northern cities before the Civil War, though an increase in vending in New York City in the 1820s and 1830s was met with strict regulation and criminalization.⁹⁷

Some city dwellers, many of whom were from Southern and Eastern Europe and who struggled to find economic opportunities elsewhere, viewed street vending as a way to provide jobs.⁹⁸ Urban leaders recognized this and, while street vending was regulated, it was not banned outright. City officials saw street vending as the best bad option, the other being to leave large groups of immigrants jobless and without a way of making an income. The former was a nuisance; the latter was an invitation to chaos.

That is not to say that cities welcomed street vendors with open arms. Around the turn of the twentieth century, several trends led to stricter regulation of street vending. Some cities saw street vending as a sign of urban filth that, along with crowded tenements, led to unsanitary and dangerous living conditions.⁹⁹ In the late nineteenth century, west coast cities enacted regulations as part of a wave of anti-Chinese sentiment that culminated in the Chinese Exclusion Act of 1882.¹⁰⁰ New York City adopted a law limiting vendors to 30 minutes in one location in 1904.¹⁰¹ City governments tolerated street vending to the extent that it was an alternative to unruly, hungry masses and urban unrest, but fell well short of putting street vendors on the same level as other, more “acceptable” professions. Despite such laws, however, street vending continued to thrive in urban centers. Harlem street markets thrived in the 1930s and 40s, for example.¹⁰²

Vending’s favor with local governments further waned as industrial capitalism emerged and matured, and more opportunities became available in the increasingly industrialized nation. Industrialization created a sufficient number of factory and other industrialized jobs such that vendors could find jobs rather than work for themselves as vendors. Local governments were sometimes explicit in their desire to transition citizens from a more rural and farming lifestyle into the city and to move city workers in the informal economy

97. Michelle N. Branch, *Just Provisions: Food, Identity, and Contested Space in Urban America, 1800–75* (2012) (Ph.D. dissertation, University of California at Berkeley).

98. See Hernández-López, *supra* note 52, at 265; Browne, Dominic & Mayerson, *supra* note 10, at 234.

99. See Wessel, *supra* note 55, at 26–27.

100. See Hernández-López, *supra* note 52, at 245–46.

101. Wessel, *supra* note 55, at 27.

102. See Stephen Robertson, *Harlem’s Street Vendors*, DIGITAL HARLEM BLOG (Jan. 25, 2011), <https://perma.cc/MS74-WWM7>.

into wage jobs. These efforts were largely successful: 1940 was the last year that street vending was listed as an occupation in the U.S. Census.¹⁰³ The middle of the twentieth century also saw immigrant numbers fall to numbers not seen in decades, though millions of Black Americans left the Jim Crow South for cities in the Northeast, Midwest, and West during these decades.¹⁰⁴ Like other migrants, these new arrivals to American cities took to street vending as a source of economic advancement and familiar, accessible food and goods.

Despite the rise of industrial capitalism, the Great Depression saw massive numbers of unemployed Americans, many of whom went onto (or back onto) the streets to sell food and other items to make a living. This surge was short-lived. After World War II and the postwar economy created formal jobs, cities like New York City and Los Angeles passed restrictive street vending laws in response. In New York, Mayor Fiorello LaGuardia created special vending markets to move vendors off of busy streets; the number of vendors fell from 15,000 to 1,200 during his tenure.¹⁰⁵ Los Angeles went even further, banning street vending outright in 1930.¹⁰⁶

Street vending experienced a resurgence towards the end of the twentieth century, driven largely by a new wave of immigration from Asia, Latin America, and Africa spurred by the 1965 Hart-Celler Immigration Act, which greatly increased the ability of immigrants from around the world to legally enter into and reside in the United States.¹⁰⁷ As it had for previous waves, street vending presented these new immigrants with an economic opportunity with relatively few barriers to entry. These vendors also brought the street vending culture of their home countries with them and catered to a clientele of immigrants used to the same. Street vending flourished in Los Angeles, for example, in the 1970s and 1980s, as construction workers, many of whom came to the city from Latin America, created demand for affordable, culturally appropriate meals.¹⁰⁸ These immigrants brought with them food traditions from their countries of origin, including street food.¹⁰⁹

In the 1980s and early 1990s, many cities cracked down on street vending, implementing strict regulations and licensing regimes that severely limited the ability of entrepreneurs to vend on city streets.¹¹⁰ New York City, which had a small but robust vending culture since the 1930s, began to cap the number of vending permits issued. This cap was so low that vendors were

103. Browne, Dominie & Mayerson, *supra* note 10, at 243.

104. ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA'S GREAT MIGRATION* (2010).

105. Wessel, *supra* note 55, at 27.

106. *Id.* at 28.

107. Kathleen Dunn, *Decriminalize Street Vending: Reform and Social Justice*, in *FOOD TRUCKS, CULTURAL IDENTITY, AND SOCIAL JUSTICE: FROM LONCHERAS TO LOBSTA LOVE* 49 (2017); Browne, Dominie & Mayerson, *supra* note 10, at 245; Kettles, *supra* note 9, at 5.

108. Glenn, *supra* note 24, at 52–53.

109. See Vallianatos, *supra* note 95, at 212.

110. See Austin, *supra* note 12, at 2122.

essentially shut out from legal vending and forced to vend illicitly.¹¹¹ Los Angeles again outlawed street vending completely. New York City Mayor Rudolph Giuliani explicitly targeted street vending in his efforts to clean up the city. The Giuliani administration closed large swaths of city streets to vendors, evicted vendors from Midtown, and removed Black vendors from Harlem streets.¹¹² These efforts did not eliminate street vending but rather pushed vendors deeper into the informal economy. The Great Recession of the late 2000s further contributed to an increase in street vending as millions found themselves unemployed or otherwise unable to access the formal economy.¹¹³

A new breed of street vendor entrepreneurs arose in the late 2000s and 2010s and met a very different response from local governments. Like other street vendors, these entrepreneurs experienced barriers to entry into the formal economy after the Great Recession, particularly in the restaurant industry.¹¹⁴ Unlike earlier vendors, however, these entrepreneurs were whiter, more affluent, and appealed to hip, young urban clients.¹¹⁵ Many of these vendors and food truck founders are trained cooks who saw in street vending a low barrier to entry opportunity for culinary entrepreneurship compared to starting a brick and mortar restaurant—much like past generations of street vendors.¹¹⁶ Diminished opportunities for employment and hard-to-access credit pushed would-be restaurant founders to start food carts and trucks instead, attracted by the flexibility and low barriers to entry.¹¹⁷

These food trucks became a symbol of urban renaissance in the modern era and supplemented rather than replaced other street vendors.¹¹⁸ Featuring active social media marketing and slick branding, these trucks appealed to whiter, wealthier crowds than their predecessors. Many appeal to the new urban consumer's desire for the exotic and feature combinations or "fusions" of foods from Latin America, Asia, and elsewhere.¹¹⁹ These new types of street trucks are common at festivals, outside music and sports venues, and nightlife districts. Some cities even designate spaces in central business districts for food trucks to serve hungry business casual-wearing lunch crowds. In Portland, Oregon, for example, the number of food carts in the city grew twenty-fold between 2007 and 2014.¹²⁰ A terminal in LAX Airport in Los

111. Wessel, *supra* note 55, at 28.

112. AGYEMAN, MATTHEWS & SOBEL, *supra* note 19, at 51.

113. Kettles, *supra* note 57, at 227–28.

114. Browne, Dominie & Mayerson, *supra* note 10, at 252. Cities in other countries, including Buenos Aires, Argentina and Mexico City, Mexico, also saw increases in the number of people vending on the street following previous economic crises. Kettles, *supra* note 10, at 22.

115. AGYEMAN, MATTHEWS & SOBEL, *supra* note 19, at 57.

116. *Id.*

117. Browne, Dominie & Mayerson, *supra* note 10, at 252.

118. Glenn, *supra* note 24, at 53. These newer vendors do sometimes compete with poorer resourced vendors. Browne, Dominie & Mayerson, *supra* note 10, at 258; Hernandez-Lopez, *supra* note 52, at 258–59.

119. Hernandez-Lopez, *supra* note 52, at 243.

120. Browne, Dominie & Mayerson, *supra* note 10, at 247.

Angeles even features a replica fancy food truck so that passers-through can get a first or last taste of Los Angeles culture as they arrive in or leave the city.¹²¹

Despite the popularity of this new wave of street food, existing brick-and-mortar establishments felt threatened by the growth of food trucks. Restaurants saw trucks, which served a wealthier clientele at a higher price point than some traditional street vendors, as direct competition for sophisticated urban palates.¹²² Nonetheless, many cities seized on the popularity of these businesses to formalize street vending or food trucks.¹²³ As discussed in Section II, above, these new laws either exclude poorer, immigrant and marginalized sidewalk vendors or create impossibly difficult burdens for these vendors to meet. New regimes, meant to act as a compromise between hip food trucks and restaurants, froze existing street vendors out. Even when cities like Chicago legalized food trucks, laws regulating these trucks were difficult to comply with for the vendors who had been operating in Chicago the longest. Steep permitting fees meant that only well-resourced entrepreneurs could afford licenses, and sidewalk vendors were exempted altogether.¹²⁴ This dynamic of immigration, vending, regulation, and gentrification is particularly visible in Louisiana following Hurricane Katrina. Tens of thousands of immigrants from Mexico and Latin America came to New Orleans and surrounding towns, attracted by construction jobs created during rebuilding efforts.¹²⁵ As a result, the Latino population nearly doubled in the New Orleans metro area between 2000 and 2013.¹²⁶ In Jefferson Parish, outside of New Orleans, new arrivals also brought with them street food, selling tacos and other Mexican eats from carts and trucks. These eateries quickly became popular among both Mexican newcomers and long-time Louisianans. They also caught the ire of brick-and-mortar restaurants concerned about new competitors, as well as local officials, who referred to

121. Harriet Baskias, *LAX Food Truck Serves up Tacos*, STUCK AT AIRPORT (July 1, 2019), <https://perma.cc/NHR6-W7A8>.

122. Restaurants pushed lawmakers for protection against this new threat, with limited success. A 2012 California proposal, for example, would ban food trucks within 1,500 of publicly owned land, effectively closing large portions of California cities to food trucks. The proposal fails but demonstrates the level of threat with which restaurants viewed this new generation of gourmet food truck. Wessel, *supra* note 55, at 31.

123. “As the demographic composition of street vending shifts, vending policies have not developed to lift all boats equally. In the case of New York, the state’s de facto embrace of gourmet food trucks has facilitated gentrification of the food vending sector, causing food permit prices to double inside a handful of years. At the same time, most vendors remain persecuted by police—as is the case in Chicago and Los Angeles, both cities with size-able immigrant vendor populations who remain criminalized while more ‘gourmet’ food truck economies have flourished thanks to state support.” AGYEMAN, MATTHEWS & SOBEL, *supra* note 19, at 49.

124. Kregor, *supra* note 90, at 458.

125. See Ian McNulty, *Taco Trucks, a Post-Katrina Lifeline, Have Transformed New Orleans Street Food*, NOLA.COM (Aug. 29, 2019), <https://perma.cc/6RCC-5WSH>.

126. Elizabeth Fussell & Lucas Diaz, *Latinos in Metro New Orleans: Progress, Problems, and Potential*, DATA CTR. RSCH. ORG. (June 2015), <https://perma.cc/6RCC-5WSH>.

vendors as “an unwelcome reminder of what Hurricane Katrina brought.”¹²⁷ Parish officials had long permitted vendors (both Black and white) to sell shrimp and snow cones, but in 2007, Jefferson Parish passed an ordinance banning these vendors altogether.¹²⁸ As is the case elsewhere, politicians pointed to unsanitary conditions as creating the need for these regulations, though health officials did not find any health risks after investigating.¹²⁹ In New Orleans, on the other hand, many locals and local officials embraced these new arrivals and the culinary culture they brought with them.¹³⁰ Taco trucks and Mexican food are now staples of the New Orleans food scene and have blended with Creole and Cajun food, the latest in the city’s long history of blending music, language, and food from the multitude of diverse communities that have called the city home.¹³¹

More recently, the COVID-19 pandemic of 2020 hit street vendors particularly hard. To encourage social distancing, cities around the country included street vendors in stay-at-home orders.¹³² Left without business income, many vendors were also excluded from unemployment, federal stimulus checks, and other government programs meant to assist individuals and small businesses. Many vendors are themselves undocumented or have family members with mixed status and, as a result, were not eligible for \$1,200 federal stimulus checks or unemployment benefits. Others, used to operating a cash business with little formal record-keeping, were unable to take advantage of loans and grants offered by governments to small businesses.

Finding themselves among the ranks of “excluded workers,” a national movement of street vendors emerged. In May 2020, a coalition of street vendors in Los Angeles, New York City, Chicago, and Washington, DC launched the National Agenda for Street Vendor Justice. The National Agenda for Street Vendor Justice included a list of demands that not only touched on the treatment of street vending by cities but also included demands about housing, immigration, and universal basic income. Street vendors continue to advocate for inclusion in efforts to support individuals and small businesses during the pandemic and beyond, as well as inclusion in programs designed to permit outdoor dining on city streets and sidewalks.

A. *Why Is Street Vending Criminalized?*

This Section explores the motives, both given and implicit, behind street vending criminalization. Among the reasons commonly given for criminalizing

127. Miguel Bustillo, *Taco Trucks in New Orleans Hit by Legislative Crunch, Ban Underscores New Tensions*, BOS. GLOBE (July 16, 2007), <https://perma.cc/9N8J-RKFE>.

128. *Id.*

129. *Id.* Community members suspected that the ban was motivated by discrimination rather than legitimate health concerns.

130. *Id.* Not all local officials were supportive. While then Mayor Nagin opposed moves to criminalize street vending, City Council President Oliver Thomas asked, “How do the tacos help gumbo?”

131. See Bustillo, *supra* note 128.

132. Vendors were considered an essential business and allowed to continue to operate in New York City. New York vendors still saw massive declines in business.

or heavily regulating street vending are protecting public health and preserving the use of public space for pedestrians, drivers, and other non-vendors. Proponents of criminalization argue that consuming food from an unlicensed food vendor carries with it the risk of transmitting foodborne illness and that carts on city streets and sidewalks crowd busy urban areas and could lead to an increase in traffic accidents. Others oppose street vending because they believe that vendors compete unfairly with brick-and-mortar businesses through lower overhead and by skirting licensing requirements.

This Section will examine two kinds of reasons for criminalizing street vending: stated reasons and unstated reasons. The first category, commonly given reasons for criminalizing street vending, may include reasons that are overblown or not supported by data. Others may withstand some scrutiny but do not necessarily lead to a conclusion that criminalization rather than civil enforcement of street vending is the appropriate method of regulation. In examining the second category, unstated reasons, this Section will explore why so many cities actually choose to criminalize street vending. In doing so, I suggest that stated motives belie other motivations behind vending criminalization that are based as much or more on the identity of who is doing the vending than the nature of the activity being regulated. Criminal vending laws can be used to prioritize public space for uses perceived as more acceptable or “American.” These laws can also act as forms of immigration policy that localities use to exclude certain immigrants from public life. These laws also play a role in “broken windows” policing and gentrification battles and are advocated for by stakeholders interested in controlling “undesirable” activity in a city or neighborhood. This Section explores the reasons for criminalizing street vending, both stated and unstated, before the Article turns specifically to street vending laws and regulations in Washington, DC.

1. *Health Regulations*

Cities and advocates of street vendor criminalization tend to rely on public health justifications, such as the concern that consuming food prepared by an unlicensed vendor risks exposing consumers to food-borne illnesses and other dangers, for criminalizing street vending.¹³³

While it would seem intuitive that consuming food from an unlicensed vendor poses a health risk to the consumer, these laws are not always linked to data. A 2014 report from the Institute for Justice looked at health violations given to sidewalk vendors, food trucks, and restaurants in several cities, including Washington, DC.¹³⁴ The authors found that “Food trucks and carts are every bit as clean and safe as restaurants and other types of brick-and-mortar food establishments.” It should be noted that, by looking at health

133. See Melanie Gray, *Mayhem in the Streets: Illegal Vendors Are Overtaking NYC*, N.Y. POST (Dec. 26, 2020), <https://perma.cc/WTM3-8945>.

134. Angela C. Erickson, *Street Eats, Safe Eats, How Food Trucks and Carts Stack Up to Restaurants on Sanitation*, INST. FOR JUST. (June 2014), <https://perma.cc/2Q5R-AB7Q>.

violations, this study likely only captured complaints and violations against those vendors who are already regulated by local health departments and ignored unlicensed vendors. So, while this data does not directly support the blanket contention that all food prepared by street vendors is safe, it does show that licensed street vendors are no more dangerous than brick-and-mortar restaurants. It also shows that vendors who can comply with health regulations are largely able to vend food without risking customers' health. I am not aware of any studies of illness transmitted through the consumption of food from unlicensed street vendors in the United States, though such studies elsewhere do show that eating street food can be risky in the developing world.¹³⁵ It is possible, however, that unclean water,¹³⁶ agricultural methods,¹³⁷ or otherwise poor sanitation¹³⁸ may contaminate street food just as it would other food sources in these countries; whatever the reason, it should not automatically be assumed that street vendors in the United States will pose the same risks to consumers as those who vend food abroad.

In studying street vending laws in Chicago, Elizabeth Kregor found that laws precluded vendors, many of whom were Mexican immigrants, from obtaining a license under the guise of public health rules with little basis. Chicago authorities often rejected street vendor permit applications without actually screening businesses.¹³⁹ The result was both a message itself and seemed to reflect the assumption that "poor people without enough money to buy a food truck or set up a restaurant cannot serve wholesome or desirable food."¹⁴⁰

The lack of concrete evidence for risks of consuming food from street vendors leads to three prescriptions for public health agencies. First, data is needed to evaluate whether any risk exists from consuming food from a street vendor. Second, regulations should be enacted that address that risk rather than rely on negative stereotypes about street vendors and street food.¹⁴¹ Third, barriers should be lowered such that vendors of all means can operate in compliance with whatever regulations are necessary to protect public health, if any.¹⁴² Alternatives to criminalization that aim to protect public health are discussed further in Section IV, Part E below.

135. See Sharmila Rane, *Street Vended Food in Developing World: Hazard Analyses*, 51 INDIAN J. MICROBIOL. 100, 100–03 (2011); Buliyaminu Adegbemi Alimi, *Risk Factors in Street Food Practices in Developing Countries: A Review*, 5 FOOD SCI. & HUMAN WELLNESS 141, 142, 146 (2016). Food-borne bacteria and other microorganisms has been observed in street food across the developing world.

136. See Rane, *supra* note 136, at 101–02 (finding pathogens like *E. coli*, fecal *streptococci*, *Salmonella* and *Vibrio cholerae* in water that street vendors use to prepare food).

137. *Id.* (identifying sporeformers like *Bacilli* and *Clostridium* and pathogens like *L. monocytogenes*, *Shigella*, *Salmonella*, etc. in vegetables and spices that vendors use).

138. *Id.* (finding transmission of enteric pathogens like *Salmonella*, *Shigella* and *E. coli* due to improper waste disposal).

139. Kregor, *supra* note 90, at 460.

140. *Id.*

141. *Id.* at 469.

142. *Id.* at 468.

2. *Controlling Public Space*

Much urban planning literature has been written about how street vending regulation, in general, is a tool to exclude the urban poor and other marginalized groups from urban spaces in favor of more “desirable” people and activities.¹⁴³ Though street vending largely takes place within the informal economy and outside the bounds of government regulation, it often occurs on spaces that are publicly owned and regulated—streets, sidewalks, parks, and the like. The use of this space is determined by governments, but that use is often “renegotiated as various actors have sought to expand or limit its bounds”—that is, governments grant or limit the use of public space in response to the interests of stakeholders.¹⁴⁴ Stakeholders can include vendors, brick-and-mortar retailers, and pedestrians; uses for public space besides vending include walking, automobiles, transit, sidewalk retail, or ornamentation.¹⁴⁵ The ability to use the public space is granted to favored groups and favored uses, while access is curtailed for disfavored groups and activities.

This scholarship shows that efforts to regulate and limit who has the right to public space often disfavors activities associated with immigrants and communities of color, like street vending. Kathleen Dunn names discrimination as the motivation behind how cities prioritize space, saying that “[s]treet vendor criminalization derives from a broad repertoire of urban governance tactics to disappear the urban poor, especially people of color, from the city’s public spaces.” City officials can be explicit about protecting other uses of public space at the expense of vendors.¹⁴⁶ Testifying before the DC City Council in 2009, a Department of Consumer and Regulatory Affairs (DCRA) official cautioned that “vendors cause serious disruption to pedestrian traffic, can pose hazards to vehicular traffic, and, perhaps above all else, are cheating all the properly licensed vendors who follow the law.”¹⁴⁷ The division of roads into the asphalt area in the center that cars use and sidewalks on the edges for pedestrians may seem preordained to us, but streets in earlier times were bustling, sometimes chaotic, less divided spaces. As discussed in Section I, above, as cars became more common, large sections of city streets were reserved exclusively for car (and sometimes bus and trolley) use, pushing pedestrians and all other street users to sidewalks. That the interests of vendors, who are disproportionately low-income, immigrants, and people of color,¹⁴⁸ should be second to vehicles and pedestrians, is not questioned.

143. See, e.g., Norma Chinchilla & Nora Hamilton, *Negotiating Urban Space: Latina Workers in Domestic Work and Street Vending in Los Angeles*, 22 HUMBOLDT J. SOC. RELATIONS 25, 31–33 (1996).

144. Browne, Dominie & Mayerson, *supra* note 10, at 253.

145. Austin, *supra* note 12, at 2121–22.

146. E.g., Linda K. Argo, Dir., Dep’t of Consumer and Regulatory Aff., Testimony on the Vending Regulation Act of 2009 Bill 18-257 (June 9, 2009) (transcript available on the District of Columbia Department of Consumer and Regulatory Affairs website).

147. *Id.*

148. See *supra* Section II.

The prioritization of favored groups and uses can exist even if the same communities access public space for different purposes. In looking at street vending in MacArthur Park in the Westlake neighborhood of Los Angeles, Kettles compared how illegal street vendors¹⁴⁹ allocated space on the sidewalk across from a park in which the city created a legal vending zone.¹⁵⁰ The vendors themselves allocated space according to an informal, self-regulating system; the city allocated vending spaces in the park zone with an eye toward “beautifying” the neighborhood.¹⁵¹ The result was stark—on the side of the street where the city allocated public space, the business was slow and few vendors chose to participate at all. Across the street, street vendors, though illegal, thrived. Kettles credits the failure of the city’s zone to an overly bureaucratic system that disproportionately favored the interests of store-front merchants who resented what they perceived as unfair competition from vendors.¹⁵²

Enacting criminal versus civil penalties is another way local governments parcel out the use of public space depending on the use and user of that space. The use of police to enforce these public space rules creates a two-tiered system in which, while the use of public space is heavily regulated for all, informal activity like street vending is handled through the criminal justice system and other favored activity is handled by civil enforcement agencies. In DC, for example, the Metropolitan Police Department heavily regulates street vendors, while the Department of Consumer and Regulatory Affairs and Department of Health enforce street vending regulations against food trucks.¹⁵³ Both operated under the same set of regulations, yet vending businesses that are primarily run by and cater to wealthier, whiter populations do not have to contend with police enforcement. A similar phenomenon was observed in New York City, where vendor complaints about police harassment and arrests were limited to lower-income immigrants and vendors of color.¹⁵⁴

This debate over who gets to use sidewalk and street space is playing out during the COVID-19 pandemic, as cities permit restaurants to operate in street and sidewalks so that they can continue to safely serve customers but continue to exclude street vendors from sidewalks and other public spaces. In New York, the city removed bureaucratic hurdles and made grants available for restaurants to move to outdoor vending, prompting calls from advocates to include street vendors in any outdoor dining program.¹⁵⁵ Los Angeles’s “al

149. Nearly all street vending in Los Angeles was illegal at the time of Kettles’s study.

150. Gregg W. Kettles, *Formal Versus Informal Allocation of Land in a Commons: The Case of the MacArthur Park Sidewalk Vendors*, 16 S. CAL. INTERDISC. L.J. 49 (2006).

151. *Id.*

152. *Id.* at 89–90.

153. *See supra* Section III.

154. KATHLEEN DUNN, *DECRIMINALIZE STREET VENDING: REFORM AND SOCIAL JUSTICE* 49 (2017).

155. Margaret Chin and Carlos Menchaca. *Opinion: Time to Protect the City’s Street Vendors*, STREETBLOG N.Y.C. (July 28, 2020), <https://perma.cc/KN4V-7BEC>.

fresco” program for outdoor dining was initially limited to bars and restaurants, though licensed street vendors were later added to the program. This was little comfort for many Los Angeles street vendors, as only forty-eight vendors in the city had secured licenses by the summer of 2020.¹⁵⁶

3. *Discrimination and Local Immigration Control*

The enactment of laws criminalizing or otherwise heavily regulating street vending, or an uptick of enforcement of these laws, is a tool used to police communities of color. These laws are sometimes enacted as a response to the presence of immigrants or non-citizens. This can be seen clearly in the Louisiana towns that passed anti-vending statutes after immigrant workers migrated to the state to rebuild after Hurricane Katrina¹⁵⁷ or in Los Angeles’s complete outlawing of street vending in the 1990s,¹⁵⁸ passed contemporaneously with other anti-immigrant measures like California’s notorious Proposition 187 barring undocumented immigrants from accessing public services. By criminalizing street vending, cities can signal that communities that engage in street vending are not welcome. They can also invite federal immigration enforcement against vendors.¹⁵⁹

Federal immigration law’s focus on criminal activity as an element of one’s ability to remain in the United States gives local governments the ability to direct the enforcement of immigration law by criminalizing certain activities under their power to pass and enforce laws intended to protect the public health and welfare.¹⁶⁰ Many states and localities do this through status-based criminalization.¹⁶¹ So-called status-based offenses criminalize acts based on the status of the offender rather than the activity. Driving without a license is a status-based offense, since the lack of license rather than the underlying act is illegal, while public urination is a conduct-based offense (*i.e.*, it is not legal for anyone to urinate publicly).¹⁶² Street vending laws criminalize vending based on the ability of a vendor to obtain a license rather than on the vendor’s underlying activity.¹⁶³ It is perfectly legal in the 50 largest cities in the country to vend, provided that one can obtain a license.

156. Farley Elliot, *Mayor Says Licensed Street Vendors Can Now Participate in LA’s Outdoor Dining Plans*, EATER L.A. (June 26, 2020), <https://perma.cc/J4YK-CCU8>.

157. *See supra* Section II.

158. *See id.*

159. *See id.* at Part D (discussing the effects of a criminal conviction on one’s immigration status and ability to remain in the United States).

160. Adam B. Cox & Thomas J. Miles, *Policing Immigration Symposium: Immigration Law and Institutional Design*, 80 U. CHI. L. REV. 87 (2013); Tiffany Walters Kleinert, *Local and State Enforcement of Immigration Law: An Equal Protection Analysis Symposium: Precious Commodities: The Supply & Demand of Body Parts: Notes and Comments*, 55 DEPAUL L. REV. 1103 (2006).

161. Alia Al-Khatib & Jayesh Rathod, *Equity in Contemporary Immigration Enforcement: Defining Contributions and Countering Criminalization*, 66 KAN. L. REV. 951, 978 (2018).

162. As far as I know.

163. *See Austin, supra* note 13. The distinction between status- and conduct-based crimes is not always clear, and many street vendor statutes contain status- and conduct-based provisions – they make it a crime to vend without a license or to vend in violation of the license requirements regardless whether one has a license. *See, e.g.*, D.C. Code § 37-131.08. But, as laid out in Section II above, the two-tiered

By creating barriers to licensure and then criminalizing vending without a license, cities and counties create situations by which immigrants are exposed to negative immigration consequences. Jayesh Rathod calls this kind of criminalization “indirect criminalization,” which he says can be more insidious than laws that directly criminalize one based on one’s immigration status (entering the country unlawfully, for example).¹⁶⁴ Vending regimes that impose impossible costs or Kafkaesque bureaucratic requirements on vendors, particularly those who lack resources or English language fluency, have the effect of criminalizing many immigrants.

Local laws criminalizing street vending may also be part of a broader strategy of “broken windows” policing, an approach in which small quality of life or public order offenses are heavily policed in the hope that doing so will prevent a more serious crime.¹⁶⁵ Like vagrancy laws, this approach criminalizes activity commonly associated with poverty, like loitering, to police poor people themselves.¹⁶⁶ “Broken windows” policing assumes that activities associated with poverty invite more dangerous crimes and indicate a lack of social order.¹⁶⁷ “Broken windows” policing has been roundly criticized for both its ineffectiveness¹⁶⁸ and for being discriminatory against people of color,¹⁶⁹ but remains in use as a policing strategy throughout the United States.¹⁷⁰

Laws that criminalize unlicensed street vending play into this strategy of policing, and illegal vending is considered among those offenses that constitute public order or quality of life offenses.¹⁷¹ Kettles found that street vending does not attract crime or otherwise facilitate the commission of a crime, but that some used this concern to justify criminalization nonetheless.¹⁷² Police use these laws to arrest not only street vendors but also people doing things like selling loose cigarettes on the sidewalk.¹⁷³ Prosecutors use these

nature of vending regulation makes it such that licensed vendors are regulated by civil enforcement agencies who cannot or do not issue criminal citations, while unlicensed vendors are regulated by police. The result is that, while criminalization could fall on any vendor for engaging in certain conduct, criminalization only actually falls on unlicensed vendors.

164. See Al-Khatib & Rathod, *supra* note 162, at 979.

165. Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 *FORDHAM URB. L.J.* 457 (2000); Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 *MICH. L. REV.* 291, 301 (1998); Charlie Gerstein & J. J. Prescott, *Process Costs and Police Discretion*, 128 *HARV. L. REV. F.* 268, 269 (2015).

166. Fagan & Davies, *supra* note 166.

167. *Id.* at 464.

168. *Id.* at 467; Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 *U. CHI. L. REV.* 271 (2006); Harcourt, *supra* note 166.

169. See Ekow N. Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40 *CARDOZO L. REV.* 1543, 1559 (2019).

170. Fagan & Davies, *supra* note 166.

171. See John J. Ammann, *Addressing Quality of Life Crimes in Our Cities: Criminalization, Community Courts and Community Compassion*, 44 *ST. LOUIS U.L.J.* 811, 812 (2000).

172. Kettles, *supra* note 94, at 35.

173. Al Baker, J. David Goodman & Benjamin Mueller, *Beyond the Chokehold: The Path to Eric Garner’s Death*, *N. Y. TIMES* (June 13, 2015), <https://perma.cc/U8LY-VJFE>; BELOVED CMTY. INCUBATOR, *WHERE THE SIDEWALK ENDS: VENDORS UNITED AND THEIR EFFORTS TO DECRIMINALIZE STREET VENDING IN WASHINGTON, DC 25*, <https://perma.cc/L9ZJ-HRB9> (last visited Oct. 4, 2021).

laws to charge people arrested for activities that are already criminalized under other statutes, like buying alcohol for a minor—. ¹⁷⁴ In this way, street vending criminalization constitutes a small part of a larger police strategy that criminalizes poor people of color.

4. *Gentrification*

Racial, spatial, and political dynamics behind the criminalization of street vending have been fueled by gentrification in many American cities in recent years. In some neighborhoods, the population is similar to business owners—Black vendors vending in Black neighborhoods, Latino vendors in Latino neighborhoods, etc. ¹⁷⁵ When vendors and brick and mortar businesses serve the same customers, competitive pressures may be eased by increased foot traffic that vendors bring to an area. ¹⁷⁶ However, as some neighborhoods gentrify and Black- and Latino-owned businesses get replaced by businesses owned by and catering to a whiter, more affluent clientele, vendors of color compete with new businesses.

While the definition of “gentrification” is debated, the term generally refers to a phenomenon by which poor and working-class neighborhoods experience an influx of middle- and upper-class residents, resulting in the displacement of the poor and working-class residents who previously called that neighborhood home. ¹⁷⁷ Many American cities have experienced gentrification over the last 20 years, reversing trends in the latter half of the twentieth century that saw capital and wealthier, whiter city dwellers flee to the suburbs. ¹⁷⁸

Gentrification brings communities into close contact with each other that may not have been previously. The racial history, politics, and economy of the United States all result in preexisting urban communities comprised largely of racial and ethnic minorities while newer, wealthier groups are much whiter. ¹⁷⁹ As wealthier newcomers move into neighborhoods populated by lower-income communities of color, long-term residents risk being displaced from their housing or businesses. ¹⁸⁰ Pushed into a corner, these

174. See BELOVED CMTY. INCUBATOR, *supra* note 174, at 24–25.

175. Austin, *supra* note 12, at 2123.

176. Kettles, *supra* note 94, at 31; *see id.* at 2125–26.

177. The term “gentrification” was first coined in the 1960s by scholar Ruth Glass to describe the displacement of working-class residents by middle and upper-class residents in London neighborhoods. The term has since been applied to similar trends around the globe. Rowland Atkinson, *Introduction: Misunderstood Saviour or Vengeful Wrecker? The Many Meanings and Problems of Gentrification*, 40 URB. STUD. 2343 (2003).

178. Mychal Cohen & Kathryn L.S. Pettit, *Guide to Measuring Neighborhood Change to Understand and Prevent Displacement*, NAT’L NEIGHBORHOOD INDICATORS P’SHIP 3 (Apr. 2019), <https://perma.cc/B924-RMY9>.

179. *Id.*

180. For a case study on gentrification and displacement in Chicago, see John Betancur, *Gentrification and Community Fabric in Chicago*, 48 URB. STU. 383 (2011).

communities now try to hold the line against the wealthy newcomers and, as space and resources become scarcer, each other.¹⁸¹

Street vending fights often pit vendors against brick and mortar businesses for access to customers and sidewalk space.¹⁸² Restaurants and other businesses tend to see street vendors as a nuisance, able to undercut prices due to low overhead and flexibility and steal business.¹⁸³ Vendors respond that they often cater to a different clientele and that street vending enhances urban communities by attracting new customers who also patronize established businesses.¹⁸⁴ Periods of economic hardship can also heighten this tension as both brick and mortars and street vendors compete over scarce customers.¹⁸⁵

Claims of unfair competition may be overwrought. In his 2004 study of Los Angeles street vendors, Greg Kettles found little direct competition between street vendors and brick-and-mortar restaurants and businesses.¹⁸⁶ Kettles observed that vendors avoid selling identical items to brick-and-mortars and seek out vending locations far enough away from similar restaurants and businesses to not lose customers to those establishments.¹⁸⁷ Direct competition between street vendors and restaurants was rare, Kettles found, but brick-and-mortar establishments opposed the presence of street vendors nonetheless.

Kettles pointed to other motivations that underlie opposition to sidewalk vending, saying that “opponents of sidewalk vending reject the practice because it signifies the rise of another culture that threatens the status of their own.”¹⁸⁸ Kettles’ findings point to a kind of cultural chauvinism that approves of brick-and-mortar businesses as sufficiently American, while street vending is foreign or other and, therefore, should not be permitted:

By continuing the broad prohibition on sidewalk vending and allowing it to take place only in districts approved by local storefront merchants, the city accorded respect or esteem to those who operate storefront businesses and their patrons. On the other hand, by creating a process by which legal vending districts may be established if neighbors approve, the city likewise accorded dignity to the vendors. Through this legislation, the city told the vendors and their patrons that their way of buying and selling is appropriate, at least in the abstract, and may be practiced in certain circumstances. The vending legislation is

181. This was the case in Los Angeles, where a Los Angeles County ordinance placed strict restrictions on lonchero trucks. “The authorities and business interests supporting the restrictions argued that the food trucks were a cumbersome and unsightly form of vending. On the opposite side, loncheros, foodies, and those looking for cheap meals viewed the restrictions as a full-frontal attack on local Los Angeles, the food scene, and Mexican food cultures.” Hernández-Lopéz, *supra* note 99, at 11.

182. Austin, *supra* note 12, at 2126; Glenn, *supra* note 109, at 58.

183. Hernández-Lopéz, *supra* note 99, at 11.

184. Vallianatos, *supra* note 95, at 211.

185. Hernández-Lopéz, *supra* note 99, at 11.

186. Kettles, *supra* note 94, at 27–29.

187. *Id.*

188. *Id.* at 41.

less about resolving traditional concerns of public policy than it is about placating interest groups whose sense of cultural worth is threatened. The only significant bar to broadly legalizing sidewalk vending would appear to be an opposition based on culture: That is not how trade is supposed to be conducted in our society.¹⁸⁹

Though Kettles was focused on Los Angeles, California, this motivation is likely at play elsewhere. We know that street vendors are largely immigrants, many of whom are recent arrivals to the country. These vendors are not white, and except for the occasional foodie or urban adventurer, they cater to a nonwhite clientele. They transport a way of doing business from their home country that is rejected in the United States despite the long history of street vending here. Black vendors are similarly othered and criminalized despite not being recent arrivals, sometimes to deadly effect. Justifications for these regulations like those given in this Section become a pretext for delegitimizing a way of doing business, a way of life, and a group of people.¹⁹⁰

As outlined above, the gourmet food truck movement has changed the face of street food in American cities by attracting wealthy clientele and entrepreneurs with relatively abundant resources. This is particularly the case in cities and neighborhoods experiencing gentrification.¹⁹¹ Many cities have responded to this movement by accommodating gourmet food trucks in their public health and public space regulations.¹⁹² Reforms that, on their face, open the door to street vending generally can be discriminatory against smaller, poorer vendors by creating expensive compliance costs.¹⁹³ Poorer vendors cannot afford the cost of expensive permits or secure space in a licensed commercial kitchen in which to prepare food, for example, both of which are often required to operate a legal food truck.¹⁹⁴ Nor are many able to purchase or even rent food trucks. Vending for these entrepreneurs is, after all, their source of start-up capital. They are not able to draw on other assets or access outside sources of capital.¹⁹⁵

189. McNulty, *supra* note 126.

190. *See supra* Section III.

191. Julian Agyeman, Caitlin Matthew, and Hannah Sobel suggest that street vending itself has been gentrified by the gourmet food truck movement. AGYEMAN, MATTHEWS & SOBEL, *supra* note 19, at 314.

192. For a discussion of reforms passed to accommodate gourmet food trucks in Los Angeles, San Francisco, Washington, DC and Philadelphia, see Baylen J. Linnekin, Jeffery Dermer & Matthew Geller, *The New Food Truck Advocacy: Social Media, Mobile Food Vending Associations, Truck Lots, & Litigation in California & Beyond*, 17 NEXUS 35 (2011–2012).

193. Kregor, *supra* note 90, at 461.

194. A retrofitted food truck can cost at least \$90,000, while even a smaller food cart can cost \$3,000.

195. This is not to say that cities have made it easy to run a gourmet food truck business. Washington, DC, for example, employs a confusing and restrictive lottery system to allocate food truck spots, expensive fees, and onerous inspection requirements. Clint Trocchio & Paul Miller, *Washington, DC's Lottery-Rotation System for Food Trucks: A Step in the Right Direction*, 22 POL'Y PERSPS. 55 (2015). Any licensing requirement that is difficult for gourmet food trucks, of course, is even more difficult for low-income sidewalk vendors.

III. WASHINGTON, DC: A CASE STUDY

This Section presents Washington, DC as a case study. In this Section, I explore the urban street vending ecosystem in Washington, DC, the state of street vending laws in the city, and present data on enforcement. In doing so, I hope to illustrate the historical trends presented above, illuminate the theoretical framework behind street vending and street vending regulations, and highlight opportunities for reform. I chose Washington, DC because the city has a robust street vending ecosystem, an active and organized community of vendors, and several recent incidents that highlight tensions among street vendors, businesses, and police, as well as trends such as gentrification, displacement, and demographic change. I have worked with street vendors and street vendor advocates in my work at the Community and Economic Development Clinic at Washington College of Law. That work has deeply informed this Article.

To study street vending in Washington, DC, I reviewed the legislative history and publicly available data about enforcement of street vendor laws in DC to get a picture of the regulation of street vending in the city. I reviewed court filings and submitted Freedom of Information Act (FOIA) requests to several DC agencies asking for, among other information, the following:

- Number of arrests for violation of street vending ordinances;
- Number of convictions for violation of street vending ordinances;
- Number of citations for violation of street vending ordinances;
- Number of street vending licenses granted;
- Number of street vending licenses denied; and
- Number of street vending license applications pending.

I submitted requests to the Metropolitan Police Departments (MPD), DC Office of the Attorney General, Department of Health (DOH), Department of Transportation (DDOT), and Department of Consumer and Regulatory Affairs (DCRA). I requested records from 2010 through the summer of 2019, though not all agencies were able to provide information. Information requests have also been affected by the COVID-19 pandemic, during which many information request deadlines were tolled.¹⁹⁶

The data and research paint a complicated picture. Street vendors have and continue to play a part in the city's ecosystem, providing access to food and merchandise for DC's residents and tourists and opportunity for Washingtonians. Street vending is permitted in Washington, DC, though the city has created significant barriers to obtaining a license and complying with street vending laws. As a result, DC has two vending ecosystems that exist side-by-side: one comprised of licensed vendors that cater to tourists and

196. D.C. Act 23-555, FOIA Tolling Emergency Amendment Act of 2020.

workers in office-heavy neighborhoods that largely vend out of trucks and another informal ecosystem of vendors selling from tables and carts on sidewalks, teenagers selling water bottles in traffic, and people selling loose cigarettes on the street. The former operate legally and are regulated by government agencies that oversee business licensing and public health matters; the latter are regulated primarily by police.

A. *DC's Street Vending Ecosystem*

The history of street vending in Washington, DC goes back nearly to its founding as the early American capital. In the nineteenth century, “gardeners,” “hawkers,” and “hucksters,” as they were then called, sold food and produce on DC streets, especially in neighborhoods that were far from open-air markets. These vendors were representative of the diverse communities moving to the young capital, including European immigrants and freed Black people.¹⁹⁷ Licenses existed in some form since at least 1805, but in the late nineteenth century, Congress, which then had greater jurisdiction over DC than it does now, created an intricate licensing regime in the 1880s in response to “safety and public space concerns.” Areas of the city were demarcated as market spaces in the hope that vendors would relocate from streets and sidewalks to the markets, though vendors continued to vend outside the markets. Greek and Italian vendors seemed to especially spark the ire of nineteenth century DC police.

Street vending in Washington, DC ebbed and flowed over the twentieth century. World War I saw a vending boom as the city swelled with hungry workers drawn to employment in war industries.¹⁹⁸ Other events, like the 1976 bicentennial, attracted vendors seeking to capitalize on tourist demand for patriotic paraphernalia.¹⁹⁹ The latter brought on action by city government to regulate vendors in crowded areas near the National Mall and various monuments. In 1980, DC issued 1,000 street vendor licenses.²⁰⁰

Today, though not as well known as lonchera trucks, danger dog carts and fruit stands in Los Angeles, or hot dog stands and halal carts in New York, Washington, DC has a thriving street vending culture. In public squares and on sidewalks in Columbia Heights and Mount Pleasant, dozens of street vendors sell tamales, pupusas, plantains, and fruit in the sticky DC summers, and hot atol de elote on cold winter days. These neighborhoods are home to much of DC's Central American population, and many of the vendors came to DC fleeing violence and unrest in El Salvador in the 1980s and 1990. They are

197. Carlton Fletcher, *Gardeners and Hucksters*, GLOVER PARK HISTORY, <https://perma.cc/DEZ4-EH2R> (last visited Oct. 1, 2021).

198. Matthew Gilmore, *Food on the Streets: Street Vending in the District of Columbia*, <https://perma.cc/DN8R-FM26> (last visited Nov. 17, 2021).

199. Courtl & Milloy, *Street-Corner Culture, Commerce Flourish*, WASH. POST (Aug. 12, 1977), <https://perma.cc/6VN7-5XQ7>.

200. Cynthia Luessenhop, *Outside the System: The Street Vendors Stage a Last Stand*, WASH. POST (June 9, 1980), <https://perma.cc/SXG5-3V9A>.

primarily Spanish-speaking and are of mixed immigration status, with some being undocumented, others having Temporary Protected Status, and still others naturalized citizens. These neighborhoods have also been a magnet for more recent immigrants from El Salvador, Guatemala, and Honduras; some of these more recent arrivals vend as well. The vendors sell largely, but not exclusively, to neighborhood residents looking for the familiar tastes of their home countries.

Street vending exists in other parts of the city as well. Vendors line up outside sports arenas before basketball, hockey, and baseball games selling hats, t-shirts, and water bottles for significantly less than those that fans can purchase inside the arena. Elsewhere, teenage boys sell cold water to hot passengers stopped at red lights or stuck in gridlock traffic. Whenever the city swells with visitors for a protest, inauguration, or other mass events, street vendors flood the city.²⁰¹ In the summer of 2020, DC saw massive protests in response to the murder of George Floyd in Minneapolis. After federal officers attacked protestors in a park near the White House in June, Washington, DC Mayor Muriel Bowser christened the nearby block “Black Lives Matter Plaza” and emblazoned the words “Black Lives Matter” in large yellow letters on the pavement. Street vendors set up shop in the plaza, selling water bottles, snacks, t-shirts, and other paraphernalia to protestors, though by July police had cleared the plaza of vendors once again.²⁰²

B. *DC Street Vending Laws*

Washington, DC permits vending on DC sidewalks or DC streets provided that the vendor obtains a license and complies with various restrictions. Vending without a license or otherwise failing to comply with these restrictions can result in a misdemeanor conviction of up to 90 days in prison.²⁰³

Getting a license is difficult for DC street vendors. Five agencies have jurisdiction over street vending in DC.²⁰⁴ The DCRA issues business licenses and is tasked with coordinating vending activities generally. DDOT approves locations in which vendors are permitted to vend. DOH reviews and approves food vendor licenses and conducts regular food safety inspections. The Fire and Emergency Medical Services Department (FEMS) issues permits for open flames, should a vendor use one. Finally, MPD enforces the law against unlicensed vendors.²⁰⁵ To obtain a license, a vendor must get (a) a basic business license from the DCRA; (b) a Vending Site Permit from DDOT; (c) a Health Inspection Certification from DOH if vending food; (d) a Food

201. Jason Paul, *Vendors Fill D.C. Streets with Goods*, ABC NEWS (Jan. 19, 2009), <https://perma.cc/7GY5-R623>.

202. Paul Schwartzman, *On Black Lives Matter Plaza, Quieter Crowds—and Yoga—as D.C. Starts to Reclaim the Street*, WASH. POST (July 21, 2020), <https://perma.cc/UP9Q-A9CH>.

203. D.C. CODE § 37-131.08.

204. Similar overlapping jurisdictions exist elsewhere. New York City street vendors are subject to the jurisdiction of seven different agencies. AGYEMAN, MATTHEWS & SOBEL, *supra* note 19, at 52.

205. D.C. Mun. Regs. tit. 24, § 501 (2017).

Protection Manager Certificate from DOH if vending food; (e) a Certified Food Protection Manager Identification Card from DOH if vending food; and (f) a permit from FEMS if the vendor is using a flame.

The first-time cost of a street vending license in DC for a food vendor can be nearly \$2,000. Aside from costs, these licensing requirements place other requirements on applications. Vendors must prepare food in a commercial kitchen and certify that they do not owe more than \$100 in outstanding taxes, fines, and fees to the District.²⁰⁶ The applicant must not have been convicted of vending without a license or cited by the DCRA for vending without a license.²⁰⁷

Once licensed, a vendor must continue to comply with a laundry list of rules. DC vending regulations govern what can and cannot be sold—for example, no power tools or large rugs.²⁰⁸ Licensed vendors can only vend in certain approved locations.²⁰⁹ Regulations dictate the design of vending carts and stands. Carts must be no more than 4 feet and 6 inches wide if vending merchandise and no more than 5 feet wide if vending food, no more than 7 or 8 feet in length, and no more than 8 feet and 6 inches high.²¹⁰ Carts can only have one umbrella and must not display goods or food from the back.²¹¹ Wheel sizes are limited, and DC regulations dictate how and where a vendor must display a license.²¹² DCRA, DOH, and FEMS conduct regular inspections for all licensed street vendors to ensure compliance with all of these rules.²¹³

Notably, DC law distinguishes between sidewalk vending and mobile food trucks, as well as between sidewalk vending and vending in farmers' markets and special events. While DC law largely treats sidewalk vendors and food trucks similarly, there are key differences in the city's vending regulations. A Sidewalk Vending Site Permit costs \$600 per year, for example, while Mobile Roadway Vending Site Permit, used by food trucks, only costs \$300 per year.²¹⁴ Vendors at farmers' markets and other special events are also exempt from licensing requirements.²¹⁵

DC's vending laws reflect several changes made in the last decade, though the city has regulated street vending for decades. 1976 is a significant date for street vending in Washington. The city got the right to self-governance three years earlier and the 1976 bicentennial saw street vendors swarm DC streets selling flags and memorabilia.

206. D.C. Mun. Regs. tit. 24, § 504.2(f) (2017).

207. D.C. Mun. Regs. tit. 24, § 504.3 (2017).

208. D.C. Mun. Regs. tit. 24, § 503.3 (2017).

209. D.C. Mun. Regs. tit. 24, §525.

210. D.C. Mun. Regs. tit. 24, §545.

211. D.C. Mun. Regs. tit. 24, §545.

212. D.C. Mun. Regs. tit. 24, §545.

213. D.C. Mun. Regs. tit. 24, §558–60.

214. *Vending Handbook*, DEPT. OF CONSUMER & REGUL. AFFS. (2013), <https://perma.cc/KT2P-GHNC>.

215. D.C. Mun. Regs. tit. 24, §502.4.

In the past decade, DC has made changes to street vending laws. In 2013, DC promulgated regulations that created a lottery system for on-street parking for food trucks. In 2015, the DC City Council added criminal penalties for vending without a license or in violation of a license, claiming that criminal penalties were inadvertently left out of a 2009 overhaul of street vending laws. Other laws are pending before City Council. In 2019, a bill was introduced that would exempt lemonade stands from DC's onerous vending regulations and penalties,²¹⁶ though that bill failed to advance out of committee.²¹⁷ In the summer of 2020, Councilmember Brianne Nadeau introduced the Street Vending Decriminalization Act of 2020. If passed, this bill would remove all criminal penalties from the DC Code for violating street vending laws. In October 2020, Councilmember Nadeau introduced the Street Vending Zones Amendment Act of 2020 to allow for street vendors, under the direction of a vendor cooperative manager, to vend with relatively few restrictions in designated zones. Both bills are still pending.

C. *Enforcement of DC Street Vending Laws*

Findings from the FOIA data from DC agencies and criminal data from the DC Superior Court were presented in a report titled "Where the Sidewalk Ends: A Multi-Phase Approach to Reforming DC's Street Vendor Licensing Regime."²¹⁸ This report shows in detail the punitive nature of street vending regulation in the city. Key findings from that report include the following:

1. Although the Metropolitan Police Department shares jurisdiction over street vending with the Department of Health and the DCRA, unlicensed street vendors overwhelmingly receive criminal citations, while licensed vendors and food trucks receive civil fines. Police occasionally issue criminal citations to food trucks, but a civil citation for an unlicensed street vendor is rare.
2. Over the last 10 years, over 1,000 vendors have been cited under the vending statute, and DC has collected over \$100,000 in fees.
3. The overwhelming majority of criminal citations given to street vendors are handled through DC's post and forfeit procedure, whereby an individual is given a citation, told to go to a police station within 48 hours, and given the chance to contest the citation in court or forfeit some collateral (essentially, pay a fine) to the police. Cases that go through post and forfeit do not receive criminal conviction records, but they do result in an arrest record. It is not clear whether any vendors have chosen to contest their case in

216. Jeff Clabaugh, *DC Council Moves to Lift Lemonade Stand Restrictions*, WTOP (July 10, 2019), <https://perma.cc/8T2W-EPBC>.

217. Comm. B. 23-0398, Reg. Sess. (D.C. 2019).

218. BELOVED CMTY. INCUBATOR, *supra* note 174.

- court. Some vendors are arrested on the spot and taken to jail, bypassing the post and forfeit process completely.
4. The most common penalty for vending without a license is a citation and a \$300 post and forfeit collateral. Smaller and larger amounts are not uncommon. Equipment is occasionally impounded.
 5. Defendants are occasionally charged under the vending statute for engaging in activity that does not look like street vending. The most common of these is selling loose cigarettes. Others are selling alcohol to minors or selling drugs. In most of these cases, the underlying activity is illegal under a separate statute and the street vending charge is brought in addition to charges under the statute criminalizing the underlying activity.

These findings highlight the need for street vending decriminalization and regulatory reform, discussed in Section IV below.

IV. REFORMS

This Section proposes a framework for reforming street vending laws in American cities that seek to remove criminal penalties from street vending violations, bring vendors into the formal economy, and maintain basic public health protections. In doing so, I assess different street vending reform proposals that have been passed or suggested around the country. Many of the reforms that have been enacted or sought seek to decriminalize street vending, shift from an enforcement-first approach to an education-first approach, remove barriers to entry, and create participatory models of regulation and dispute resolution while continuing to protect public safety.

A. *Decriminalization*

In cities and counties where street vending without a license is criminalized, vending violations should be decriminalized. Decriminalization creates the conditions necessary for reform. As the DC official testified to the DC City Council, civil agencies lean on police when they feel unable or unwilling to enforce vending laws. Removing police enforcement leaves these agencies without this fallback and can create the political will to institute an effective licensing scheme. Decriminalization removes vendors' fear, which may encourage vendors to come forward to seek a license without fearing criminal citation and collateral consequences.

Recent reforms in California decriminalized street vending as an important first step in reforming street vending laws. In September 2018, California Governor Jerry Brown signed legislation legalizing street vending statewide.²¹⁹ This legislation, which overturned local laws in cities like Los

219. Sophia Bollag, *New California Law to Help Sidewalk Vendors Operate Legally*, U.S. NEWS & WORLD REPORT (Sept. 17, 2018), <https://perma.cc/53D6-CABV>.

Angeles, was a major recent victory for street vendor advocates. This legislation, which applies to all street vendors, establishes a framework under which California cities and counties may regulate street vending and prohibits California localities from outlawing street vending outright. The legislation also prohibits treating any violation of street vending regulations as a criminal offense, limiting penalties to administrative fines payable only on an as-payable basis. The law did give cities the ability to require licenses for street vendors and to place reasonable time and place regulations on street vending.²²⁰

The statewide effort followed years of activism in Los Angeles to decriminalize street vending. Because the street vendor population in Los Angeles is largely made up of immigrants who could find their immigration status and sustained presence in this country in jeopardy as a result of interacting with the criminal justice system, advocates in California pushed to protect these individuals and create a regime that permitted these types of businesses to operate in the state.²²¹ Efforts to create and implement street vending license programs in California cities continue, but these efforts are happening without the threat of criminal enforcement.

Other cities have removed street vending from police authority as part of reform efforts. Chicago removed a ban on street carts in 2015.²²² New York City Mayor Bill de Blasio recently announced that the New York Police Department would no longer be involved in regulating street vending,²²³ and a bill is currently pending before DC City Council to remove criminal penalties from DC's street vending laws.²²⁴

B. *Removing Barriers to Entry*

Once criminal penalties are removed for violations of vending ordinances, vending reforms should identify and dismantle barriers to entry. As described in Section III, above, Washington, DC, like many cities, places many barriers to entry on vendors. Those barriers may take the form of fees, background and financial checks, insurance requirements, special food training licenses, or physical cart requirements. Each of these can make it difficult for vendors, particularly those with limited resources, to obtain a license—combined, they are prohibitive.²²⁵

As discussed in Section III, above, a first-time street vending license in Washington, DC costs nearly \$2,000, an exorbitant amount for many

220. S.B. 946 (Cal. 2018).

221. Samantha Helou Hernandez, *Making It Official: How L.A. Street Vending Became Legal*, KCET (July 3, 2019), <https://perma.cc/4ST3-S8RU>.

222. *City Council Overturns Chicago's Ban on Food Carts*, NBC CHI. (Sept. 24, 2015), <https://perma.cc/7XVW-EASY>.

223. Amelia Nierenberg & Rachel Wharton, *New York Police Will Stop Enforcing Street-Vendor Laws, but Questions Linger*, N.Y. TIMES (June 12, 2020), <https://perma.cc/CY8M-RGB4>.

224. B23-0875 – Street Vending Decriminalization Amendment Act of 2020 (D.C. 2020).

225. See Kregor, *supra* note 90, at 468.

vendors. Vendors who can come up with license funds face additional regulatory hurdles. DC vendors are required to obtain a basic business license, which requires that vendors obtain a Clean Hands Certificate. Clean Hands Certificates certify that someone does not owe more than \$100 in outstanding fees to the DC government. DC law specifically bars anyone who has been convicted of vending without a license or cited by the DCRA for vending without a license, among other things, from obtaining a vending license.²²⁶ Similarly, Elizabeth Kregor found that a street vending license in Chicago can cost \$1,000 even before costs to bring carts into compliance with design regulations.²²⁷ Barriers like this are particularly harmful to a population that has been engaging in an unlawful business and should be removed so that vendors can enter the formal market by vending in a manner that complies with local law.

Early results from California show that decriminalizing without lowering costs and streamlining requirements does little to bring vendors into the formal economy.²²⁸ Los Angeles' licensing program has come under scrutiny from advocates for retaining expensive fees—over \$500—and other difficult-to-meet requirements.²²⁹ As mentioned previously, by the summer of 2020, only 48 street vendors in Los Angeles had obtained licenses—tens of thousands of other vendors continue to vend illegally.²³⁰

C. *Education-First*

Many street vending reforms seek to shift the government's approach to regulation from one of enforcement to one of education, sometimes referred to as “fix don't fine.” A “fix don't fine” approach does not require that the government give businesses carte blanche to operate in a way that threatens the health and welfare of the public. Rather, it encourages regulations which lower compliance costs enough that vendors can comply with them.²³¹

“Fix don't fine” can also address public health concerns. In Los Angeles, Greg Kettles found “ample evidence that increased compliance be obtained and street food made safe.”²³² To criminalize noncompliant food vendors in the name of public health creates a false choice between vending food and not vending at all. Vendors who are cited rarely exit vending altogether and

226. D.C. Mun. Regs. tit. 24, §504.3.

227. A streamlined licensing system could also save local governments significant administrative costs. See Kregor, *supra* note 90, at 468.

228. See Kettles, *supra* note 94, at 15.

229. Alvaro Huerta, *Opinion: \$541 A Year for a Street Vendor Permit is Too Much*, L.A. TACO (Dec. 9, 2019), <https://perma.cc/5Q3Y-VXUF>; Anastassia Kostin, *Costs Remain for Street Vendors Despite Signing of Safe Sidewalk Vending Act*, PEPPERDINE GRAPHIC MEDIA (Feb. 26, 2020), <https://perma.cc/KUS4-7RX2>.

230. Farley Elliot, *Mayor Says Licensed Street Vendors Can Now Participate in LA's Outdoor Dining Plans*, L.A. EATER (June 26, 2020), <https://perma.cc/UBK5-7YV9>; Lexis-Oliver Ray, *MacArthur Park's Street Vendors Are Hiding But Not Gone*, LAIST (Apr. 27, 2020), <https://perma.cc/PQG7-B8MG>.

231. See Kregor, *supra* note 90, at 465.

232. Kettles, *supra* note 94, at 40.

the result of criminalization is often that vendors simply begin to vend elsewhere without changing the methods in which they prepare their food.²³³ This fails to accomplish public safety goals.

Formalization can take place through regulatory reform or selective exercise of discretionary regulatory power.²³⁴ Portland, Oregon took an approach to vending in the 2010s that relied more on public education than on enforcement. Government officials approached vendors operating outside the bounds of Portland's vending ordinance to educate them on the laws' requirements and assist them in applying for licenses rather than citing the vendors. This approach was seen as successful, allowing the vendors to enter the formal economy and the city to capitalize on the economic development opportunities created by the carts while still managing public health concerns. Rather than burdening vendors with complicated laws and regulations, laws should create more opportunities like this for vendors to enter the formal economy.²³⁵

D. *Participatory Processes*

Related to "fix don't fine," cities should embrace a participatory approach to vending regulation and enforcement. City agencies can work with vendors to develop regulations that elevate and support existing informal systems instead of abruptly replacing existing arrangements with incompatible rules and penalty structures. The city can also empower local vendor leaders or vendor leadership committees to implement vendor-led conflict resolution, mediation, and accountability practices. These vendor-led systems should be given a chance to succeed before escalating to citations or other penalties.²³⁶

E. *Protecting Public Health*

Reform does not entail jettisoning public health protections, and regulatory tools can be used to protect the health of consumers without criminalization and massive barriers to entry. Instead of requiring that street vendors comply with onerous health regulations requiring, for example, that food is prepared in a licensed commercial kitchen or commissary, disclosure and insurance requirements can substitute to protect public health. Vendors could be required to disclose that food they sell is not prepared in a licensed kitchen, allowing consumers to make an informed decision about whether to consume street food. This approach has been adopted in several states' "cottage food" laws, which permit individuals to sell food prepared at home rather than in a licensed kitchen. While there is a wide spectrum of how that states handle

233. *Id.* at 26.

234. Browne, Dominie & Mayerson, *supra* note 10, at 256.

235. Kettles, *supra* note 94, at 23–24.

236. Julian Agyeman, *From Loncheras to Lobsta Love: Food Trucks, Cultural Identity and Social Justice*, JULIAN AGYEMAN (June 28, 2013), <https://perma.cc/T8P5-DHAE>.

cottage food businesses, neither Virginia nor Maryland has registration, permit, license, or food safety course requirements but both do place disclosure requirements on cottage food businesses.²³⁷

Requiring or providing insurance to vendors is another way to help mitigate the risk, real or perceived, of food vending.²³⁸ The government could, for example, purchase a policy and require individual vendors to buy into that policy at a reduced rate.

CONCLUSION

The criminalization and overregulation of street vending have profound negative effects on vendors and the communities from which they come. American street vendors are largely low-income, immigrant, and nonwhite entrepreneurs who turn to street vending as an alternative to wage employment and to provide culturally appropriate food and goods to communities. Cities around the country employ labyrinthine street vending regulations and criminalize vending in violation of these regulations, compliance with which is difficult if not impossible for many street vendors. Unduly burdensome regulations push vendors into the informal economy, while criminalization exposes vendors to negative immigration and other collateral consequences. These laws and regulations rest on dubious assumptions that can be used to regulate public space and economic activity in a way that purposefully excludes communities of color. Instead, cities should embrace street vending in a way that avoids the criminal justice system, removes barriers to entry, and utilizes a regulatory process that works with vendors to bring vendors into compliance rather than penalize them for violations.

POSTSCRIPT

British census records show a Giuseppe Angioletto living on 24 Albert Street in London at the turn of the twentieth century. Born in 1855 in Italy, Giuseppe emigrated to London sometime before 1880 and married Italian-born Giovina Sassano, who went by Julia, in 1880. Together, Giuseppe and Julia had 10 children. Giuseppe and Julia supported the family by selling ice cream.

Thousands of Italian immigrants came to London in the late 19th or early 20th centuries to escape poverty in southern Italy. Many of these immigrants sold ice cream, then a novelty to commoners, from pushcarts on London

237. CHRISTINA RICE, EMILY BROAD LEIB, ONA BALKUS, CANDACE HENSLEY, AMY HOOVER, MEAGHAN JERRETT, NATHAN LEAMY, MOLLY MALAVEY, LEXI SMITH & PATRICK TAYLOR, COTTAGE FOOD LAWS IN THE UNITED STATES, HARV. L. SCH. FOOD L. & POL'Y CLINIC (2018), <https://perma.cc/RKA3-FXJ2>.

238. Omri Ben Shahr, *Regulation of Food Safety Through Compulsory Insurance*, 14 L. & SOC. SCI. 47 (2015).

streets. These “hokey-pokey men” sold hungry Londoners ice cream out of small glasses called “penny licks” for one penny.²³⁹

The details of Giuseppe’s and Julia’s lives and business are largely unknowable. What flavors of ice cream did they sell? What did their cart look like? What interactions did they have with London Bobbies and Peelers, then terms for police officers? What we do know is that Giuseppe and Julia had 10 children and numerous grandchildren. Among their grandchildren was Julia Angeletta, who served in the British Army during the Second World War, met and fell in love with an American serviceman, and immigrated to the United States to be with him. Julia was also my grandmother.

239. Zoe Craig, *The History of Ice Cream in London*, LONDONIST (Feb. 7, 2017), <https://perma.cc/8AZN-333Q>; J. Thomson & Adolphe Smith, *Street Life in London*, VICTORIAN LONDON (1877), <https://perma.cc/U83S-6DH9>.