

# ISSUE BRIEF **07.09.18**

## **Political Turpitude: The Negative Impact of Zero-Tolerance Immigration Policies on Irregular Labor Markets**

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### **ZERO-TOLERANCE ON IMMIGRATION: FEDERAL POLICY**

On April 6, 2018, U.S. Attorney General Jeff Sessions reemphasized the Trump administration's zero-tolerance policy on immigration, instructing all federal prosecutors to take swift action against all undocumented migrants who enter through the Southwest border.<sup>1</sup> This directive came on the heels of increased efforts by the U.S. Department of Homeland Security's Border Patrol (BP) and Immigration and Customs Enforcement (ICE) to deport indiscriminately all individuals present in the United States without proper documentation.<sup>2</sup> Although a policy of mass deportations was already in place, what has changed is the fact that all undocumented migrants, whether they are new arrivals or long-time residents, are now subject to criminal prosecution. At the same time, all classes and categories of these individuals, without exception, are subject to removal.

### **DEEPENING ZERO-TOLERANCE ON IMMIGRATION: STATE POLICIES**

In addition to increasingly drastic federal policies, a number of states have passed immigration legislation, including laws banning sanctuary cities; deputizing

local police to enforce immigration laws; penalizing local authorities that do not cooperate with federal immigration agencies; mandating the use of the E-Verify system,<sup>3</sup> etc. In 2017, the Texas Legislature passed Senate Bill 4 (SB 4), which contains all of these measures. In addition, the legislature allocated \$800 million in 2015 and an additional \$800 million dollars in 2017 to the Texas Department of Public Safety (DPS) to carry out border security and immigration operations.

Together, federal and state immigration law enforcement policies have produced several unintended consequences, including straining law enforcement budgets,<sup>4</sup> overburdening the court system,<sup>5</sup> overloading local jails and federal prisons,<sup>6</sup> infringing upon due process and human rights, separating migrant families,<sup>7</sup> compromising public safety by damaging community trust in law enforcement,<sup>8</sup> and worsening labor shortages in a near-full employment economy, especially in sectors that depend heavily on foreign-born workers.

This issue brief deals with the last of these consequences—the impact of draconian immigration law enforcement policies on labor markets that depend on immigrants, many of whom are undocumented, for their workforce supply. To understand this impact, this brief focuses on the construction industry as an example



**Harsh immigration law enforcement policies are not ending the practice of using undocumented workers.**

**Forced labor, coercive work practices, and exploitation in U.S. labor markets are much more plausible when a class of workers is forced to toil in a constant state of fear.**

**In the American labor market, undocumented workers have been driven completely underground by a voracious economic system, severe immigration policies, and a political class that is indifferent to the welfare of workers who have much to contribute to the economy.**

of an economic sector that relies on migrant workers, both authorized and unauthorized.<sup>9</sup>

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### **ZERO-TOLERANCE IMMIGRATION POLICIES AND THE CONSTRUCTION INDUSTRY**

As the U.S. economy hums along, the construction industry has been keeping pace with the vitality of the current economy. The Bureau of Labor Statistics reports that construction employment continues to trend upward, adding 286,000 jobs between January and June 2018.<sup>10</sup> But employers in this sector are having trouble finding workers. In 2017, USG Corporation and the U.S. Chamber of Commerce stated that the construction industry was on the verge of a massive labor shortage.<sup>11</sup> This is not a new problem. An earlier survey conducted by the Associated General Contractors of America revealed that as early as 2013, around 80% of construction businesses were having a tough time finding qualified labor.<sup>12</sup> Nationally, the construction industry depends heavily on migrants. According to the Pew Research Center, nearly 25% of all construction workers are foreign born, of which roughly half are unauthorized residents.<sup>13</sup>

In Texas, this situation is worse, given that the industry relies heavily on migrants for its workforce. According to a 2013 report published by the Austin-based Workers Defense Project and a group of researchers of The University of Texas at Austin,<sup>14</sup> approximately 80% of all construction workers in Texas were Hispanic and almost 75% were foreign born. The same report mentions that as much as half of all construction workers in the state were undocumented. Similarly, in 2018, the National Association of Home Builders reported that the share of immigrant workers in the construction industry is rising, reaching 41% in Texas.<sup>15</sup> It follows that when undocumented migrants are targeted for deportation under a strict zero-tolerance policy, the industry is hit hard when these workers are sent back to their home countries.

Large cities like Houston are also feeling the sting of the zero-tolerance policy. Recently, the *Houston Chronicle* reported that the city's construction industry faces labor shortages as workloads rise.<sup>16</sup> Field research conducted for this brief in Houston, Texas,<sup>17</sup> confirmed these trends, indicating that the construction industry is one of the sectors most affected by a growing labor shortage.

According to some of our sources, the construction industry today faces severe labor shortages that can be linked to mass deportation policies. This connection seems quite plausible, although further research needs to be conducted to definitively establish these links. An examination of the state of the construction industry's workforce that considers the increasingly inflexible immigration law enforcement policies will plausibly demonstrate that the Trump administration's zero-tolerance policy is putting the industry in dire straits. Some of the interviewees, however, are convinced that their workplaces are affected by deportation, as work sites are often targeted for ICE raids or workers regularly learn that their coworkers have been deported.

Labor shortages, however, may be the least worrisome consequence of Trump's zero-tolerance immigration policy. Mass deportation is having additional pernicious effects, many of which are apparent in how the industry is adjusting to its inability to find qualified workers. One is the further "precarization"—or precarious employment—of undocumented labor; another is the increased potential for labor trafficking; and a third is a reconfiguration of illegal labor markets without necessarily ending reliance on undocumented workers. The following sections explain each of these.

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### **SYSTEMATIC PRECARIZATION OF UNDOCUMENTED LABOR**

Most construction companies are now being subjected to ICE inspections and raids as well as reviews by employment verification task forces. Having undocumented workers on their payrolls has thus become a serious liability. Consequently, many

companies have opted not to hire workers directly. Instead, they now rely on “labor brokers”—that is, individuals who keep tens or even hundreds of workers on call for specific jobs by construction firms. These brokers negotiate single-job contracts with construction companies then deploy the workers, charge companies for the specific job, and pay the workers in cash, keeping part of the pay for themselves. Many of these “brokered” workers are undocumented, as authorized workers would not have to go through these intermediaries.

In the chain that goes from construction companies to labor brokers to undocumented migrants, it is the undocumented workers who assume the greatest personal risk because they perform their work activities under extremely precarious conditions. For example, they can no longer secure jobs directly with construction companies using fake social security numbers and identification cards. Their wages are low—and often lower than minimum wage, as brokers keep some of the contract payment.<sup>18</sup> They also are more vulnerable to wage theft, as unscrupulous brokers sometimes pay them less than promised or not at all. Workers are quickly cast aside if they become injured, sick, or too old, without having ever accrued government or private employment benefits. And they often experience verbal, physical, and psychological abuse and even threats.

Worse, anecdotes recently collected in Houston, Texas, for this brief indicate that under the new federal mandates and state laws, undocumented workers are wary of lodging complaints if they experience wage theft, abuse, or exploitation, as they fear that reporting such crimes will lead to detection by immigration authorities.

Clearly, undocumented workers are an active and significant part of the construction industry. But, whereas before they secured documents (albeit falsified) that directly led to construction jobs, drew some benefits, and paid taxes, harsh immigration law enforcement policies have turned them into a “ghost” labor force managed by labor brokers, some with few scruples and willing to exploit them or, in extreme cases, denying them their due pay.

In the American labor market, undocumented workers have been driven completely underground by a voracious economic system, severe immigration policies, and a political class that is indifferent to the welfare of workers who have much to contribute to the economy.

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## POTENTIAL FOR LABOR TRAFFICKING

As undocumented workers have become much more vulnerable under the threat of harsh immigration policies in the Trump era—as well as due to precarious work conditions from being driven underground by labor market layering—they have also become more susceptible to labor trafficking. The logic is simple: Human trafficking cases increase when the demand for certain types of labor exceeds the supply. And that is what seems to be happening in the construction industry, among other work sectors.

In the Texas construction industry, for example, the current circumstances provide some employers and abusive labor brokers greater incentives to force undocumented workers to perform certain activities without pay or against their will, keeping them under conditions of quasi- or modern-day slavery. Forced labor, coercive work practices, and exploitation in U.S. labor markets are much more plausible when a class of workers is forced to toil in a constant state of fear. Cases of labor trafficking are more difficult to identify than other forms of trafficking (such as sex trafficking), but we are concerned that labor trafficking could occur more frequently under a zero-tolerance immigration regime.

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## INCREASING ILLEGALITY IN LABOR MARKETS

Interestingly, harsh immigration law enforcement policies are not ending the practice of using undocumented workers. Instead, they have forced the reconfiguration of labor markets, in that construction companies now protect themselves by utilizing labor brokerage firms to find workers, which both diffuses and hides the work of unauthorized migrants.

**In the chain that goes from construction companies to labor brokers to undocumented migrants, it is the undocumented workers who assume the greatest personal risk because they perform their work activities under extremely precarious conditions.**

**Zero-tolerance policies in general do not seem to be the most effective measures for the U.S. labor markets and the continued development of the U.S. economy, as well as for ensuring just compensation for a needed labor force.**

Thus, companies continue to benefit from this labor; they have simply outsourced the legal risk to the labor brokers below them in the supply chain. When they are audited, their systems will show that they do not have undocumented workers, but such workers are present on their construction sites nonetheless—they simply do not appear on company payrolls.

The use of labor brokers does not end but rather displaces the illegality in U.S. labor markets. In fact, the construction industry is not less reliant on undocumented labor. It is simply no longer responsible for managing it, as using labor brokers simply drives such duties and accountability away from the human resource departments of construction companies.

### CONCLUSION

Labor markets have adjusted to the zero-tolerance immigration policy by reconfiguring their hiring processes to find the workers they need, but such workers are now supplied by labor brokers, a kind of middleman between legitimate employers and undocumented workers. This in turn leaves workers, specifically undocumented migrants, extremely vulnerable to exploitation, abuse, and even labor trafficking. This is an important consequence of immigration law enforcement today, one that further makes it evident that Congress must act to fix the immigration system, carefully considering the dynamics of America's labor markets. Driving workers underground only complicates what should be a simple economic issue: Workers should be able to offer their labor, legally, to legitimate employers, under fair conditions, and without having to go underground and face conditions of abuse and exploitation as they contribute to the vibrancy of the U.S. economy.

Comprehensive immigration reform that would legalize the presence of these much-needed workers in times of economic expansion—through the increase of temporary working visas, for example—might be part of an appropriate solution.

Zero-tolerance policies in general do not seem to be the most effective measures for the U.S. labor markets and the continued development of the U.S. economy, as well as for ensuring just compensation for a needed labor force.

### ENDNOTES

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