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## Trump's 'Immemployment' Law Agenda: Intensifying Employment-Based Enforcement and Un-authorizing the Authorized


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## Trump's 'Immemployment' Law Agenda: Intensifying Employment-Based Enforcement and Un-authorizing the Authorized

### Abstract

This article considers President Trump's immigration efforts through an immemployment law lens. Immemployment 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. It draws from available enforcement data to argue that Trump's regime is intensifying the use of workplace-based immigration enforcement tools such as audits of employer records and arrests of workers at their place of work. While his predecessors used these tools too, Trump is simultaneously pursuing both high profile worker arrests and bureaucratic audits as key tools of a more aggressive immigration enforcement strategy. The Trump administration is also deviating from his predecessors by un-authorizing large groups of authorized workers. The article focuses its attention primarily on one such targeted group, workers with Temporary Protected Status (TPS), who may soon lose their authorization. It also uses interviews with two dozen immigrant worker advocates in the New York City metropolitan area to convey the ways that the threat of workplace-based immigration enforcement and unauthorization efforts are consequential for workers and the government compliance and benefits regimes that rely on voluntary participation of immigrant workers.

### Keywords

immigration, legal status, policy, enforcement, Temporary Protected Status, TPS

### Disciplines

Immigration Law | Labor and Employment Law | Labor Relations

### Comments

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# TRUMP'S 'IMMPLOYMENT' LAW AGENDA: INTENSIFYING EMPLOYMENT- BASED ENFORCEMENT AND UN-AUTHORIZING THE AUTHORIZED

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Kati L. Griffith and Shannon Gleeson\*

*This article considers President Trump's immigration efforts through an immpoyment law lens. Immployment 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. It draws from available enforcement data to argue that Trump's regime is intensifying the use of workplace-based immigration enforcement tools such as audits of employer records and arrests of workers at their place of work. While his predecessors used these tools too, Trump is simultaneously pursuing both high profile worker arrests and bureaucratic audits as key tools of a more aggressive immigration enforcement strategy. The Trump administration is also deviating from his predecessors by un-authorizing large groups of authorized workers. The article focuses its attention primarily on one such targeted group, workers with Temporary Protected Status (TPS), who may soon lose their authorization. It also uses interviews with two dozen immigrant worker*

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*advocates in the New York City metropolitan area to convey the ways that the threat of workplace-based immigration enforcement and un-authorization efforts are consequential for workers and the government compliance and benefits regimes that rely on voluntary participation of immigrant workers.*

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#### I. INTRODUCTION

In September 2017, the Trump administration announced, “the largest payment ever levied [against an employer] in an immigration case.”<sup>1</sup> In this extraordinary 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.<sup>3</sup> They arrested 160 unauthorized immigrants at their place of work.<sup>4</sup> Both of these cases illustrate immigration enforcement actions that take place in, and impact, the employment sphere. They are part of President Trump’s self-

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1. *Asplundh Tree Experts, Co. Pays Largest Civil Settlement Agreement Ever Levied by ICE*, ICE NEWSROOM (Sept. 28, 2017), <https://www.ice.gov/news/releases/asplundh-tree-experts-co-pays-largest-civil-settlement-agreement-ever-levied-ice>.

2. *Id.*

3. Mark Smith & Jason Whitely, *Immigration Agents Raid Texas Business, Detain 160 Undocumented Workers in Surprise Raid*, USA TODAY (Aug. 29, 2018), <https://www.usatoday.com/story/news/nation-now/2018/08/29/ice-agents-detain-160-undocumented-workers-texas-raid/1133735002/>.

4. *Id.*

described “war” on immigrants and immigration.<sup>5</sup> Beyond the arrests, prosecutions, and fines are the devastated immigrant families and communities coping with the detention and deportation of many of these unauthorized workers.

The spectacle of worksite immigration raids has garnered renewed attention during the Trump administration. Nonetheless, the legal foundations on which workplace-based immigration enforcement actions rest are in no way new. Federal law has intertwined the immigration and employment spheres since 1986, when Congress introduced the workplace as a key site of immigration enforcement.<sup>6</sup> Since then the workplace has been an on again, off again, target of audits and surprise raids as employers are legally required to verify workers’ immigration authorization.<sup>7</sup> The previous two presidential administrations prior to Trump pursued workplace-based immigration enforcement, though in very different ways. President Bush (2001-2008) was known for initiating high-profile workplace raids and worker arrests,<sup>8</sup> while President Obama (2009-2016) was known for shifting the enforcement pressure to employers, rather than workers.<sup>9</sup>

While it borrows from the Bush and Obama administrations, President Trump’s brand of enforcement in the workplace is unique. It is new in the sense that the Trump administration is using every tool in the workplace-based immigration enforcement toolkit. His administration is pursuing both audits and arrests simultaneously. The Trump administration is also adding its own aggressive expansion, one that we did not witness in prior administrations and one that has implications for the workplace and beyond.

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5. Scott Bixby, *Trump’s Midterm Pitch in Arizona: Immigration is ‘Like a War’ on America*, DAILY BEAST (Oct. 19, 2018), <https://www.thedailybeast.com/trump-declares-war-on-immigration-in-fiery-arizona-rally>; Masha Gessen, *Trump’s New War on Immigrants*, THE NEW YORKER (Aug. 10, 2018), <https://www.newyorker.com/news/our-columnists/trumps-new-war-on-immigrants>; Melissa Gira Grant, *Trump Has Turned the War on Trafficking Into a War on Immigrants*, RADIO BILINGUE (Jan. 10, 2019), <https://www.thedailybeast.com/trump-declares-war-on-immigration-in-fiery-arizona-rally>.

6. Leticia M. Saucedo, *Immigration Enforcement versus Employment Law Enforcement: The Case for Integrated Protections in the Immigrant Workplace*, 38 FORDHAM URB. L.J. 303, 305 (2010).

7. Scholars have consistently argued for the need to consider worker rights and immigration regulation together. See 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, 432 (2009); 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, 741 (2003); Michael J. Wishnie, *Labor Law After Legalization*, 92 MINN. L. REV. 1446, 1459 (2008); Saucedo, *supra* note 6.

8. Laura D. Francis, *ICE Work-Site Enforcement Likely to Borrow from Obama, Bush*, BLOOMBERG LAW (Feb. 5, 2018), <https://www.bna.com/ice-worksite-enforcement-n57982088343/>.

9. *Id.*

It has further restricted legal immigration, such as refugee flows, and has reduced access to protections from deportation. It has engaged in a broad program to *un-authorize* individuals who are currently authorized to live and work in the U.S. For example, the Trump administration has tried to effectively eliminate new applications to the Deferred Action to Childhood Arrivals (DACA) program. It has announced the end to a longstanding humanitarian deportation relief program, the Temporary Protected Status (TPS) program, by removing countries from the list of beneficiaries one by one.<sup>10</sup> Ending TPS would un-authorize this group of temporarily authorized immigrants overnight. This would render them immediately deportable (through workplace-based immigration enforcement or otherwise) and subject to termination from their current employment.<sup>11</sup>

In this Article, we consider the Trump administration's efforts through an *immloyment* law lens.<sup>12</sup> *Immloyment* 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. For example, as the authors have posed elsewhere immigration law, and employers' role in enforcing it, poses institutional barriers for workers attempting to file claims against their employers.<sup>13</sup> This is the case even when they face egregious violations of wage and/or workplace health and safety requirements.<sup>14</sup> In this way, we use the term as an "interpretive device[]"—a sensitizing idea—that opens up areas of inquiry.<sup>15</sup> *Immloyment* law has normative law and policy implications, as it signals potential impacts that go beyond the immediate policy regime.

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10. Zachary Mueller, *Trump Administration's Latest Workplace Raid Takes 133 Workers in Nebraska Area*, AMERICA'S VOICE (Aug. 15, 2018), <https://americasvoice.org/blog/nebraska-raid/>.

11. Dara Lind, *Judge Blocks Trump's Efforts to End Temporary Protected Status for 300,000 Immigrants*, VOX (Oct. 4, 2018), <https://www.vox.com/policy-and-politics/2018/10/4/17935926/tps-injunction-chen-news>.

12. Immigration policy has increasingly pervaded employer-employee relations, and hence immigrant worker experience, on multiple fronts. See Kati L. Griffith, *Discovering "Immloyment" Law: The Constitutionality of Subfederal Immigration Regulation at Work*, 29 YALE L. & POL'Y REV. 389, 431 (2011); Kati L. Griffith, *Undocumented Workers: Crossing the Borders of Immigration and Workplace Law*, 21 CORNELL J.L. & PUB. POL'Y 611, 630, 631 (2012).

13. 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, 569 (2010); Kati L. Griffith & Shannon Gleeson, *The Precarity of Temporality: How Law Inhibits Immigrant Worker Claims*, 39 COMP. LAB. L. & POL'Y J. 111, 119–20 (2017).

14. *Id.*

15. 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, et al., *The Negotiated Expansion of Immigrant Control: Crimmigration in the Netherlands*, 39 LAW & SOC. INQUIRY 560, 561 n.2 (2014) (citing multiple social researchers along these lines).

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>16</sup> *Crimmigration* scholars denote the increasingly penal nature of immigration policy regimes internationally, but also identify “[c]rime-[b]ased [r]elief” from deportation such as visas for those who assist in the enforcement of criminal law.<sup>17</sup>

In Part II we compare the Trump administration’s workplace-based enforcement actions to those of his two immediate predecessors and raise questions about the potential impact of these efforts on employers, workers, and communities. Trump’s presidency is still underway, but the data provided 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 immigration agenda that deviates from his predecessors and has implications for the employment sphere. It aims to “de-authorize” large swaths of workers who have various forms of temporary protection from deportation 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, also reveal negative impacts for workers and their ability to access benefits regimes on which they rely. The interviews illustrated 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 in enforcing their rights and benefits as workers. Thus, Trump’s immigration policies confuse and intimidate even those workers who are currently authorized to live and work

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16. See generally CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *CRIMMIGRATION LAW* (2015); KEVIN R. JOHNSON, *THE “HUDDLED MASSES” MYTH: IMMIGRATION AND CIVIL RIGHTS* (2004); Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. UNI. L. REV. 367 (2006).

17. Rachel E. Rosenbloom, *Beyond Severity: A New View of Crimmigration*, 22 LEWIS & CLARK L. REV. 664, 682-83 (2018); Leticia M. Saucedo, *A New ‘U’: Organizing Victims and Protecting Immigrant Workers*, 42 U. RICHMOND L. REV. 891, 892 (2008).

in the U.S. In Part IV we conclude by raising research questions that could further untangle the effects of Trump's old-but-new immigration agenda in the employment sphere.<sup>18</sup>

## 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 combines the strategies of previous administrations to simultaneously pursue unauthorized worker arrests at the worksite and exert various forms of pressure on employers through investigations and audits. The 1986 Immigration Reform and Control Act, referenced in the Introduction, requires that employers verify their employees' work authorization. It provides the federal government with the discretion to initiate worksite raids, investigations and employer audits in order to ensure that employers comply. A survey of news coverage and available data on enforcement actions illustrates that the Trump administration has chosen to use all available tools to engage in workplace-based immigration enforcement.

### 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>19</sup>

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18. Even though federal policy is dominant, state legislatures have also combined the immigration and employment spheres. As seen with Arizona's high-profile SB1070 "show me your papers" bill, local governments 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. See Margaret Hu, *Reverse-Commandeering*, 46 U.C. DAVIS L. REV. 535, 586 (2012) (referencing Arizona's SB 1070) ("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, 477 (2018). 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. See 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). See also Daniel Costa, *California Leads the Way: A Look at California's Laws that Help Protect Labor Standards for Unauthorized Immigrant Workers*, ECONOMIC POLICY INSTITUTE (Mar. 22, 2018), <https://www.epi.org/publication/california-immigrant-labor-laws/> (describing California's protection).

19. *ICE Worksite Enforcement Investigations in FY18 Surge*, ICE NEWSROOM (Dec. 11, 2018), <https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge>.



Nonetheless, the bulk of arrests stemming out of worksite raids are arrests of workers.<sup>20</sup>

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>21</sup> Beyond criminal proceedings, ICE also made administrative arrests, which are arrests that relate to charges of removability/deportability from the United States. 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, and ICE's other investigatory initiatives.<sup>22</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 advocates challenged and the government halted for a time.<sup>23</sup>

It is too early to tell whether worker arrests will reach the heights seen during the Bush administration,<sup>24</sup> but the Trump administration has signaled

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20. Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures*, CONG. RES. SERV., 5 (2015), <https://fas.org/sgp/crs/homesec/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 (Dec. 11, 2018), <https://www.usatoday.com/story/news/nation/2018/12/11/donald-trump-targeted-more-worksites-undocumented-immigrants-immigration-and-customs-enforcement/2263656002/>.

21. Gomez, *supra* note 20.

22. Alex Ebert, *ICE Arrests 146 Ohio Workers at Unionized Meat-Packing Plant*, BNA DAILY LAB. REP. (June 20, 2018), <https://perma.cc/6RFC-96ND> (“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”).

23. Massoud Hayoun, *The Social Security Administration Has a New Plan to Flag Undocumented Workers to Employers*, PAC. STANDARD (Jan. 4, 2019), <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’”).

24. For information on Bush raids, see *Lessons Learned: Mississippi and Iowa*, CLINIC LEGAL (Nov. 12, 2008), <https://cliniclegal.org/sites/default/files/RAIDS%20Mississippi%20and%20Iowa%20Lessons%20Learned.pdf>; *Comprehensive Documentation of Immigration Enforcement*

that it intends to double down on enforcement efforts.<sup>25</sup> It has hired the personnel it thinks will help it achieve these goals. As Figure 1 demonstrates,<sup>26</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 more than ten years ago under the Bush administration in May of 2008. ICE arrested four hundred workers, and some managers, at a meatpacking plant in Postville Iowa in a highly publicized and criticized worksite raid.<sup>27</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>28</sup>

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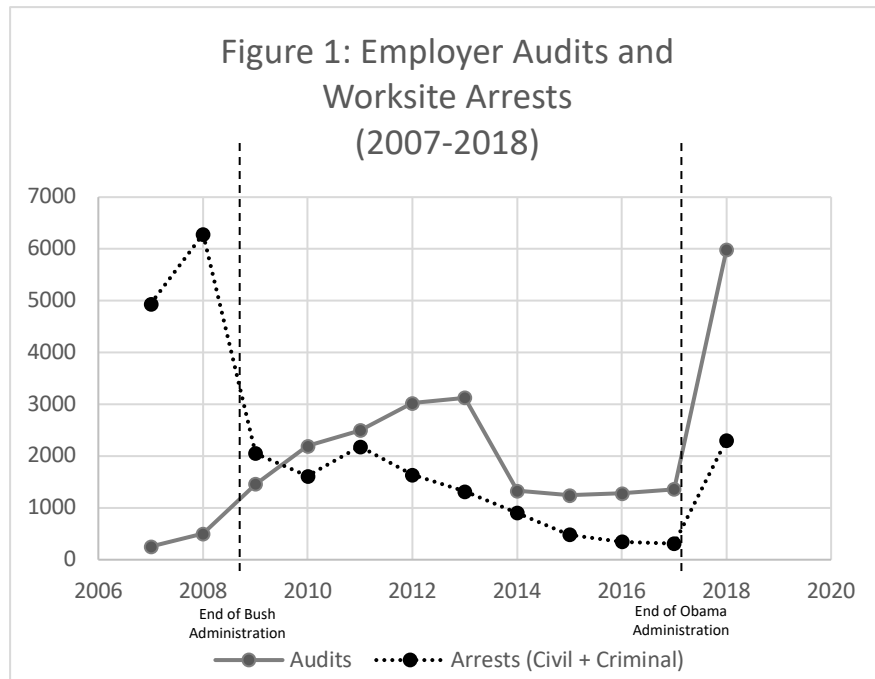
*Operations*, CENT. LEGAL (Oct. 7, 2008), [https://tunkas2009.files.wordpress.com/2009/02/comprehensive\\_raid\\_list.pdf](https://tunkas2009.files.wordpress.com/2009/02/comprehensive_raid_list.pdf).

25. *ICE Work-Site Enforcement Likely to Borrow from Obama, Bush*, *supra* note 8.

26. *ICE Worksite Enforcement Investigations in FY18 Surge*, *supra* note 19 (describing points for arrests and audits in 2018 used in figure 1); *ICE Work-Site Enforcement Likely to Borrow from Obama, Bush*, *supra* note 8 (describing data points for arrests from 2007-2017, audits from 2009-2017, used in figure 1); Toby McIntosh & Amber McKinney, *ICE Data Show Immigration Audits Up, Penalties Increased Five-Fold in FY 2010*, BLOOMBERG LAW (Sept. 17, 2010), <https://perma.cc/YV5S-G6Z2> (providing data points for audits in 2007 and 2008 in figure 1).

27. *See, e.g.*, Luis Argueta, *AbUSed: The Postville Raid*, NEW DAY FILMS (2012), <https://www.newday.com/film/abused-postville-raid>.

28. Anna Giaritelli, *ICE Arrests of Illegal Workers, Employers Up 700 Percent in 2018*, WASH. EXAMINER, (Dec. 11, 2018), <https://www.washingtonexaminer.com/news/ice-arrests-of-illegal-workers-employers-up-700-percent-in-2018>.



ICE seems poised, however, 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>29</sup> Our survey of news reports during 2018 shows that there has been a highly publicized worksite raid almost every month.<sup>30</sup> Indeed, in December 2018 ICE touted the success of several “high-profile enforcement actions” which resulted in hundreds of worker arrests.<sup>31</sup> These spectacles grab public attention and spur concern among immigrant and worker communities. For example, in January 2018, ICE targeted 7-

29. *Id.*

30. There were raids in 2017 too. See, e.g., David Bacon, *Fire and ICE: The Return of Workplace Immigration Raids*, AM. PROSPECT (Apr. 27, 2017), <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*, MISS. BUS. J. (Aug. 17, 2017), <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*, USA TODAY (Feb. 24, 2017), <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*, L.A. TIMES (Feb. 23, 2017), <http://www.latimes.com/nation/la-na-mississippi-immigration-raids-20170223-story.html>.

31. *ICE Worksite Enforcement Investigations in FY18 Surge*, *supra* note 19.

Eleven stores across the country in workplace raids. The media reported extensively on these investigations and raids, which targeted locations such as ninety-eight 7-Eleven stores across the country.<sup>32</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>33</sup> and more than 200 workers from 122 businesses in the Los Angeles area.<sup>34</sup> In April 2018, ICE detained close to a hundred workers at a meatpacking plant in Tennessee.<sup>35</sup> In June 2018, ICE arrested over a hundred workers at an Ohio gardening company.<sup>36</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>37</sup> Yet, some of these

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32. James Doubek, *ICE Targets 7-Eleven Stores In Nationwide Immigration Raids*, NPR (Jan. 11, 2018), <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*, NBC NEWS (Jan. 10, 2018), <https://www.nbcnews.com/news/us-news/immigration-agents-raid-7-eleven-stores-nationwide-arrest-21-people-n836531>.

33. Nicole Darrah, *ICE Arrests 232 People in Four-Day Raid of California's Bay Area*, FOX NEWS (Mar. 1, 2018), <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*, KCRA NEWS (Feb. 27, 2018), <https://www.kcra.com/article/more-than-150-arrested-in-northern-california-immigration-raids/18918777>.

34. Jeff Daniels, *US agents Arrest More than 200 Undocumented Immigrants, Target 122 Businesses in California Sweep*, CNBC (Feb. 16, 2018), <https://www.cnn.com/2018/02/16/federal-immigration-raids-in-southern-california-target-122-businesses.html>.

35. Travis Dorman, *ICE Raids Granger County Meatpacking Plant Amid Charges Owners Avoided \$2.5 Million in Payroll Taxes*, KNOX NEWS (Apr. 6, 2018), <https://www.knoxnews.com/story/news/crime/2018/04/05/ice-raids-meatpacking-plant-granger-county/490673002/>; Diana Orces, *Largest Worksite Raid in a Decade Signals a Dark Turn in Immigration Enforcement*, IMMIGR. IMPACT (Apr. 12, 2018), <http://immigrationimpact.com/2018/04/12/worksite-raid-tennessee-immigration-enforcement/>; *Southeastern Provision Owner Agrees to Plead Guilty to Charges After ICE Raid*, WBIR (Aug. 17, 2018), <https://www.wbir.com/article/news/local/southeastern-provision-owner-agrees-to-plead-guilty-to-charges-after-ice-raid/51-585057981>.

36. Samantha Schmidt, *'Utter Chaos': ICE Arrests 114 Workers in Immigration Raid at Ohio Gardening Company*, WASH. POST (June 6, 2018), [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*, CNN (June 7, 2018), <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*, FOX NEWS (June 5, 2018), <https://www.foxnews.com/us/ice-raids-ohio-lawn-and-garden-business-arrests-114>.

37. Meagan Flynn, *ICE Raid Targeting Employers and More Than 100 Workers Rocks a Small Nebraska Town*, WASH. POST (Aug. 9, 2018), <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>; *ICE Announces Multi-State Operation and Execution of Federal Search Warrants in Nebraska, Minnesota, and Nevada*, ICE NEWSROOM (Aug 8, 2018), <https://www.ice.gov/news/>

actions have roots in previous administrations. For example, the August 2018 Texas raid mentioned at the outset involved a company that the Obama administration had audited and fined just four years earlier.<sup>38</sup>

Advocates decry these raids for disregarding basic humanitarian principles and stoking stress and fear.<sup>39</sup> 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 worksite raids.<sup>40</sup> The Nebraska raid in August 2018 separated more than four dozen children from their parents.<sup>41</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>42</sup> They can also lead to permanent family dissolution,<sup>43</sup> depression, and other mental health crises.<sup>44</sup> Raids undoubtedly have a chilling effect on local community institutions, as seen through the lens of diminished school attendance.<sup>45</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

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releases/ice-executes-federal-search-warrants-nebraska-minnesota-and-nevada; Mueller, *supra* note 10; Josh Planos, *ICE Executes Federal Search Warrants in Nebraska, Minnesota, Nevada*, KETV OMAHA (Aug. 9, 2018), <https://www.ketv.com/article/immigration-raid-underway-in-oneill/22676364>.

38. Smith & Whitely, *supra* note 3. See also *Immigration Officials Raid Sumner Based Company, Load Trail*, MR PARIS TEXAS (Aug. 28, 2018), <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*, NBC NEWS (Aug. 28, 2018), <https://www.nbcnews.com/news/us-news/more-150-arrested-massive-ice-raid-texas-n904581>.

39. See *Organized Labor Roundly Condemns Immigration Raids in Ohio*, AMERICA'S VOICE (Jun. 21, 2018), [https://americasvoice.org/press\\_releases/labor-condemns-ohio-raids/](https://americasvoice.org/press_releases/labor-condemns-ohio-raids/).

40. Mueller, *supra* note 10.

41. Flynn, *supra* note 37; Mueller, *supra* note 10.

42. Jacob S. Rugh & Matthew Hall, *Deporting the American Dream: Immigration Enforcement and Latino Foreclosures*, 3 SOC. SCI. 1053, 1070 (2016).

43. Joanna Dreby, *The Burden of Deportation on Children in Mexican Immigrant Families*, 74 J. OF MARRIAGE AND FAM. 829, 830 (2012).

44. David K. Androff, et al., *US Immigration Policy and Immigrant Children's Well-Being: The Impact of Policy Shifts*, 38 J. SOC. & SOC. WELFARE 77, 89, 90 (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 & FAM. 275, 277-79 (2011).

45. Jacqueline Hagan, Brianna Castro & Nestor Rodriguez, *The Effects of US Deportation Policies on Immigrant Families and Communities: Cross-border Perspectives*, 88 N.C. L. REV. 1799, 1814-16 (2009).

with local law enforcement involvement—will send shockwaves across the country.”<sup>46</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>47</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>48</sup> Indeed, prior research confirms that the fear of immigration enforcement measures, even when such measures are absent in practice, *disincentivizes* immigrant workers from making claims against their employers.<sup>49</sup> Moreover, Professor Hiroshi Motomura 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>50</sup>

Workplace raids and deportations also impact the labor supply and worker precarity.<sup>51</sup> Whereas some scholars characterize immigration as a

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46. Travis Dorman, *ICE Raids Granger County Meatpacking Plant Amid Charges Owners Avoided \$2.5 Million in Payroll Taxes*, KNOX NEWS (Apr. 6, 2018), <https://www.knoxnews.com/story/news/crime/2018/04/05/ice-raids-meatpacking-plant-granger-county/490673002/>.

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

48. Eric Heisig, *Thirteen Workers Arrested in Fresh Mark Immigration Raid Face Federal Charges*, CLEVELAND.COM (Aug. 30, 2018), [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*, CNN (Jun. 20, 2018), <https://www.cnn.com/2018/06/19/us/ice-raid-meat-supplier-fresh-mark/index.html>; *Organized Labor Roundly Condemns Immigration Raids in Ohio*, AMERICA’S VOICE (Jun. 21, 2018), [https://americasvoice.org/press\\_releases/labor-condemns-ohio-raids/](https://americasvoice.org/press_releases/labor-condemns-ohio-raids/); Kristine Phillips, *ICE Arrests Nearly 150 Meat Plant Workers in Latest Immigration Raid in Ohio*, WASH. POST (Jun. 20, 2018), [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).

49. Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, 35 LAW & SOC. INQUIRY 561, 582-83 (2010).

50. Hiroshi Motomura, *Immigration Outside the Law*, 108 COLUM. L. REV. 2037, 2069 (2008).

51. In March 2018, ICE detained twenty-eight workers at a Florida-based tent/event rental business. See Paul Mueller, *‘People are Afraid’; Immigration Activists Respond to ICE Raids*, CBS12 NEWS (Mar. 28, 2018), <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. See Luke Nozicka, *32 Arrested by ICE Agents on Immigration Violations in Eastern Iowa*, DE MOINES REGISTER (May 9, 2018), <https://www.desmoinesregister.com/story/news/2018/05/09/homeland-security-investigation-underway-mount-pleasant-iowa-henry-county/595656002/>.

demographic and economic “lifeline” to small town America,<sup>52</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 plant’s workforce.<sup>53</sup> However, often missing from these characterizations of immigrants “doing the work that American simply won’t do” (as advocates often argue)<sup>54</sup>—is the race to the bottom that negatively impacts all workers, in order to maintain low-cost consumer markets that rely on cheap labor.<sup>55</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, based on the available data on worksite enforcement and a survey of news reports, it seems clear that a fixture of Trump’s agenda in the coming years will include worksite raids followed by large-scale arrests. Lessons from the past remind us of the devastating impact of 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>56</sup> More recently, 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 years later.<sup>57</sup> These actions negatively affect not only workplace justice, but also families and communities for generations.

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52. See generally Patrick J. Carr, Daniel T. Lichter & Maria J. Kefalas, *Can Immigration Save Small-town America? Hispanic Boomtowns and the Uneasy Path to Renewal*, 641 ANNALS AM. ACAD. POL. & SOC. SCI. 38 (2012).

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

54. See Walter Ewing, *Immigrants and Native-Born Americans Get the Job Done-Together*, IMMIGRATION IMPACT (Aug. 29, 2018), <http://immigrationimpact.com/2018/08/29/immigrants-americans-get-the-job-done/>.

55. Chris Morris, *California Crops Rot as Immigration Crackdown Creates Farmworker Shortage*, FORTUNE (Aug. 8, 2017), <http://fortune.com/2017/08/08/immigration-worker-shortage-rotting-crops/>; *Creating a Labor Shortage by Deporting Immigrant Farmworkers Makes no Sense*, L.A. TIMES (Apr. 4, 2018) (letters to the editor), <https://www.latimes.com/opinion/readersreact/la-ol-le-ice-farmworkers-immigrants-deport-20180404-story.html>.

56. See generally Vernon M. Briggs, Jr., *Guestworker Programs: Lessons from the Past and Warnings for the Future*, CTR FOR IMMIGR. STUD. (2004); KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE INS* (1992).

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

### B. 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 bureaucratic 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>58</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>59</sup> News reports speculate that this quadrupling of audits is likely to create administrative backlogs, as the government 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>60</sup> ICE is in the process of hiring 60 additional auditors, to add to the 120 that are currently conducting worksite audits.<sup>61</sup> Yet, these will no doubt take time to train and start.

ICE's rhetoric, and its increase in workplace audits, signal that the Trump administration wants to pressure employers even more than before. A goal of this effort, in part, is to increase participation in the voluntary

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58. Cameron, *supra* note 7, at 620 ("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").

59. ICE *Worksite Enforcement Investigations in FY18 Surge*, *supra* note 19.

60. Laura D. Francis, *Slim Immigration Enforcement Resources Leave Employers Hanging*, BNA DAILY LAB. REP. (Nov. 27, 2018), <https://perma.cc/NP8E-M8N2>.

61. Gomez, *supra* note 20.



compliance program, ICE's Mutual Agreement between Government and Employers (IMAGE).<sup>62</sup> In September 2017, ICE directed employers to the little-utilized IMAGE program after announcing the landmark \$95 million settlement with Asplundh Tree services.<sup>63</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>64</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>65</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>66</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.<sup>67</sup> He described ICE's efforts to date as an "explosion of I-9 inspections."<sup>68</sup> The implication of this, of course, is that employers will comply if they assess that enforcement measures are likely to reach their workplace.

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62. See U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT: IMAGE, <https://www.ice.gov/image> (last visited Mar. 13, 2019) ("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 *Albuquerque Business Teams Up with ICE to Become IMAGE Partner*, ICE NEWSROOM (Dec. 21, 2018), <https://www.ice.gov/news/releases/albuquerque-business-teams-ice-become-image-partner>; *ICE IMAGE Program Enrolls 13 New York Businesses*, MILLER MAYER LLP (Dec. 18, 2018), <https://millermayer.com/2018/ice-image-program-enrolls-13-new-york-businesses/> (December 2018).

63. *Asplundh Tree Experts, Co. Pays Largest Civil Settlement Agreement Ever Levied By ICE*, *supra* note 1.

64. *ICE Worksite Enforcement Investigations in FY18 Surge*, *supra* note 19.

65. Gomez, *supra* note 20.

66. INTERNAL REVENUE SERV., 2017 INTERNAL REVENUE SERV. DATA BOOK, 24-25, TABLE 9A (2017), <https://www.irs.gov/pub/irs-soi/17databk.pdf>; INTERNAL REVENUE SERV., 2016 INTERNAL REVENUE SERV. DATA BOOK, 23-24, TABLE 9A (2016), <https://www.irs.gov/pub/irs-soi/16databk.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 (Apr. 3, 2018), <https://www.forbes.com/sites/beltway/2018/04/03/the-irs-audit-rate-is-plummeting-does-it-matter/#25e5e86e685e>; *ICE Delivers More Than 5,200 I-9 Audit Notices to Businesses Across the US in 2-Phase Nationwide Operation*, ICE NEWSROOM (July 24, 2018), <https://www.ice.gov/news/releases/ice-delivers-more-5200-i-9-audit-notices-businesses-across-us-2-phase-nationwide>.

67. Francis, *supra* note 60.

68. *Id.*

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>69</sup> During the Obama presidency (2009-2016), that average number jumped to \$11.5 million per year.<sup>70</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>71</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 are risk-averse regarding compliance measures, which could encourage them to discriminate based on national origin and/or race in their employment decisions.<sup>72</sup> The heightened rhetoric and enforcement actions may make risk averse employers more hesitant to hire people with "foreign sounding" names. They may make them more hesitant to employ immigrants who are temporarily authorized to live and work in the U.S.<sup>73</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.<sup>74</sup> Some employers may not want to deal with the hassle and risks involved with hiring workers who appear to be immigrants. Employer risk aversion may in turn 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

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69. Andorra Bruno, *Immigration-Related Worksite Enforcement: Performance Measures*, CONG. RES. SERV. (June 23, 2015), <https://fas.org/sgp/crs/homsec/R40002.pdf>.

70. *Id.*; *ICE Work-Site Enforcement Likely to Borrow from Obama, Bush*, *supra* note 8; *Budget in Brief*, DEPARTMENT OF HOMELAND SECURITY (2007-2019), <https://www.dhs.gov/dhs-budget>.

71. *ICE Work-Site Enforcement Likely to Borrow from Obama, Bush*, *supra* note 8.

72. Juliet Stumpf, *Getting to Work: Why Nobody Cares about E-Verify (And Why They Should)*, 2 U.C. IRVINE L. REV. 381, 385 (2012); WESTAT CORP., FINDINGS OF THE E-VERIFY PROGRAM EVALUATION, REPORT SUBMITTED TO U.S. DEPARTMENT OF HOMELAND SECURITY, 235, 242, 250 (Dec. 2009), [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).

73. *See Discovering 'Immigration' Law*, *supra* note 12, at 418.

74. *See* U. S. DEP'T OF JUST.: OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES, <http://www.justice.gov/crt> (last visited Mar. 13, 2019).

authorized but may “look foreign.”<sup>75</sup> In the next Part, we share the experiences of a group of low-wage authorized workers who may soon become unauthorized.

### III. ‘UN-AUTHORIZING’ 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>76</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/un-authorize* thousands of immigrants who are currently authorized to live and work in the country.<sup>77</sup> It is important, therefore, to consider the experiences of currently authorized workers who are in danger of becoming unauthorized. The current context makes clear that the potential of workplace-based immigration enforcement, although specifically targeted at currently unauthorized immigrants, also affects many currently authorized immigrant workers as well.<sup>78</sup> These include, for example, individuals with Deferred Action for Childhood Arrivals status who may be unable to renew their two-year permit if the program is canceled, or other immigrants such as those with Deferred Enforced Departure who have benefitted from routine prosecutorial discretion that could be revoked.<sup>79</sup>

We specifically consider Trump’s efforts as they affect workers with Temporary Protected Status (TPS). This is a strategic group to study because

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75. See *Discovering ‘Immployment’ Law*, *supra* note 12, at 418.

76. Interview by Darlene Dubuisson of Labor Union Advocate, in New York, N.Y. (Sept. 6, 2018).

77. Joel Sati, *Noncitizenship and the Case for Illegalized Persons*, BERKELEY BLOG (Jan. 24, 2017), <https://blogs.berkeley.edu/2017/01/24/noncitizenship-and-the-case-for-illegalized-persons/>.

78. *Id.*

79. See WILLIAM A. KANDEL ET AL., THE PRESIDENT’S IMMIGRATION ACCOUNTABILITY EXECUTIVE ACTION OF NOVEMBER 20, 2014: OVERVIEW AND ISSUES 14-15 (Feb. 24, 2015), <https://fas.org/sgp/crs/homesecc/R43852.pdf>; JILL H. WILSON, TEMPORARY PROTECTED STATUS: OVERVIEW AND CURRENT ISSUES 3-4 (Mar. 29, 2019), <https://fas.org/sgp/crs/homesecc/RS20844.pdf>.

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 holders include 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 Advanced Parole and the Deferred Action for Childhood Arrivals/DACA program).<sup>80</sup> Similar to DACA recipients and recipients of other temporary relief, TPS holders are one step away from having their current authorization to live and work in the U.S. revoked. TPS holders, 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 aspects of their lives, including work.<sup>81</sup>

Workers with temporary protection from deportation are also particularly vulnerable because, unlike many unauthorized workers who have never been subject to government processing, they have provided the government with personal information about their residence and their places of employment.<sup>82</sup> Unlike the vast majority of unauthorized immigrants currently in the U.S., the government has the fingerprints and other biometric information of temporarily authorized immigrants on file.<sup>83</sup> 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 and ongoing surveillance through each renewal. If the DHS Secretary cancels a country's

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80. Geoffrey Heeren, *The Status of Nonstatus*, 64 AM. U. L. REV. 1115 (2015).

81. 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).

82. 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 REV. 807 (2018).

83. U.S. CITIZENSHIP AND IMMIGR. SERV.: TEMPORARY PROTECTED STATUS, <https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited Mar. 13, 2019).

TPS designation, these workers become unauthorized immediately after the termination date.<sup>84</sup> 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.<sup>85</sup> However, as of this writing, two federal district courts have temporarily halted this termination of status.<sup>86</sup>

Interviews with New York City advocates working with TPS recipients provide an enlightening perspective on how Trump's immigration policies might affect the employment experiences of those with temporary work authorization that the government may soon revoke. These advocates relayed the immense fear held by many TPS holders that they will be picked up at work, or on the street, once they become unauthorized.<sup>87</sup> They also relayed workers' reluctance to turn to government entities, even those that could ostensibly help them, their co-workers, their families, or their community.<sup>88</sup>

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

Our interviews confirm that even currently authorized TPS holders 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 holders, and how they were reacting to the Trump administration. In every interview, advocates consistently described the current climate as stoking "a lot of fear."<sup>89</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 government announced

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84. Hillel R. Smith, *UPDATE: Termination of Temporary Protected Status for Sudan, Nicaragua, Haiti, and El Salvador: Key Takeaways and Analysis*, CONG. RES. SERV. (June 8, 2018), <https://fas.org/sgp/crs/homesecc/LSB10070.pdf>.

85. *Id.*

86. *Ramos v. Nielsen*, 336 F. Supp. 3d 1075 (N.D. Cal. 2018) (for El Salvador, Nicaragua, Haiti, and Sudan); *Saget v. Trump*, No. 18-CV-1599 (WFK)(ST), 2019 U.S. Dist. LEXIS 63773 (E.D.N.Y. Apr. 11, 2019) (for Haiti).

87. Sasha Abramsky, *Why Does Trump Want to Terminate Temporary Protected Status?*, NATION (Jan. 25, 2019), <https://www.thenation.com/article/tps-immigration-trump-family-separation/>.

88. Interview by Darlene Dubuisson with Organizational Leader, in New York, N.Y. (Sept. 8, 2017) [hereinafter Organizational Leader]; Interview by Darlene Dubuisson with Government Worker, in New York, N.Y. (June 20, 2017) [hereinafter Government Worker]; Interview by Darlene Dubuisson with Labor Union Representative, in New York, N.Y. (Sept. 6, 2018) [hereinafter Labor Union Representative].

89. Government Worker, *supra* note 88; Interview by Darlene Dubuisson with Haitian Advocate, in New York, N.Y. (July 7, 2017); Interview by Alicia Canas with Organizational Leader, in New York, N.Y. (July 14, 2017) [hereinafter Canas July Interview]; Labor Union Representative, *supra* note 88; Organizational Leader, *supra* note 88; Interview by Alicia Canas with Organizational Leader, in New York, N.Y. (Oct. 27, 2017) [hereinafter Canas October Interview].

the first travel ban “everything went haywire.”<sup>90</sup> He noted that not only TPS holders were fearful. Fear also pervaded the concerns of naturalized citizens.<sup>91</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>92</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. As mentioned, two temporary court injunctions are currently holding up these TPS terminations, but workers are in perpetual limbo and are wondering, “when will they take it from us?”<sup>93</sup> TPS holders, most of whom were previously unauthorized, know that if they lose their current immigration status they will immediately become unauthorized and deportable.

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. This information, by design, is updated every 6-18 months, when they must renew their TPS designation. Consequently, these TPS holders logically expressed fear that the very information they provided to the government to receive humanitarian TPS relief, and to gain work authorization, will be in turn 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>94</sup>

In light of growing enforcement efforts, TPS holders were also anxious when carrying out everyday life activities. Advocates reported how TPS

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90. Canas July Interview, *supra* note 89.

91. *Id.*

92. Elizabeth Aranda, Cecilia Menjivar & Katharine M. Donato, *The Spillover Consequences of an Enforcement-First U.S. Immigration Regime*, 58 AM. B. SCI. 1687 (2014).

93. Canas October Interview, *supra* note 89.

94. Organizational Leader, *supra* note 88.

holders 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.<sup>95</sup> They fear that once they become unauthorized they will leave their children without care and they will lose their jobs, their homes, their cars, and their ability to feed and care for their families locally, and in their origin country.<sup>96</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.<sup>97</sup>

The threat of deportation causes immigrants' fear and stress, and also disrupts family relationships,<sup>98</sup> erodes health outcomes,<sup>99</sup> and creates barriers to claims-making.<sup>100</sup> Some nefarious employers may take advantage of this heightened vulnerability, stoking even more fear. For instance, recent reporting on low-wage guest workers, who are tied to one employer through their employment contracts, suggests that employers are increasingly leveraging the fear of immigration enforcement to exploit authorized workers.<sup>101</sup> Indeed, worker advocates refer to Trump's immigration policies as “the nasty boss's best friend.”<sup>102</sup> David Weil, Administrator of the U.S. Department of Labor's Wage and Hour Division under President Obama,

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95. Government Worker, *supra* note 88; Canas July Interview, *supra* note 89; Labor Union Representative, *supra* note 88; Organizational Leader, *supra* note 88; Canas October Interview, *supra* note 89.

96. Labor Union Representative, *supra* note 89.

97. *Id.*

98. Zoya Gubernskaya & Joanna Dreby, *US Immigration Policy and the Case for Family Unity*, 5 J. ON MIGRATION & HUM. SEC. 417 (2017).

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

100. 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 & SOC'Y REV. 337 (2011).

101. Kartikay Mehrotra et al., *In Trump's America, Bosses Are Accused of Weaponizing the ICE Crackdown*, BNA DAILY LAB. REP. (Dec. 18, 2018), <https://www.bloomberg.com/news/features/2018-12-18/in-trump-s-america-bosses-are-accused-of-weaponizing-the-ice-crackdown> (“Immigrant workers say rising panic over deportation forces them to endure abuses in jobs Americans don't want.”); Briana Beltran, *134,368 Unnamed Workers: Client-Centered Representation on Behalf of H-2A Agricultural Guestworkers*, 42 N.Y.U. REV. L. & SOC. CHANGE 531 (2019) (describing the vulnerabilities of agricultural guestworkers and proposing a lawyering model to promote worker empowerment).

102. Mehrotra, et al., *supra* note 101.

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>103</sup> It appears that an increase in retaliatory immigration threats is even occurring in more immigrant friendly policy environments such as California, where an employer threatened to "use President Donald Trump" to deport a worker who asked for back wages.<sup>104</sup> Another employer reportedly threatened a worker for filing a claim, angrily texting that "TRUMP IS COMING TO TOWN" to have the worker deported.<sup>105</sup> 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.<sup>106</sup> This is a modest number but a notable uptick compared to the mere 29 complaints that same office received between 2014 and 2016.<sup>107</sup> The rate is likely higher amongst those who do not ultimately lodge a formal complaint. As we will take up next, our interviews with advocates suggest that efforts to un-authorize TPS holders intensify worker reluctance to interact with even "benevolent arms of" the government.

#### *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 holders are hesitant to interact with all types of government workers, including social workers, law enforcement and health care officials, all of whom were seen as threats for deportation.<sup>108</sup> This type of fear means that workers are not getting the help they need when they need it, 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>109</sup>

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103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. Government Worker, *supra* note 88; Labor Union Representative, *supra* note 88; Organizational Leader, *supra* note 88; Canas October Interview, *supra* note 89.

109. Government Worker, *supra* note 88.



She contrasted the current situation, from what she had seen in the past, and expressed concern that people “are not talking anymore” to government resources even when they are desperate for help.<sup>110</sup> 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.”<sup>111</sup> It means, in her view, that essential laws that protect the public will go unenforced.

Given growing views that government employees are increasingly engaging in “tricks or traps” to ensnare immigrants, workers are now more unlikely to invoke protections when they face problems in the workplace. This reluctance to come forward to voice grievances is particularly concerning considering the key role worker claims play in labor and employment law enforcement efforts.<sup>112</sup> In the eyes of the workers, the interviewee said, it is very risky in the current environment to “put themselves out there to be exposed,” even to a benevolent arm of the rights enforcement bureaucracy.<sup>113</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.<sup>114</sup> These are legitimate concerns, given current changes in public charge policies, and Trump’s announcement that public benefits use will have immigration consequences.<sup>115</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>116</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.<sup>117</sup> The

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110. *Id.*

111. Government Worker, *supra* note 88.

112. *Undocumented Workers*, *supra* note 12, at 631.

113. Government Worker, *supra* note 88.

114. Labor Union Representative, *supra* note 88.

115. See, e.g., Yeganeh Torbati, *Trump Administration Moves to Restrict Immigrants Who Use Public Benefits*, REUTERS (Sept. 22, 2018), <https://www.reuters.com/article/us-usa-immigration-benefits/trump-administration-moves-to-restrict-immigrants-who-use-public-benefits-idUSKCN1M20YP>; Yeganeh Torbati & Kristina Cooke, *Denials of U.S. Immigrants Visas Skyrocket After Little-Heralded Rule Change*, REUTERS (Apr. 15, 2019), <https://www.reuters.com/article/us-usa-immigration-visas-insight/denials-of-us-immigrant-visas-skyrocket-after-little-heralded-rule-change-idUSKCN1RR0UX>.

116. Labor Union Representative, *supra* note 88.

117. *Differences Between T Visa and U Visa*, IMMIGR. SOLUTIONS,

government intended these mechanisms to grant immigration protections 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 law enforcement agencies to enforce the law to advance public safety and welfare.<sup>118</sup> Many advocates argue that discouraging immigrant participation with government entities allows perpetrators—be it an abusive spouse or an employer operating with impunity—to evade enforcement.<sup>119</sup> Recent changes to protective policies for victims of abuse raise the stakes for this engagement even further.

Aggressive immigration enforcement effectively discourages immigrants from accessing 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 legally liminal status of “soon to be unauthorized” populations interacts with other regulatory regimes, such as labor and employment rights enforcement.

#### IV. CONCLUSION

The Trump administration’s agenda is both old and new, raising pressing questions about its short and long-term impacts on all immigrants, but especially those that are in the administration’s crosshairs. It continues trends we have seen before, building on workplace-based immigration enforcement 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 roots in previous administrations and have been traversed before to some extent. As such, 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>120</sup>

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<http://www.immsolutionsllc.com/immigration/visas-victims-crimes-abuse/t-visa> (last visited Mar. 13, 2019).

118. Saucedo, *supra* note 17.

119. See, e.g., Jenna Krajeski, *The Hypocrisy of Trump’s Anti-Trafficking Argument For a Border Wall*, NEW YORKER, (Feb. 5, 2019), <https://www.newyorker.com/news/news-desk/the-hypocrisy-of-trumps-anti-trafficking-argument-for-a-border-wall>.

120. See, e.g., *Court Blocks Government from Implementing Flawed Social Security ‘No-Match’ Rule*,” NAT’L IMMIGR. LAW CTR, (Oct. 10, 2007), <https://www.nilc.org/2007/10/10/nomatch1007/>; David Bacon, *How Unions Help Immigrants Resist Deportations*, AM. PROSPECT, (Feb. 13, 2018), <https://prospect.org/article/how-unions-help-immigrants-resist-deportations>.

The current era is unique, however, in that Trump combines workplace-based immigration enforcement approaches perfected by Obama and Bush before him, though in a new way and with a racist and xenophobic rhetoric that has mobilized anti-immigrant forces. Talk aside, the Trump administration targets immigrants 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 implores us to develop research agendas with an *immployment* law lens. What effects will this combined pressure have on unauthorized workers' willingness to confront their employers when they face injustices in the workplace? How does it affect immigrant workers' ability to speak with a collective voice on workplace issues? Does ICE's pressure on employers mitigate employers' nefarious use of immigration enforcement threats to quash unauthorized workers' collective activity and worker mobilization? It would seem that it could, as evidenced by reports from legal advocates who report a spike in employer retaliation claims.<sup>121</sup> Will the intense enforcement environment stoke employers' fear of hiring immigrant workforces, leading to enhanced national origin and race discrimination against authorized workers? This also seems likely. Will Trump's combination of pressure on workers and employers lead to reduced flows of unauthorized immigration, the policy's stated goal? Given what the sociological literature tells us about the way home country conditions push migrants out and social networks pull migrants in, it seems likely that it will not.<sup>122</sup> If anything, the unauthorized migrant flow is most responsive to economic shifts, having dropped some since the last Great Recession.<sup>123</sup>

The current regime is also distinctive in that it aims to un-authorize broad swaths of the population who were previously granted protection from deportation.<sup>124</sup> This is indeed a new hallmark of Trump's policies. Unlike prior administrations, the Trump administration undeniably aims to turn large

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121. See Andrew Khouri, *More Workers Say Their Bosses are Threatening to Have Them Deported*, L.A. TIMES (Jan. 2, 2018), <https://www.latimes.com/business/la-fi-immigration-retaliation-20180102-story.html>.

122. See Douglas S. Massey, *Why Does Immigration Occur? A Theoretical Synthesis*, HANDBOOK INT'L MIGRATION: AM. EXPERIENCE 34-51 (Charles Hirschman, et al. eds., 1999); DOUGLAS S. MASSEY, JORGE DURAND & NOLAN J MALONE, *BEYOND SMOKE AND MIRRORS* (2003); Douglas S. Massey & Kristin E Espinosa, *What's Driving Mexico-U.S. Migration? A Theoretical, Empirical and Policy Analysis*, 102 AM. J. SOC. 939 (1997).

123. Andrés Villarreal, *Explaining the Decline in Mexico-U.S. Migration: The Effect of the Great Recession*, 51 DEMOGRAPHY 2203 (2014).

124. Julia Gelatt & Sarah Pierce, *The Trump Immigration Plan: A Lopsided Proposal*, MIGRATION POLICY INST., <https://www.migrationpolicy.org/news/trump-immigration-plan-lopsided-proposal> (last visited Mar. 13, 2019).

groups of authorized workers (e.g. TPS, DED, 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 denaturalize U.S. citizens.<sup>125</sup> The potential un-authorization of authorized immigrants 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. Risk averse employers may respond by shying away from hiring immigrants in general, even those who are authorized to work. When employers 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>126</sup>

Future research should consider the important role that employers play within the immigration enforcement 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 holders. 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 and reach their communities in need. 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 to 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

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

126. Mehrotra, et al., *supra* note 101.

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 workers' employment 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.