

IMMIGRATION ENFORCEMENT AND THE EMPLOYMENT SPHERE:  
UNPACKING TRUMP-ERA ‘IMMPLOYMENT’ LAW

Kati L. Griffith and Shannon Gleeson<sup>1</sup>

**TABLE OF CONTENTS**

- I. INTRODUCTION
- II. TARGETING UNAUTHORIZED IMMIGRATION AT THE WORKPLACE
  - a. Workplace Raids and Arrests
  - b. Employer Audits
- III. ‘UNAUTHORIZING’ WORKERS WITH TEMPORARY PROTECTED STATUS (TPS)
  - a. Workers’ Fears of Worksite Enforcement and Deportation
  - b. Workers’ Reluctance to Interact with Government
- IV. CONCLUSION

---

<sup>1</sup> Associate Professors at Cornell’s ILR School. We would like to thank Cornell’s Institute for the Social Sciences, the Cornell Population Center, the Worker Institute at Cornell, and the Russell Sage Foundation for funding this research. Anneliese Truame, Lori Sonken, and Claire Concepcion provided valuable assistance with project administration. We appreciate interviewers Jessica Santos, Kennys Lawson, Darlene Dubuisson, Lynne Turner and Alicia Canas for their important work conducting the interviews. We also thank Juan Guevara, Sophonie Joseph, Laura Martinez, and Jennifer O’Brien for their research assistance, Christopher Ioannou for his editorial assistance, Leslie Gates for her extensive feedback, and Aliqae Geraci at Catherwood library for her able guidance. Jessie Hahn and Juan Pedroza helped us find available enforcement data. Special gratitude goes out to Valerie Silva and Vivian Vázquez for their diligence, insight, and careful work throughout the process. All errors and omissions are the responsibility of the authors.

## I. INTRODUCTION

In September 2017, the Trump administration announced “the largest payment ever levied [against an employer] in an immigration case.” A court ordered Asplundh Tree, a tree trimming government contractor, to pay \$95 million.<sup>2</sup> A year later, in August 2018, 300 federal immigration enforcement agents, some arriving in helicopters, descended on a large trailer manufacturing facility in Northern Texas. They arrested 160 unauthorized immigrants. Both cases illustrate immigration enforcement actions that take place in, and impact the employment sphere. Beyond the arrests, prosecutions, and fines are the devastated immigrant families coping with the detention and deportation of many of these unauthorized workers.

While the spectacle of worksite raids has garnered renewed attention during the Trump administration, the legal foundations on which they rest are in no way new. Federal law has intertwined the immigration and employment spheres since 1986, when Congress gave employers a role in immigration enforcement. Since then employers must verify workers’ immigration authorization to work in the U.S., and risk being sanctioned for knowingly employing unauthorized workers.<sup>3</sup> The previous two presidential administrations prior to Trump enforced these restrictions, though in different ways. President Bush (2001-2008) was known for initiating high-profile workplace raids and worker arrests, while President Obama (2009-2016) was known for shifting the enforcement pressure to employers, rather than workers.

President Trump’s brand of enforcement in the workplace borrows from these prior administrations. However, it is new in the sense that it combines and intensifies both these two strategies. Additionally, Trump has further restricted legal immigration and has reduced legal forms of relief from deportation. For example, the Trump administration has restricted refugee flows, effectively eliminated new applications to the Deferred Action to Childhood Arrivals (DACA) program, and attempted to end a longstanding humanitarian deportation relief program--the Temporary Protected Status (TPS) program. Ending TPS would unauthorize currently authorized immigrant workers overnight, rendering them immediately deportable. Commentators and Trump himself often refer to his collective immigration actions and rhetoric as a “war” on immigrants and immigration.<sup>4</sup>

While Trump’s “war” on immigration is unprecedented, his immigration enforcement at the workplace is not. His “war” advances initiatives in the workplace that began three decades ago. Immigration policy has increasingly pervaded employer-employee relations, and hence

---

<sup>22</sup> ICE News Release, September 28, 2017, *Asplundh Tree Experts, Co. pays largest civil settlement agreement ever levied by ICE*, available at <https://www.ice.gov/news/releases/asplundh-tree-experts-co-pays-largest-civil-settlement-agreement-ever-levied-ice>.

<sup>3</sup> Scholars have convincingly argued about the need to consider worker rights and immigration regulation together. See Ruben J. Garcia, *Ghost Workers in an Interconnected World: Going Beyond the Dichotomies of Domestic Immigration and Labor Laws*, 36 U. Mich. J.L. Reform 737, 740 (2003); Michael J. Wishnie, *Labor Law After Legalization*, 92 MINN. L. REV. 1446, 1461 (2008); Christopher David Ruiz Cameron, *The Borders of Collective Representation: Comparing the Rights of Undocumented Workers to Organize Under United States and International Labor Standards*, 44 U.S.F. L. REV. 431 (2009); Leticia M. Saucedo, *Immigration Enforcement Versus Employment Law Enforcement: The Case for Integrated Protections in the Immigrant Workplace*, 38 FORDHAM URB. L.J. 303 (2010).

<sup>4</sup> Masha Gessen, *Trump’s New War on Immigrants*, THE NEW YORKER (August 10, 2018); Melissa Gira Grant, *Trump Has Turned the War on Trafficking Into a War on Immigrants*, RADIO BILINGUE (January 10, 2019); Scott Bixby, *Trump’s Midterm Pitch in Arizona: Immigration is ‘Like a War’ on America*, DAILY BEAST (October 19, 2018).

immigrant worker experience, on multiple fronts.<sup>5</sup> For example, immigration law poses institutional barriers for workers attempting to file claims against their employers, even when they face egregious violations of wage or workplace health and safety requirements.<sup>6</sup> Even though federal policy is dominant in this area, state legislatures have also combined the immigration and employment spheres. As seen with Arizona’s high-profile SB1070 “show me your papers” bill, state legislators often try to deter unauthorized immigration by making it harder for employers to hire this workforce and by making these jobs less tolerable for unauthorized workers.<sup>7</sup> In contrast, the California legislature has instituted a number of laws that protect the rights of California’s immigrants from the federal government’s aggressive immigration enforcement measures at the workplace.<sup>8</sup>

In this Article, we consider the Trump administration’s efforts through an *immigration* law lens. *Immigration* is a conceptual frame that reminds us to consider (1) immigration policy’s impacts on employers and the employment-based rights of workers and (2) employment and labor law’s impacts on immigration policy. In this way, we use the term as “an interpretive device”---a sensitizing idea---that opens up areas of inquiry.<sup>9</sup> *Immigration* law has normative law and policy implications, as it signals potential impacts that go beyond the immediate policy regime. This usage is analogous to how law and society scholars employ the term *crimmigration* to encourage scholars to interrogate the interaction between criminal law and immigration law more fully.<sup>10</sup> *Crimmigration* scholars denote the increasingly penal nature of immigration policy regimes internationally, but also identify “crime-based relief” from deportation such as visas for those who assist in the enforcement of criminal law.<sup>11</sup>

In Part II we compare Trump’s workplace-based enforcement actions to those of his two predecessors, and raise questions about the potential impact of these efforts on employers, workers and communities. It is still relatively early in Trump’s presidency, but the data provided

---

<sup>5</sup> See Kati L. Griffith, *Undocumented Workers: Crossing the Borders of Immigration and Workplace Law*, 21 CORNELL J.L. & PUB. POL’Y 611, 631 (2012); Kati L. Griffith, *Discovering “Immigration” Law: The Constitutionality of Subfederal Immigration Regulation at Work*, 29 YALE L. & POL’Y REV. 389, 431 (2011).

<sup>6</sup> Kati L. Griffith & Shannon Gleeson, *The Precarity of Temporality: How Law Inhibits Immigrant Worker Claims*, 39 COMP. LAB. L. & POL’Y J. 111 (2017); SHANNON GLEESON, PRECARIOUS CLAIMS: THE PROMISE AND FAILURE OF WORKPLACE PROTECTIONS IN THE UNITED STATES 133–36 (2016); Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, 35 LAW & SOC. INQUIRY 561, 563 (2010).

<sup>7</sup> For a reference to Arizona’s SB 1070, see Margaret Hu, *Reverse-Commandeering*, 46 U.C. DAVIS L. REV. 535, 586 (2012) (“SB 1070 ... [is often] referred to by critics as Arizona’s ‘racial profiling’ law and ‘show me your papers’ statute.”). See also Leticia Saucedo, *States of Desire: How Immigration Law Allows States to Attract Desired Immigrants*, 52 U.C. DAVIS L. REV. 473 (2018).

<sup>8</sup> For a description of California’s protection see Daniel Costa, EPI Report, *California Leads the Way: A Look at California’s Laws that Help Protect Labor Standards for Unauthorized Immigrant Workers* (March 22, 2018), <https://www.epi.org/publication/california-immigrant-labor-laws/>; Kati L. Griffith, *The Power of a Presumption: California as a Laboratory for Unauthorized Immigrant Workers’ Rights*, 50 UC DAVIS L. REV. 1279, 1295–1303 (2017).

<sup>9</sup> This is consistent with social researchers who use similar conceptual frames as starting points for qualitative research studies. See Maartje A. H. van der Woude, Joanne P. van der Leun, and Jo-Anne A. Nijland, *The Negotiated Expansion Of Immigrant Control: Crimmigration in the Netherlands*, 39 LAW & SOC. INQUIRY 560, 561 (2014) (citing multiple social researchers along these lines).

<sup>10</sup> See generally César Cuauhtémoc García Hernández, *CRIMMIGRATION LAW* (2015); Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. UNI. L. REV. 367 (2006); KEVIN R. JOHNSON, *THE “HUDDLED MASSES” MYTH: IMMIGRATION AND CIVIL RIGHTS* (2004).

<sup>11</sup> Rachel E. Rosenbloom, *Beyond Severity: A New View of Crimmigration*, 22 LEWIS & CLARK L. REV. 664, 682 (2018); Leticia M. Saucedo, *A New ‘U’: Organizing Victims and Protecting Immigrant Workers*, 42 U. RICHMOND L. REV. 891 (2008).

in Part II suggest that both worker arrests and targeted enforcement actions against employers are cornerstones of Trump’s regime. Trump’s agenda deviates from his predecessors in that it aggressively targets unauthorized immigrant workers through worksite arrests (unlike Obama’s agenda, but similar to Bush’s agenda) at the same time it aggressively pushes for employer compliance (unlike Bush’s agenda, but similar to Obama’s agenda).

In Part III, we demonstrate another element of Trump’s agenda that deviates from his predecessors, which is to “de-authorize” large swaths of workers who have various forms of temporary deportation relief and work authorization. We specifically consider Trump’s impact on workers with Temporary Protected Status (TPS)---a group that is slated to lose its temporary authorization to work in the U.S. Our in-depth interviews with two dozen TPS advocates and experts, mostly based in New York City, reveal considerable worker distress about losing work authorization, or becoming unauthorized. These workers live and work under the intense fear of being picked up by the Immigration and Customs Enforcement (ICE) agency at their places of employment, or as they walk the streets at any time. Advocates report that workers are fearful of any and all interactions with public spaces and government actors, even those actors who are trying to assist them and to enforce their rights as workers. Thus, Trump’s immigration policies confuse and intimidate even those workers who are currently authorized to live and work in the U.S. These reports confirm that workplace-based immigration enforcement reaches far beyond the unauthorized workforce. In Part IV we conclude by raising research questions that could further untangle the effects of Trump’s old-but-new agenda.

## II. TARGETING UNAUTHORIZED IMMIGRATION AT THE WORKPLACE

Even though the Trump administration is using the same workplace-based enforcement tools we have seen in the past, its strategy deviates from those of its predecessors by simultaneously pursuing unauthorized worker arrests at the worksite and exerting various forms of pressure on employers. A survey of news coverage and available data on enforcement actions illustrate that the Trump administration deploys this strategy through aggressive rhetoric regarding worksite enforcement, and through its actual implementation of heightened enforcement initiatives.

### a. Workplace Raids and Arrests

Arrests of unauthorized workers at their places of employment are a key tactic of President Trump’s administration both rhetorically, and in practice. Raids are worksite enforcement initiatives that result in detentions or arrests of immigrant workers. Sometimes ICE detains a manager, or employer representative. In fiscal year 2018, the government indicted 72 managers and convicted 49 managers of criminal violations of immigration law.<sup>12</sup> Nonetheless, the bulk of arrests stemming out of worksite raids are arrests of workers.<sup>13</sup>

---

<sup>12</sup> ICE News Release, December 11, 2018, *ICE Worksite Enforcement Investigations in FY18 Surge*, available at <https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge>.

<sup>13</sup> Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures*, Congressional Research Service (2015), available at <https://fas.org/sgp/crs/homsec/R40002.pdf> (“It seems reasonable to assume that most individuals arrested on administrative charges are non-managerial employees. Criminal arrests include arrests for illegal hiring as well as for identity theft, alien harboring, money laundering, and other criminal violations. Citizens and noncitizens alike can be the subject of criminal arrests, as can non-managerial employees, managerial employees, and employers.”). See also Alan Gomez, *Feds targeting more worksites crack down on undocumented workers – but not their employers*, USA TODAY (December 11, 2018),

Trump's ICE has revived Bush-era worksite raids and worker arrest tactics. The Obama administration avoided this practice, instead focusing enforcement efforts on employers. Accordingly, in Trump's first full fiscal year (October 2017-September 2018), the government charged 666 workers and 113 managers with criminal violations.<sup>14</sup> All 1,525 administrative worksite-related arrests during this period were worker arrests. Criminal and administrative arrests stemmed from voluntary audits employers participate in as part of ICE's mandatory and voluntary audits,<sup>15</sup> and ICE's other investigatory initiatives.<sup>16</sup> Each of these enforcement mechanisms long preceded the Trump administration. Even the Social Security Administration's recent announcement---that it will heighten scrutiny of wage and tax statements and will notify employers about discrepancies---is a renewal of a much criticized Bush-era practice that was challenged and halted.<sup>17</sup>

It is too early to tell whether worker arrests will reach the heights seen during the Bush administration,<sup>18</sup> but the Trump administration has signaled that it intends to double down on enforcement and increase worker arrests.<sup>19</sup> It has hired the personnel it thinks will help it achieve these goals. As Figure 1 demonstrates,<sup>20</sup> the Bush administration extensively used workplace raids. In the last two years of Bush's presidency, ICE averaged 5,600 arrests per year. In contrast, the average annual arrest rate flowing from worksite investigations in the final two years of the Obama administration was just over 400 individuals. The Agriprocessors raid, by far the most noteworthy workplace raid, occurred ten years ago under the Bush administration in May of 2008. ICE arrested four hundred workers, and some managers, at a meatpacking plant in

---

<https://www.usatoday.com/story/news/nation/2018/12/11/donald-trump-targeted-more-worksites-undocumented-immigrants-immigration-and-customs-enforcement/2263656002/>.

<sup>14</sup> Alan Gomez, *Feds targeting more worksites crack down on undocumented workers – but not their employers*, USA TODAY (December 11, 2018), <https://www.usatoday.com/story/news/nation/2018/12/11/donald-trump-targeted-more-worksites-undocumented-immigrants-immigration-and-customs-enforcement/2263656002/>.

<sup>15</sup> The sources used in Figure 1 include DHS website, IMAGE; Your Workforce Compliance Partner, (describing intent of program as enhancing employer compliance through voluntary agreements that subject employers to regular self audits, to I-9 inspections and other measures); Amber McKinney, *Tyson Foods Joins ICE's IMAGE Program; Morton Announces New I-9 Inspection Center* (January 20, 2011)(“If a company as large as Tyson Food can get compliance right, any company in the United States can get compliance right”).

<sup>16</sup> Alex Ebert, *ICE Arrests 146 Ohio Workers at Unionized Meat-Packing Plant*, BNA DAILY LAB. REP. (June 20, 2018) (“ICE said the raid was part of a yearlong investigation based on evidence Fresh Mark provided voluntarily to the federal government through the IMAGE program.”).

<sup>17</sup> Massoud Hayoun, *The Social Security Administration Has a New Plan to Flag Undocumented Workers to Employers*, PACIFIC STANDARD (Jan. 4, 2019), at <https://psmag.com/economics/the-social-security-administration-has-a-new-plan-to-flag-undocumented-workers-to-employers> (“Previous administrations have sent out such letters before, but were ‘temporarily halted during litigation and congressional inquiry because it was wrongfully used as a method of immigration enforcement that was found to hurt workers and employers alike’”).

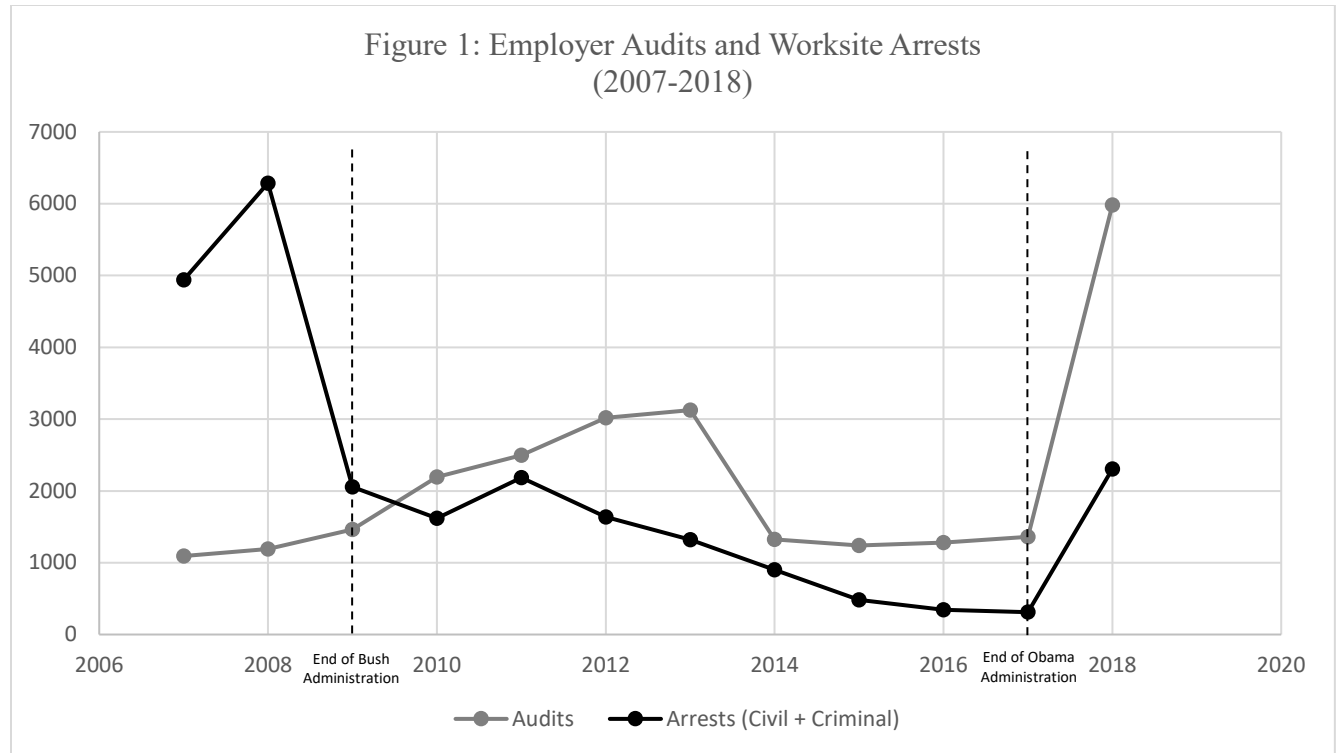
<sup>18</sup> For information on Bush raids, see Clinic Legal Webinar, *Lessons Learned: Mississippi and Iowa* (Nov. 12, 2008),

<https://cliniclegal.org/sites/default/files/RAIDS%20Mississippi%20and%20Iowa%20Lessons%20Learned.pdf>; Centro Legal, *Comprehensive Documentation of Immigration Enforcement Operations* (February 2009), [https://tunkas2009.files.wordpress.com/2009/02/comprehensive\\_raid\\_list.pdf](https://tunkas2009.files.wordpress.com/2009/02/comprehensive_raid_list.pdf).

<sup>19</sup> Laura D. Francis, *ICE Work-Site Enforcement Likely to Borrow from Obama, Bush*, BNA DAILY LAB. REP. (February 5, 2018).

<sup>20</sup> Immigration-Related Worksite Enforcement Measures, CRS (2015), Table 2, available at [https://www.everycrsreport.com/reports/R40002.html#\\_Toc422838335](https://www.everycrsreport.com/reports/R40002.html#_Toc422838335); Laura D. Francis, *ICE Work-Site Enforcement Likely to Borrow From Obama, Bush*, BLOOMBERG BNA REPORT (2018), available at <https://www.bna.com/ice-worksites-enforcement-n57982088343/>; ICE News Report, *ICE Worksite Enforcement Investigations in FY18 Surge*, ICE Newsroom (2018), available at <https://www.ice.gov/news/releases/ice-worksites-enforcement-investigations-fy18-surge>.

Postville Iowa in a highly publicized and criticized worksite raid.<sup>21</sup> At least initially, the Trump administration’s worksite raid levels have landed somewhere in between the Bush and Obama administrations. During Trump’s first full fiscal year (October 2017-September 2018) ICE arrested a total of 2,304 individuals as part of worksite enforcement.<sup>22</sup>



However, ICE seems poised to reach Bush-level arrests in the remaining years of the Trump presidency. Figure 1 illustrates that arrests are sharply on the rise. During the Fall of 2017, an ICE official called for a 400 percent increase in worksite investigations.<sup>23</sup> Our survey of news reports during 2018 shows that there has been a highly publicized worksite raid almost every month.<sup>24</sup> Indeed, ICE recently touted the success of several “high-profile enforcement actions”

<sup>21</sup> See, e.g., Luis Argueta, *AbUSed: The Postville Raid*, New Day Films (2012).

<sup>22</sup> Anna Giaritelli, *ICE arrests of illegal workers, employers up 700 percent in 2018*, WASHINGTON EXAMINER, (Dec. 11, 2018), [https://www.washingtonexaminer.com/news/ice-arrests-of-illegal-workers-employers-up-700-percent-in-2018?fbclid=IwAR2P-IH-FVwTnSmxb3CpC79xyhSmt\\_uQiQuY7frHcJn33uaw75Lo-JSh8uI](https://www.washingtonexaminer.com/news/ice-arrests-of-illegal-workers-employers-up-700-percent-in-2018?fbclid=IwAR2P-IH-FVwTnSmxb3CpC79xyhSmt_uQiQuY7frHcJn33uaw75Lo-JSh8uI).

<sup>23</sup> Anna Giaritelli, *ICE arrests of illegal workers, employers up 700 percent in 2018*, WASHINGTON EXAMINER, (Dec. 11, 2018), [https://www.washingtonexaminer.com/news/ice-arrests-of-illegal-workers-employers-up-700-percent-in-2018?fbclid=IwAR2P-IH-FVwTnSmxb3CpC79xyhSmt\\_uQiQuY7frHcJn33uaw75Lo-JSh8uI](https://www.washingtonexaminer.com/news/ice-arrests-of-illegal-workers-employers-up-700-percent-in-2018?fbclid=IwAR2P-IH-FVwTnSmxb3CpC79xyhSmt_uQiQuY7frHcJn33uaw75Lo-JSh8uI).

<sup>24</sup> There were raids in 2017 too. See, e.g., David Bacon, *Fire and ICE: The Return of Workplace Immigration Raids* (April 27, 2017), available at <http://prospect.org/article/fire-and-ice-return-workplace-immigration-raids> (reporting on 55 worker detentions in Mississippi); Jack Weatherly, *11 held in ICE restaurant raids plead guilty* (Aug 17, 2017), available at <http://msbusiness.com/2017/08/11-held-ice-restaurant-raids-plead-guilty/>; Sarah Fowler, *Feds won't say where 55 Miss. migrants have been taken* (February 24, 2017), available at <https://www.usatoday.com/story/news/nation-now/2017/02/24/restaurant-immigration-raids/98360024/>; Jenny Jarvie, *More than 50 detained in immigration raids at Asian restaurants in Mississippi* (Feb 23, 2017), available at <http://www.latimes.com/nation/la-na-mississippi-immigration-raids-20170223-story.html>.

which resulted in hundreds of worker arrests.<sup>25</sup> These spectacles grab public attention, and spur concern among immigrant and worker communities. For example, in January 2018 ICE targeted 7-Eleven stores across the country in workplace raids. These investigations and raids were reported on extensively in the media and affected ninety-eight stores across the country.<sup>26</sup>

Similar to the Bush years, some Trump worksite raids are larger scale and focused on a range of industries in a variety of locations. In February 2018, ICE detained 232 workers in a raid of businesses in California's San Francisco Bay Area<sup>27</sup> and more than 200 workers from 122 businesses in the Los Angeles area.<sup>28</sup> In April 2018, ICE detained close to a hundred workers at a meatpacking plant in Tennessee.<sup>29</sup> In June 2018 ICE arrested over a hundred workers at an Ohio gardening company.<sup>30</sup> In August 2018, ICE arrested 133 workers from farms, a restaurant, a grocery store and other businesses in and around a small town in Nebraska.<sup>31</sup> Yet some of these actions have roots in previous administrations. For example, the August 2018 Texas raid

---

<sup>25</sup> ICE News Release, December 11, 2018, *ICE Worksite Enforcement Investigations in FY18 Surge*, available at <https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge>.

<sup>26</sup> James Doubek, ICE Targets 7-Eleven Stores In Nationwide Immigration Raids (January 11, 2018), available at <https://www.npr.org/sections/thetwo-way/2018/01/11/577271488/ice-targets-7-eleven-stores-in-nationwide-immigration-raids>; Corky Siemazko, Immigration agents raid 7-Eleven stores nationwide, arrest 21 people in biggest crackdown of Trump era (January 10, 2018), available at <https://www.nbcnews.com/news/us-news/immigration-agents-raid-7-eleven-stores-nationwide-arrest-21-people-n836531>

<sup>27</sup> Nicole Darrah, ICE arrests 232 people in four-day raid of California's Bay Area (March 1, 2018) available at <https://www.foxnews.com/politics/ice-arrests-232-people-in-four-day-raid-of-californias-bay-area>; More than 150 arrested in Northern California immigration raids (February 27, 2018), available at <https://www.kcra.com/article/more-than-150-arrested-in-northern-california-immigration-raids/18918777>

<sup>28</sup> Jeff Daniels, US agents arrest more than 200 undocumented immigrants, target 122 businesses in California sweep (February 16, 2018), available at <https://www.cnbc.com/2018/02/16/federal-immigration-raids-in-southern-california-target-122-businesses.html>.

<sup>29</sup> Travis Dorman, ICE raids Granger County meatpacking plant amid charges owners avoided \$2.5 million in payroll taxes (April 6, 2018), available at <https://www.knoxnews.com/story/news/crime/2018/04/05/ice-raids-meatpacking-plant-granger-county/490673002/>; Southeastern Provision owner agrees to plead guilty to charges after ICE raid (Aug. 17, 2018), available at <https://www.wbir.com/article/news/local/southeastern-provision-owner-agrees-to-plead-guilty-to-charges-after-ice-raid/51-585057981>; Diana Orces, Largest Worksite Raid in a Decade Signals a Dark Turn in Immigration Enforcement (April 12, 2018), available at <http://immigrationimpact.com/2018/04/12/worksite-raid-tennessee-immigration-enforcement/>

<sup>30</sup> Samantha Schmidt, *'Utter chaos': ICE arrests 114 workers in immigration raid at Ohio gardening company* (June 6, 2018), available at [https://www.washingtonpost.com/news/morning-mix/wp/2018/06/06/utter-chaos-ice-arrests-114-workers-in-immigration-raid-at-ohio-gardening-company/?utm\\_term=.f7a166953ad2](https://www.washingtonpost.com/news/morning-mix/wp/2018/06/06/utter-chaos-ice-arrests-114-workers-in-immigration-raid-at-ohio-gardening-company/?utm_term=.f7a166953ad2); Carma Hassan, *ICE arrests 114 at Ohio garden center in major mass raid* (June 7, 2018), available at <https://www.cnn.com/2018/06/06/us/ice-undocumented-immigrants-arrests-garden-ohio/index.html>; Robert Gearty, *ICE raids Ohio lawn and garden business, arrests 114* (June 5, 2018), available at <https://www.foxnews.com/us/ice-raids-ohio-lawn-and-garden-business-arrests-114>

<sup>31</sup> Zachary Mueller, *Trump Administration's Latest Workplace Raid Take 133 Workers in Nebraska Area* (Aug. 15, 2018), available at <https://americasvoice.org/blog/nebraska-raid/>; Meagan Flynn, *ICE raid targeting employers and more than 100 workers rocks a small Nebraska town* (Aug. 9, 2018), available at [https://www.washingtonpost.com/news/morning-mix/wp/2018/08/09/ice-raid-targeting-employers-and-more-than-100-workers-rocks-a-small-nebraska-town/?noredirect=on&utm\\_term=.a122ca583987](https://www.washingtonpost.com/news/morning-mix/wp/2018/08/09/ice-raid-targeting-employers-and-more-than-100-workers-rocks-a-small-nebraska-town/?noredirect=on&utm_term=.a122ca583987); Josh Planos, *ICE executes federal search warrants in Nebraska, Minnesota, Nevada* (Aug. 9, 2018), available at <https://www.ketv.com/article/immigration-raid-underway-in-oneill/22676364>; Fred Knapp, *O'Neill Dealing with Aftermath of Immigration Raids* (Aug. 9, 2018), available at <http://netnebraska.org/article/news/1140091/oneill-dealing-aftermath-immigration-raids>; ICE Announces Multi-State Operation and Execution of Federal Search Warrants in Nebraska, Minnesota, and Nevada (Aug 8, 2018), available at <https://www.aila.org/infonet/ice-execution-federal-search-warrants>.

mentioned at the outset involved a company that the Obama administration had audited and fined just four years earlier.<sup>32</sup>

Advocates decry these raids for disregarding basic humanitarian principles and stoking stress and fear. The impacts of deportation can be devastating. For example, news stories convey that children separated from their deported parents are part of the collateral damage caused by surprise work site raids. The Nebraska raid in August 2018 separated more than four dozen children from their parents.<sup>33</sup> Scholars have yet to fully document the long-term impact of these separations. Yet we know that there are material and emotional costs of deportation for the children left behind. Deportations can remove primary breadwinners from households, resulting in foreclosures and housing instability.<sup>34</sup> They can also lead to permanent family dissolution,<sup>35</sup> depression and other mental health crises.<sup>36</sup> Raids undoubtedly have a chilling effect on local community institutions, as seen through the lens of diminished school attendance.<sup>37</sup> In April 2018, one advocate reported that at least 600 students did not show up for school the day after the Tennessee meatpacking raid. As she put it, “this raid – coupled with local law enforcement involvement – will send shockwaves across the country.”<sup>38</sup>

Worker advocates have also expressed concern about the effects of these raids on workplace rights and protections, which rely on workers’ ability to voice their grievances.<sup>39</sup> Organized labor groups raised this very critique after the raid of an Ohio gardening center in June 2018. An AFL-CIO representative stated that “[w]orksites do nothing to raise wages and standards for working people in Ohio. In fact, they create fear in our workplaces and communities, which actually makes us all less safe.”<sup>40</sup> Indeed, prior research confirms that the fear of immigration

---

<sup>32</sup> *Id.* See also *Immigration Officials Raid Sumner Based Company, Load Trail* (Aug. 28, 2018), available at <https://myparistexas.com/breaking-news-immigration-officials-raid-sumner-based-company-load-trail/>; Dennis Romero, *More than 150 arrested in massive ICE raid in Texas* (August 28, 2018), available at <https://www.nbcnews.com/news/us-news/more-150-arrested-massive-ice-raid-texas-n904581>.

<sup>33</sup> Zachary Mueller, *Trump Administration’s Latest Workplace Raid Take 133 Workers in Nebraska Area* (Aug. 15, 2018), available at <https://americasvoice.org/blog/nebraska-raid/>; Meagan Flynn, *ICE raid targeting employers and more than 100 workers rocks a small Nebraska town* (Aug. 9, 2018), available at [https://www.washingtonpost.com/news/morning-mix/wp/2018/08/09/ice-raid-targeting-employers-and-more-than-100-workers-rocks-a-small-nebraska-town/?noredirect=on&utm\\_term=.a122ca583987](https://www.washingtonpost.com/news/morning-mix/wp/2018/08/09/ice-raid-targeting-employers-and-more-than-100-workers-rocks-a-small-nebraska-town/?noredirect=on&utm_term=.a122ca583987).

<sup>34</sup> Jacob S. Rugh & Matthew Hall, *Deporting the American Dream: Immigration Enforcement and Latino Foreclosures*, 3 *SOCIOLOGICAL SCIENCE* 1053 (2016).

<sup>35</sup> Joanna Dreby, *The burden of deportation on children in Mexican immigrant families*, 74 *J. OF MARRIAGE AND FAMILY* 829 (2012).

<sup>36</sup> David K. Androff, Cecilia Ayon, David Becerra, and Maria Gurrola, *US immigration policy and immigrant children’s well-being: The impact of policy shifts*, 38 *J. SOC. & SOC. WELFARE* 77 (2011); Kalina M. Brabeck, M. Brinton Lykes, and Rachel Hershberg, *Framing immigration to and deportation from the United States: Guatemalan and Salvadoran families make meaning of their experiences*, 14 *COMMUNITY, WORK & FAMILY* 275 (2011).

<sup>37</sup> Jacqueline Hagan, Brianna Castro, and Nestor Rodriguez, *The effects of US deportation policies on immigrant families and communities: Cross-border perspectives*, 88 *NCL REV.* 1799 (2009).

<sup>38</sup> Travis Dorman, *ICE raids Granger County meatpacking plant amid charges owners avoided \$2.5 million in payroll taxes* (April 6, 2018), available at <https://www.knoxnews.com/story/news/crime/2018/04/05/ice-raids-meatpacking-plant-granger-county/490673002/>.

<sup>39</sup> Donald M. Kerwin and Kristen McCabe, *Labor Standards Enforcement and Low-Wage Immigrants: Creating an Effective Enforcement System*, *MIGRATION POLICY INSTITUTE* (2011), <http://www.migrationpolicy.org/pubs/laborstandards-2011.pdf>.

<sup>40</sup> Kristine Phillips, *ICE arrests nearly 150 meat plant workers in latest immigration raid in Ohio* (June 20, 2018), available at [https://www.washingtonpost.com/news/post-nation/wp/2018/06/20/ice-arrests-nearly-150-meat-plant-workers-in-latest-immigration-raid-in-ohio/?utm\\_term=.6dc489f59f13](https://www.washingtonpost.com/news/post-nation/wp/2018/06/20/ice-arrests-nearly-150-meat-plant-workers-in-latest-immigration-raid-in-ohio/?utm_term=.6dc489f59f13); America’s Voice, *Organized Labor Roundly Condemns Immigration Raids in Ohio* (June 21, 2018), available at



enforcement measures, even when such measures are absent in practice, *disincentivizes* immigrant workers from making claims against their employers.<sup>41</sup> Moreover, Professor Hiroshi Motomuro has noted that some employers use the threat of immigration enforcement “as an opportunity to solidify their power over workers,” and even if employers never call immigration, the “constant threat can make workers’ lives precarious – always reminding them that they are powerless.”<sup>42</sup>

Workplace raids and deportations also impact the labor force.<sup>43</sup> Whereas some scholars characterize immigration as a demographic and economic “lifeline” to small town America,<sup>44</sup> others highlight the shortages left following major immigration enforcement actions. For example, a raid of a food processing plant in Arkansas on September 12, 2018 resulted in the detention of 30 people, close to three quarters of the work force.<sup>45</sup> However, often missing from these characterizations of immigrants “doing the work that American simply won’t do” – are the race to the bottom that forces out native born and other workers and the emergence of low-cost consumer markets that rely on cheap labor.<sup>46</sup> In other words, while immigrant labor does indeed fill an important gap, the structural conditions that degrade workplace conditions ultimately disadvantage all workers.

In sum, the available data on worksite enforcement, and a survey of news reports, paint the picture that worker arrests following a work site raid will be a fixture of Trump’s agenda in the coming years. Lessons from the past remind us of the devastating impact of large scale worker round-ups. Such was the case at the end of the Bracero Program, a bilateral agreement with Mexico to send Mexican agricultural laborers to the U.S. temporarily, when the U.S. deported thousands of workers.<sup>47</sup> Similarly, the small town of Postville, Iowa is still feeling the deleterious effects of the workplace raid and mass deportation of 400 meat packing workers, ten

---

[https://americasvoice.org/press\\_releases/labor-condemns-ohio-raids/](https://americasvoice.org/press_releases/labor-condemns-ohio-raids/); Eric Heisig, *Thirteen workers arrested in Fresh Mark immigration raid face federal charges* (Aug. 30, 2018), available at [https://www.cleveland.com/court-justice/index.ssf/2018/08/thirteen\\_workers\\_arrested\\_in\\_f.html](https://www.cleveland.com/court-justice/index.ssf/2018/08/thirteen_workers_arrested_in_f.html); Parija Kavilanz, *ICE arrests more than 100 workers in raid at Ohio meat supplier* (June 20, 2018), available at <https://www.cnn.com/2018/06/19/us/ice-raid-meat-supplier-fresh-mark/index.html>.

<sup>41</sup> Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, 35 LAW & SOC. INQUIRY 561, 563 (2010).

<sup>42</sup> Hiroshi Motomura, *Immigration Outside the Law*, 108 COLUM. L. REV. 2037, 2069 (2008).

<sup>43</sup> In March 2018, ICE detained twenty-eight workers at a Florida-based tent/event rental business. Paul Mueller, ‘People are afraid’; Immigration activists respond to ICE raids (March 28, 2018), available at <https://cbs12.com/news/local/people-are-afraid-immigration-activists-respond-to-ice-raids>. A May 2018 raid resulted in the arrest of thirty-two concrete workers in eastern Iowa. Luke Nozicka, 32 arrested by ICE agents on immigration violations in eastern Iowa (May 9, 2018), available at <https://www.desmoinesregister.com/story/news/2018/05/09/homeland-security-investigation-underway-mount-pleasant-iowa-henry-county/595656002/>.

<sup>44</sup> Patrick J. Carr, Daniel T. Lichter, and Maria J. Kefalas, *Can immigration save small-town America? Hispanic boomtowns and the uneasy path to renewal*, 641 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 38 (2012).

<sup>45</sup> Homeland Security Agents Raid Alma Manufacturer (Sep 12, 2018), available at <https://5newsonline.com/2018/09/12/homeland-security-agents-raid-alma-manufacturer/>; ICE Detains Dozens of Workers in Arkansas Factory Raid (Sep 13, 2018), available at <https://www.usnews.com/news/best-states/arkansas/articles/2018-09-13/ice-detains-dozens-of-workers-in-arkansas-factory-raid>.

<sup>46</sup> Chris Morris, *California Crops Rot as Immigration Crackdown Creates Farmworker Shortage*, FORTUNE (August 8, 2017); Editorial, *Creating a Labor Shortage by Deporting Immigrant Farmworkers Makes no Sense*, LA TIMES (April 4, 2018).

<sup>47</sup> Vernon M. Briggs, Jr., GUESTWORKER PROGRAMS: LESSONS FROM THE PAST AND WARNINGS FOR THE FUTURE (2004); Kitty Calavita, INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE INS (1992).

years later.<sup>48</sup> These actions negatively affect not only workplace justice, but also families and communities for generations.

a. Employer Audits

President Trump's new brand of workplace-based enforcement combines worker arrests with intensified compliance measures for employers. As Figure 1 portrays, these initiatives arguably amplify the pressure on employers beyond that of the Obama years. As previously mentioned, the Obama administration reduced workplace raids and worksite arrests. Yet, in turn, it increased the number of immigration audits and sanctions on employers. Immigration audits, unlike Internal Revenue Service (IRS) audits, scrutinize employers hiring documentation to ensure that employers have hired individuals with legal authorization to work in the United States. Janet Napolitano, Obama's Department of Homeland Security Secretary, critiqued Bush-era workplace raids. She proclaimed that "while federal immigration authorities expended considerable time and resources to conduct large-scale workplace immigration raids during the Bush administration, too many lawbreaking employers were left unpunished."<sup>49</sup>

The Trump administration expresses its intent to go well beyond the Obama administration in its efforts to ensure employer compliance with 1980s' employer sanctions and verification requirements. The number of ICE audits rose dramatically, from 1,360 in 2017 to 5,981 in 2018.<sup>50</sup> News reports speculate that this quadrupling of audits is likely to create backlogs, as ICE does not have sufficient personnel (including judges and enforcement police), nor facilities to hold so many detainees. The possible impact for targeted employers is "months or years of uncertainty as the potential high cost of fines hangs over their heads."<sup>51</sup> ICE is in the process of hiring 60 additional auditors, to add to the 120 that are currently conducting worksite audits.<sup>52</sup>

ICE's rhetoric, and its increase in workplace audits, signal that the Trump administration wants more to pressure employers even more than before. A goal of this effort, in part, is to increase participation in ICE's voluntary compliance program, ICE's Mutual Agreement between Government and Employers (IMAGE).<sup>53</sup> In September 2017, ICE directed employers

---

<sup>48</sup> Andrea Patiño and Almudena Toral, *Postville Iowa*, RADIO AMBULANTE, (September 23, 2018) (recounting the ways the community has struggled in the wake of the raid), at <http://radioambulante.org/en/audio-en/translation/postville-iowa>.

<sup>49</sup> Kati L. Griffith, *Undocumented Workers: Crossing the Borders of Immigration and Workplace Law*, 21 CORNELL J.L. & PUB. POL'Y 611, 620 (2012) ("Homeland Security Secretary Janet Napolitano, for instance, recently stated that workplace immigration raids "made no sense" as an immigration enforcement strategy. According to Napolitano, while federal immigration authorities expended considerable time and resources to conduct large-scale workplace immigration raids during the Bush administration, too many lawbreaking employers were left unpunished and "criminal aliens were free to roam our streets.").

<sup>50</sup> ICE News Release, December 11, 2018, *ICE Worksite Enforcement Investigations in FY18 Surge*, available at <https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge>.

<sup>51</sup> Laura D. Francis, *Slim Immigration Enforcement Resources Leave Employers Hanging*, BNA DAILY LAB. REP. (Nov. 27, 2018).

<sup>52</sup> Alan Gomez, *Feds targeting more worksites crack down on undocumented workers – but not their employers*, USA TODAY (December 11, 2018).

<sup>53</sup> U.S. Immigration and Customs Enforcement, *IMAGE*, available at <https://www.ice.gov/image> ("IMAGE now offers a formal membership certification program that focuses on exceptional employers that have the ability to effect change within their industry or region."). For stories on recent additions to the IMAGE program, see ICE News Release, December 2018, *Albuquerque Business Teams Up with ICE to Become IMAGE Partner*, available at <https://www.ice.gov/news/releases/albuquerque-business-teams-ice-become-image-partner>; Miller Mayer LLP, ICE

to the little-utilized IMAGE program after announcing the landmark \$95 million settlement with Asplundh Tree services.<sup>54</sup> The IMAGE program creates incentives for employers' voluntary participation, in part by reducing employer participants' exposure to fines and penalties. ICE's recent increase in enforcement activity targeting employers is notable. In fiscal year 2018, ICE opened 6,848 new worksite investigations, as compared to 1,691 in 2017.<sup>55</sup> An ICE official recently described the goal of this increase as follows: "business owners [should]. . . fear an ICE immigration audit as much as they fear an IRS tax audit."<sup>56</sup> This will require more ICE enforcement activity, as the IRS audited close to 19,000 businesses in fiscal year 2017 (compared to 5,981 ICE audits that same year).<sup>57</sup> Even though ICE has not reached IRS audit levels, its rhetoric and recent spike in audits is leaving an impression on some employers. An attorney representing businesses confirmed that employers who hire immigrant workers are feeling the heat. He described ICE's efforts to date as an "explosion of I-9 inspections."<sup>58</sup> The implication of this, of course, is that employers will comply if they assess that enforcement measures are likely to reach their workplace.

Even with the influx of audits, it remains unclear how much money the Trump administration will ultimately collect from businesses in administrative fines after the audits are complete, compared to prior administrations. In Bush's eight years (2001-2008), the government collected an average of about \$500,000 a year in administrative fines.<sup>59</sup> During the Obama presidency (2009-2016), that average number jumped to \$11.5 million per year.<sup>60</sup> The first partial year of the Trump presidency yielded \$7.8 million from employers, but we do not yet have comparable numbers for 2018.<sup>61</sup> Given the numbers of audits currently underway, as observed in Figure 1, it appears that the total amount of administrative fines collected will surpass Obama-era levels.

These measures, or even the heightened rhetorical threat of these measures, are likely to shape employer behavior moving forward. Prior research suggests that employers' risk aversion regarding compliance measures could encourage them to discriminate based on national origin

---

IMAGE Program Enrolls 13 New York Businesses, available at <https://millermayer.com/2018/ice-image-program-enrolls-13-new-york-businesses/> (December 2018).

<sup>54</sup> ICE News Release, September 28, 2017, *Asplundh Tree Experts, Co. pays largest civil settlement agreement ever levied by ICE*, available at <https://www.ice.gov/news/releases/asplundh-tree-experts-co-pays-largest-civil-settlement-agreement-ever-levied-ice>.

<sup>55</sup> ICE News Release, December 11, 2018, *ICE Worksite Enforcement Investigations in FY18 Surge*, available at <https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge>.

<sup>56</sup> Alan Gomez, *Feds targeting more worksites crack down on undocumented workers – but not their employers*, USA TODAY (December 11, 2018), <https://www.usatoday.com/story/news/nation/2018/12/11/donald-trump-targeted-more-worksites-undocumented-immigrants-immigration-and-customs-enforcement/2263656002/>.

<sup>57</sup> IRS Data Book, Pages 24-25, Table 9A (2017), <https://www.irs.gov/pub/irs-soi/17datbk.pdf>; IRS Data Book, Pages 23-24, Table 9A (2016), <https://www.irs.gov/pub/irs-soi/16datbk.pdf> (21,136 businesses were audited in 2016). The general trend of IRS auditing of businesses is in decline see Howard Gleckman, *The IRS Audit Rate is Plummeting. Does it Matter?*, FORBES (April 3, 2018) available at <https://www.forbes.com/sites/beltway/2018/04/03/the-irs-audit-rate-is-plummeting-does-it-matter/#25e5e86e685e>.

<sup>58</sup> Laura D. Francis, *Slim Immigration Enforcement Resources Leave Employers Hanging*, BNA DAILY LAB. REP. (Nov. 27, 2018).

<sup>59</sup> Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures*, Congressional Research Service (2015), available at <https://fas.org/sgp/crs/homesecc/R40002.pdf>.

<sup>60</sup> *Id.*; Laura D. Francis, *ICE Work-Site Enforcement Likely to Borrow From Obama, Bush*, Bloomberg BNA Report (2018), available at <https://www.bna.com/ice-worksite-enforcement-n57982088343/>; *Budget in Brief*, Department of Homeland Security (2007-2019), available at <https://www.dhs.gov/dhs-budget>

<sup>61</sup> Laura D. Francis, *ICE Work-Site Enforcement Likely to Borrow from Obama, Bush*, Bloomberg BNA Report (2018), available at <https://www.bna.com/ice-worksite-enforcement-n57982088343/>.

and/or race in their employment decisions.<sup>62</sup> The heightened rhetoric and enforcement actions may make risk averse employers more hesitant to hire people with “foreign sounding” names, or to employ immigrants who are temporarily authorized to live and work in the U.S.<sup>63</sup> This was indeed a primary concern of the 1986 federal employer sanctions policies, which resulted in the creation of the Office of the Special Counsel under the Department of Justice. Some employers may not want to deal with the hassle and risks involved with hiring workers who appear to be immigrants. Indeed, employer risk aversion may create significant spillover effects. For instance, authorized immigrant workers, and those who may soon see their work authorization revoked, could be harmed. Given that we are in new immigration policy territory in the Trump era---typified by the combined intensification of pressure on workers and employers---future research must investigate not only the effects on unauthorized workers, but also the effects on employers and workers who are authorized but may “look foreign.”<sup>64</sup> In the next Part, we share the experiences of a group of low-wage authorized workers who may soon become unauthorized.

### III. ‘UNAUTHORIZING’ WORKERS WITH TEMPORARY PROTECTED STATUS (TPS)

*It’s like you live in a carton of milk . . . you have an expiration date . . .*

-Labor Union Advocate for Temporary Immigrant Workers, NY NY, September 2018<sup>65</sup>

In this Part, we draw on interviews with temporary worker advocates to emphasize that immigration enforcement impacts more than just the precarious, unauthorized workforce. To be sure, the immigration policy changes underfoot since Trump took office go far beyond an intensification of immigration enforcement targeting the unauthorized workforce. These changes are unprecedented in that they also include a dismantling of deportation relief policies that will in effect *illegalize* thousands of immigrants who are currently authorized to live and work in the country.<sup>66</sup> It is important, therefore, to consider the work experiences of currently authorized workers who are in danger of becoming unauthorized. The current context makes clear that workplace-based immigration enforcement, although specifically targeted at currently unauthorized immigrants, affects these workers as well.

We specifically consider Trump’s efforts as they affect workers with Temporary Protected Status (TPS). This is a strategic group to study because the future of this program---and the work authorization it provides---is currently in the crosshairs of the Trump administration. TPS is a humanitarian measure intended to provide temporary residency and employment authorization for individuals from countries that have experienced natural disasters, wars and other events raising humanitarian concerns. TPS represents 400,000 workers across the country, but it shares many of the characteristics of other groups that have temporary deportation relief, but no path to legal permanent residence and naturalized citizenship (such as beneficiaries of

---

<sup>62</sup> Juliet Stumpf, *Getting to Work: Why Nobody Cares about E-Verify (And Why They Should)*, 2 U.C. Irvine L. Rev. 381, 382 (2012); WESTAT CORP., *Findings of the E-Verify Program Evaluation, Report Submitted to U.S. Department of Homeland Security* 235, 242, 250 (Dec. 2009), available at [http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09\\_2.pdf](http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf).

<sup>63</sup> Shannon Gleeson & Kati L. Griffith, *Bureaucratic Sources of Employment Insecurity* (unpublished manuscript, 2019).

<sup>64</sup> Kati L. Griffith, *Discovering ‘Immemployment’ Law: The Constitutionality of Subfederal Immigration Regulation at Work*, 29 YALE L. & POL’Y REV. 389, 418 (2011).

<sup>65</sup> Interview by Darlene Dubuisson of Labor Union Advocate, in New York, New York (September 6, 2018).

<sup>66</sup> Joel Sati, *Noncitizenship and the case for illegalized persons*, Blog (January 24, 2017).

Advanced Parole and the Deferred Action for Childhood Arrivals/DACA program).<sup>67</sup> Similar to DACA recipients and recipients of other temporary relief, TPS workers are one step away from being unauthorized, even though they are currently authorized to live and work in the U.S. TPS workers, like other groups of temporary immigrant workers, are a population (of mostly working adults) that is subject to changes in both their legal status and the immigration policy environment for unauthorized workers. Cecilia Menjívar's extensive work on TPS holders illustrates that individuals with TPS experience a type of "liminal legality" that pervades several key intuitional aspects of their lives, including work.<sup>68</sup>

Workers with temporary deportation relief are also particularly vulnerable because, unlike many unauthorized workers who have never been subject to government processing, they have provided the government with information about their whereabouts and their places of employment.<sup>69</sup> Unlike the circumstances surrounding the vast majority of unauthorized workers currently in the U.S., the government has TPS workers' fingerprints and other biometric information on file. They are, in this way, ostensibly easier for ICE to round up and target in a worksite raid *because* they have been subject to government processing. If the DHS Secretary cancels a country's TPS designation, these workers become unauthorized immediately after the termination date. The TPS program is currently in considerable flux because the DHS has announced the termination of relief for major TPS countries, such as El Salvador and Haiti. However, a federal district court in Northern California has temporarily halted this termination of status.<sup>70</sup>

Interviews with New York City advocates working with TPS recipients provide an important perspective on how Trump's immigration policies might affect the employment experiences of those with temporary work authorization that may soon be revoked. These advocates relayed the immense fear held by many TPS workers that they will be picked up at work through a raid, or on the street, once they become unauthorized. Interviewees also relayed workers' reluctance to turn to government, even when government entities could ostensibly help them, their co-workers, their families or their community.

#### a. Workers' Fears of Worksite Enforcement and Deportation

Our interviews confirm that even currently authorized TPS workers are fearful of worksite enforcement and deportation measures. Our team asked more than a dozen advocates what they thought were the biggest challenges for TPS workers, and how they were reacting to the Trump administration. In every interview, advocates consistently described the current climate as

---

<sup>67</sup> Geoffrey Heeren, *The Status of Nonstatus*, 64 AM. U. L. REV. 1115 (2015).

<sup>68</sup> Cecilia Menjívar, *Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States*, 111 AM. J. SOC. 999, 1003, 1008 (2006). For others who expose the precarity of TPS holders, see Leisy Abrego & Sarah M. Lakhani, *Incomplete Inclusion: Legal Violence and Immigrants in Liminal Legal Statuses*, 37 L. & POL'Y 265 (2015); Jennifer Chacón, *Producing Liminal Legality*, 92 DENV. U.L. REV. 709 (2015); Miranda Cady Hallett, *Temporary Protection, Enduring Contradiction: The Contested and Contradictory Meanings of Temporary Immigration Status*, 39 L. & SOC. INQUIRY 621, 635–38 (2014).

<sup>69</sup> For a call to look at the unique positionality of immigrants with temporary forms of immigration relief in various national contexts, see Maria Lorena Cook, Shannon Gleeson, Kati Griffith & Lawrence Kahn, *Introduction to a Special Issue on the Impact of Immigration Legalization Initiatives: International Perspectives on Immigration and the World of Work*, 71 ILR REVIEW 807 (2018).

<sup>70</sup> *Ramos v. Nielsen*, No. 18-cv-01554-EMC, 2018 U.S. Dist. LEXIS 105988 (N.D. Cal. June 25, 2018).

stoking “a lot of fear.”<sup>71</sup> President Trump’s much-publicized restrictionist immigration policies, like the so-called travel ban, sent a lot of immigrants into a panic. One advocate described that after the first travel ban was announced “everything went haywire.” He noted that not only TPS holders were fearful. Fear also pervaded the comments of naturalized citizens.<sup>72</sup> These responses echo what we know about the spillover effects of immigration enforcement on mixed status families, and the broader communities in which unauthorized and liminal status individuals have been intertwined for decades.<sup>73</sup>

The Trump administration’s announcements to cancel TPS status for Haitians and Central Americans and other crackdowns of immigrants in workplaces and community spaces, stoked widespread concern in these communities across immigration status categories. As mentioned, a court injunction is currently holding up these TPS terminations, but workers are in perpetual limbo and are wondering “when will they take it from us?”<sup>74</sup> TPS holders know that if they lose their current immigration status, they will immediately become unauthorized and deportable, even if the mechanism for this transition has not yet been made clear.

TPS advocates also told us that most TPS holders are acutely aware that immigration enforcement officials can easily locate them and their family members. The very process of obtaining TPS means that these immigrants have provided significant identifying information to the government (such as where they work). This information, by design, is updated every 6-18 months, when they must renew their TPS designation. Consequently, these TPS workers logically expressed fear that the very information they provided to the government to receive humanitarian TPS relief will be used to round them up and deport them. There is no reason to believe that this could not, and would not happen. One advocate summarized this common Trump-era sentiment as such:

So, TPS filers have consistently given their addresses, their work addresses, information about their children, you know, consistently for over, about seven years now. And [they wonder,] will that information be used against them to possibly deport them? So, a lot of my clients have actually asked me, should I be putting this honest information in my applications? And will they be coming to my workplace or my last known address to actually deport me . . . if [TPS] doesn’t get renewed?<sup>75</sup>

In light of growing enforcement efforts, respondents were also anxious performing everyday life activities. Advocates reported how TPS workers fear that they will be “snatched up off the streets” of Brooklyn New York any day now by ICE. TPS recipients lay low at work and stay out of public spaces; they try not to rock any boats. They fear that once they become unauthorized they will leave their children without care and they will lose their jobs, their homes,

---

<sup>71</sup> Interview by Alicia Canas with Organizational Leader, in New York, New York (July 14, 2017); Interview by Alicia Canas with Organizational Leader, in New York, New York (October 27, 2017); Interview by Darlene Dubuisson with Haitian Advocate, in New York, New York (July 7, 2017); Interview by Darlene Dubuisson with government worker in New York, New York (June 20, 2017); Interview by Darlene Dubuisson with Organizational Leader in New York, New York (September 8, 2017); Interview by Darlene Dubuisson with labor union representative, in New York, New York (September 6, 2018).

<sup>72</sup> Interview by Alicia Canas with Organizational Leader, in New York, New York (July 14, 2017).

<sup>73</sup> Elizabeth Aranda, Cecilia Menjivar, and Katharine M. Donato, *The Spillover Consequences of an Enforcement-First U.S. Immigration Regime*, 58 AMERICAN BEHAVIORAL SCIENTIST 1687 (2014).

<sup>74</sup> Interview by Alicia Canas with Organizational Leader, in New York, New York (October 27, 2017).

<sup>75</sup> Interview by Darlene Dubuisson with Organizational Leader in New York, New York (September 8, 2017).

their cars, and their ability to feed and care for their families locally, and in their origin country.<sup>76</sup> One advocate conveyed that,

TPS recipients tell me that every morning before they leave their house they have a conversation with their children about what to do if [they] don't come home from work. Every day. They have like their emergency contact, what you do, what you don't do, in case I don't come home. . . . So we're looking at a lot of emotional scarring behind this TPS as well as the financial issues that come behind it.

The threat of deportation causes immigrants' fear and stress, and also disrupts family relationships,<sup>77</sup> erodes health outcomes,<sup>78</sup> and creates barriers to claims-making.<sup>79</sup> Some nefarious employers may take advantage of this heightened vulnerability. For instance, recent reporting on low-wage guest workers, authorized to work temporarily in the U.S. through their employment contracts, suggests that employers are increasingly leveraging the fear of immigration enforcement to exploit authorized workers.<sup>80</sup> Indeed, worker advocates refer to Trump's immigration policies as "the nasty boss's best friend."<sup>81</sup> David Weil, Administrator of the U.S. Department of Labor's Wage and Hour Division under President Obama, commented that due to Trump's immigration policies "more workers are putting up with unpaid wages, untreated injuries and various forms of mental and physical abuse."<sup>82</sup> It appears that an increase in retaliatory immigration threats is even occurring in more immigrant friendly policy environments such as California, where a employer threatened to "use President Donald Trump" to deport a worker who asked for back wages. Another reportedly threatened a worker for filing a claim, angrily texting that "Trump is coming to town" to have the worker deported. Data from California's Labor Commissioner show that between January 2017 and December 2018 there were 172 worker complaints that employers threatened to retaliate against them based on immigration status. This is a notable uptick compared to the mere 29 complaints that same office received between 2014 and 2016.<sup>83</sup> The rate is likely higher amongst those who do not ultimately lodge a formal complaint.

#### b. Workers' Reluctance to Interact with Government

The current environment challenges workers' rights enforcement, and other forms of government relief, for authorized workers. Advocates we spoke with conveyed that TPS workers are hesitant to contact all types of government workers, including social workers, law enforcement and health care officials, all of whom were seen as threats for deportation. Fear of interaction with any form of government, these advocates relayed, means workers are not getting

---

<sup>76</sup> Interview by Darlene Dubuisson with labor union representative, in New York, New York (September 6, 2018).

<sup>77</sup> Zoya Gubernskaya and Joanna Dreby, *US immigration policy and the case for family unity*, 5 J. ON MIGRATION & HUM. SEC. 417 (2017).

<sup>78</sup> Efrain Talamantes and Sergio Aguilar-Gaxiola, *Perspective: POTUS Trump's Executive Orders—Implications for Immigrants and Health Care*, 27 ETHNICITY & DISEASE 121 (2017).

<sup>79</sup> Leisy J. Abrego, *Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims Making for First and 1.5 Generation Immigrants*, 45 LAW & SOCIETY REV. 337 (2011).

<sup>80</sup> Kartikay Mehrotra, Peter Waldman and Jonathan Levin, *In Trump's America, Bosses Are Accused of Weaponizing the ICE Crackdown*, BNA DAILY LAB. REP. (Dec. 18, 2018) ("Immigrant workers say rising panic over deportation forces them to endure abuses in jobs Americans don't want.").

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Kartikay Mehrotra, Peter Waldman and Jonathan Levin, *In Trump's America, Bosses Are Accused of Weaponizing the ICE Crackdown*, BNA DAILY LAB. REP. (Dec. 18, 2018).

the help they need, and are not exposing the injustices that they face (in the workplace and beyond). A New York City based government lawyer spoke, for example, about how TPS holders are more hesitant than before to reach out to government for assistance. She recounted:

[W]e used to see people come from the immigrant community, now we don't really see as much people coming out and asking for help because of fact that they feel that, okay, this is part of some maybe trick or trap.<sup>84</sup>

She contrasted the current situation, from what she had seen in the past, and expressed concern that people “are not talking anymore” to government even when they are desperate for help. She fears that individuals will turn to unregulated and dangerous forms of the underground economy, stating that “people are going to be going the wrong path to get information...to acquire certain things...because [they're] not trustful of government.” It means, in her view, that essential laws that protect the public will go unenforced. Workers are now more unlikely to invoke protections when they face problems in the workplace, which is particularly concerning considering the key role worker claims play in labor and employment law enforcement efforts.<sup>85</sup> In the eyes of the workers, she said, it is very risky in the current environment to “put themselves out there to be exposed,” even if by a benevolent arm of the rights enforcement bureaucracy.<sup>86</sup> Another advocate similarly told us that his clients are “very afraid of applying for any type of government provision” because they fear it will be used against them in the future. These are legitimate concerns, given current changes in public charge policies, and Trump’s announcement that public benefits use will have immigration consequences.<sup>87</sup> The result is that TPS individuals on whose behalf she advocated were not taking good care of themselves at work or at home. As she put it, “you’re not looking out for yourself” and instead you “are going underground.”<sup>88</sup>

The impact of this extreme self-censoring is problematic for immigrants’ ability to seek the services and assistance they need and deserve. In fact, encouraging immigrants to turn to government is a primary goal of a number of immigration relief mechanisms, such as the U and T visas. The government intended these mechanisms to grant deportation relief to victims of crimes (such as victims of domestic violence) who can be encouraged to come forward, and to those who serve as witnesses and help prosecutors to enforce the law to advance public safety and welfare.<sup>89</sup> Many advocates argue that discouraging immigrant participation with government allows perpetrators – be it an abusive spouse or an employer operating with impunity – to evade enforcement. Aggressive immigration enforcement effectively ends up blocking separate enforcement efforts – leading to under enforcement – in other areas regulatory environments. It also blocks immigrants from the rights and services to which they are entitled. In light of these findings, future research should consider not only the negative effects of immigration policies on the already vulnerable unauthorized population, but how the legal liminal status of “soon to be

---

<sup>84</sup> Interview by Darlene Dubuisson with government worker in New York, New York (June 20, 2017).

<sup>85</sup> Kati L. Griffith, *Undocumented Workers: Crossing the Borders of Immigration and Workplace Law*, 21 CORNELL J.L. & PUB. POL’Y 611, 631 (2012).

<sup>86</sup> Interview by Darlene Dubuisson in New York, New York (June 20, 2017).

<sup>87</sup> See, e.g., Yeganeh Torbati, *Trump Administration Moves to Restrict Immigrants Who Use Public Benefits*, REUTERS (September 22, 2018).

<sup>88</sup> Interview by Darlene Dubuisson with labor union representative, in New York, New York (September 6, 2018).

<sup>89</sup> Leticia M. Saucedo, *A New ‘U’: Organizing Victims and Protecting Immigrant Workers*, 42 U. RICHMOND L. REV. 891 (2008).



unauthorized” populations interacts with other regulatory regimes, such as labor and employment rights enforcement.

#### IV. CONCLUSION

Trump’s agenda is both old and new, raising questions about its short and long-term impacts. It continues trends we have seen before, building on tools perfected in past administrations. Immigrant and worker advocates are right to be troubled by the direction in which we are headed. It is critical, nonetheless, to understand that these paths have been traversed before. The environment for immigrant worker rights at the federal level has deteriorated, but advocates have built tools in years prior to help mitigate these deleterious effects. For example, advocates have used legal challenges to social security no-match letters, collective bargaining agreements that limit employer involvement with immigration enforcement, and know-your-rights trainings to limit ICE’s power; each may continue to be important today.<sup>90</sup>

The current era is unique, however, in that Trump combines approaches perfected by Obama and Bush before him in a new way. His administration targets workers for arrest at their workplaces and pressures employers to comply through mandatory and voluntary audits. It is a new environment for workers and employers, though with some important antecedents. As such, it raises critical areas of inquiry moving forward. What effects will this combined pressure have on unauthorized workers’ willingness to confront their employers when they face injustices in the workplace? Does ICE’s pressure on employers, and perceptions of heightened risk to liability exposure, mitigate employers’ nefarious use of immigration enforcement threats to quash unauthorized workers’ collective activity and worker claims? It would seem that it could. Will this pressure lead to enhanced national origin and race discrimination against authorized workers, as employers fear the immigration enforcement complications of hiring immigrant workforces? It seems likely that it will. Will it lead to reduced unauthorized immigration, its stated goal? Given what the sociological literature tells us about the way home country conditions push migrants out and social network pull migrants in, it seems likely that it will not.<sup>91</sup> If anything, the unauthorized migrant flow is most responsive to economic shifts, having dropped some since the last Great Recession.<sup>92</sup>

The current regime is also distinctive in that it impacts broad populations of currently authorized immigrants. This is indeed a new hallmark of Trump’s policies, which aim to illegalize broad swaths of the population who were previously granted deportation relief. Unlike prior administrations, the Trump administration undeniably aims to turn large groups of authorized workers (e.g. TPS, DACAmented) into unauthorized workers by the end of his presidency. This anti-immigrant campaign has targeted noncitizens in particular, but has also included efforts to

---

<sup>90</sup> See, e.g., *Court Blocks Government from Implementing Flawed Social Security ‘No-Match’ Rule*,” National Immigration Law Center, (October 10, 2007), at <https://www.nilc.org/2007/10/10/nomatch1007/>; David Bacon, *How Unions Help Immigrants Resist Deportations*, AMERICAN PROSPECT, at <https://prospect.org/article/how-unions-help-immigrants-resist-deportations>.

<sup>91</sup> See Douglas S. Massey, *Why Does Immigration Occur? A Theoretical Synthesis*, THE HANDBOOK OF INTERNATIONAL MIGRATION: THE AMERICAN EXPERIENCE (1999); Douglas S. Massey, Jorge Durand, and Nolan J Malone, *Beyond Smoke and Mirrors* (2003); Douglas S. Massey and Kristin E Espinosa, *What’s Driving Mexico-U.S. Migration? A Theoretical, Empirical and Policy Analysis*, 102 AMERICAN J. OF SOCIOLOGY 939 (1997).

<sup>92</sup> Andrés Villarreal, *Explaining the Decline in Mexico-U.S. Migration: The Effect of the Great Recession*, 51 *Demography* 2203 (2014).

denaturalize U.S. citizens.<sup>93</sup> The potential unauthorization of authorized workforces reminds us that future research should focus not only on the currently unauthorized immigrant population. Indeed, as mentioned, intensified pressure on employers may negatively affect other workers, as risk averse employers may respond by shying away from hiring immigrants in general, even those who are authorized to work. When employers do hire authorized immigrant workers, will they use “the ICE Crackdown” as a “weapon[]” to further deteriorate working conditions for low-wage workers, as has been reported in the guest worker context?<sup>94</sup> Unlike employers who hire unauthorized workers, employers of TPS recipients are not under the same threat of immigration compliance problems, and likely to therefore act with more impunity than with others.

Therefore, future research should consider the important role that employers play within the immigration enforcement regime; their positionality in the legal regime. Employers are both targets of immigration enforcement efforts, which lead to compliance concerns, and vehicles for immigration enforcement against unauthorized workers. The latter gives employers enhanced power over their workforces. Future studies should also consider how immigration enforcement may alter the calculations of soon-to-be unauthorized workers, like TPS workers. Given their registration with immigration enforcement authorities, are these authorized workers more disincentivized than their unauthorized peers to engage in collective activity and raise claims because they are more easily deportable? Does this further hinder their willingness to make legal claims and organize? Or are they comparatively more empowered than they were in the past because they now have less to lose?

We call for thorough analysis not only of immigration enforcement’s effects on workers and employers, but also its effects on other government compliance and social welfare regimes. When rights and benefits are made available to all residents regardless of immigration status, enforcement authorities and other service providers must be able to carry out their missions. Yet it is unclear how immigration policies will impact police officers’ ability to protect victims of domestic violence, hospitals’ ability to offer health care covered by universal benefits, schools’ ability provide a free and equal education to the children of immigrants, or workers’ ability to experience the health and wage protections that have been put in place. Can non-immigration related arms of the state remain independent and avoid getting involved in immigration enforcement efforts?

In sum, future research should consider how immigration law, and immigration law enforcement measures, impact worker experiences and employer behavior. Along with interrogating the experiences of unauthorized workers in the Trump era, we must examine the experiences of currently authorized workers across a variety of liminal immigration statuses. Researchers and policymakers should consider not only how government actions encourage immigration law compliance, but also how those same actions may negatively impact worker wellbeing and other areas of government regulation.

---

<sup>93</sup> See, e.g., Seth Freed Wessler, *Is Denaturalization the Next Step in the Trump Administration’s War on Immigration?*, NY TIMES MAGAZINE (December 19, 2018), at <https://www.nytimes.com/2018/12/19/magazine/naturalized-citizenship-immigration-trump.html>.

<sup>94</sup> Kartikay Mehrotra, Peter Waldman and Jonathan Levin, *In Trump’s America, Bosses Are Accused of Weaponizing the ICE Crackdown*, BNA DAILY LAB. REP. (Dec. 18, 2018).