



# Segmentation and the Role of Labor Standards Enforcement in Immigration Reform

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## Executive Summary

Despite the fact that many low-wage, violation-ridden industries are disproportionately occupied by immigrants, labor standards and immigration reform have largely been treated as separate pieces of an otherwise interrelated puzzle. Not only is this view misguided, but this paper argues that strengthening labor standards enforcement would ensure that standards are upheld for all workers, immigrant and others. In addition, labor standards enforcement is instrumental to the erosion of sub-standard conditions in certain sectors, often referred to as the “secondary” labor market, that are associated with advanced market economies. Ensuring labor standards are upheld diminishes the incentive for employers to undercut wages by exploiting vulnerable workers, many of whom are immigrants. As this paper argues, strengthening enforcement must include not only “vertical” mechanisms, including strategic enforcement and penalizing and criminalizing egregious and repeated labor violators, but also “lateral” mechanisms, such as co-enforcement by workers and through worker and community organizations. The article illustrates the role of co-enforcement in labor standards through two case studies.

## Introduction

This article argues that domestic labor standards enforcement must be integrated into immigration reform proposals as immigrants are often employed in industries with high violation rates. Without the inclusion of strong labor standards enforcement as a central element of comprehensive immigration reform, it will be impossible to satisfy labor shortages in ways that do not advantage unscrupulous employers and depress wages and working conditions for US workers.

Questions about how labor markets are constituted and composed are inherently tied to theories of immigration and real world immigration policy choices. Nevertheless, debate over immigration has largely focused on issues such as border enforcement, and far less attention is devoted to the domestic nature of labor market standards and the extent to

which the state is capable of conditioning, regulating, and effectively governing the labor market. Labor standards enforcement is necessary in order to undercut firms' incentives to exploit vulnerable immigrant workers and ensure a level playing field and equitable wages and working conditions for all, including immigrant, native, and naturalized workers.

We begin by considering the deterioration of workplace standards in the United States and the lack of effective labor standards enforcement. Next, we discuss explanations for the deterioration and theories of the labor market with particular attention to segmentation theory in order to call into question the inevitability of a "secondary," unstable sector in which low-wage workers, many of whom are immigrants, are employed. The key thrust here is that the quality of workplace conditions and labor standards enforcement are inherently intertwined and that preventing the exploitation of vulnerable low-wage immigrant workers requires integrating into immigration reform proposals significantly strengthened labor standards enforcement. This should include: increased penalties for violations and connecting them to registration and licensing schemes (Yoon 2015); strategic enforcement that targets sectors with the highest underlying violation rates (Weil 2010); and enhanced institutional capacity such as increased resources and more investigators as well as co-enforcement of labor standards through partnerships between state and civil society (Fine 2015; Amengual and Fine 2016; Fine 2017) and strong protections of the right to organize. Two case studies are used to illustrate the role of co-enforcement in enforcing labor standards and ensuring the rights of immigrant workers are upheld.

## Immigration and Labor Conditions

A groundbreaking study of low-wage occupations in three metropolitan cities found that almost 26 percent of workers failed to receive the legally required minimum wage, 70 percent did not receive legally required documentation of earnings, and of those eligible for overtime, a whopping 75 percent did not receive the pay they were entitled to (Bernhardt, Spiller, and Theodore 2013, 817-18). Many of the industries most prone to violations such as wage theft and unpaid overtime are also industries that are most heavily populated by immigrant workers (Bobo 2009; Waldinger 1996; Capps et al. 2007). Indeed, as of eight years ago, over half of all workers born in Mexico and Central America were employed in seven notoriously low-wage, high-violation industries: construction, restaurants, retail, landscaping, agriculture, food manufacturing, and building services (CBO 2010, 15).

In some regions, the US Department of Labor (DOL) has found that compliance with the Fair Labor Standards Act (FLSA) fell below 50 percent in industries such as nursing homes, poultry processing, daycare, and restaurants. A 2013 study found that 41 percent of Latino immigrants working in the agriculture, construction, hospitality, and poultry processing industries in Nashville, Charlotte, New Orleans, southern Georgia and several towns and cities in northern Alabama had experienced wage theft (Bauer 2009). Most recently, a 2014 study found that between 3.5 and 6.5 percent of all wage and salary workers in California and New York were paid less than the minimum wage and estimated that 300,000 workers *a month*, in *every state*, suffered minimum-wage violations (ERG 2014).

As an example, in Los Angeles, many Filipino immigrant workers are isolated in small care-home facilities where they also reside. It is a shockingly underregulated industry.

Workers are responsible for washing, dressing, medicating, and feeding multiple patients throughout the day. They are seldom able to get more than a few hours of uninterrupted sleep and are rarely compensated for all the hours they work. Recruiters and placement agencies are often part of an oppressive system that puts workers in facilities that pay below minimum wage and illegally deduct housing and food expenses.

At Dick Lee Pastry, in San Francisco's Chinatown, organizers and investigators working together found that for nearly four years, seven Dick Lee employees had not been paid minimum wage, overtime, or double time compensation as required by law, and that the company had falsified payroll records. Workers had been working six days per week on shifts of 11 to 14 hours, receiving "semimonthly" wages of approximately \$550, averaging between \$3.02 and \$3.91 per hour. Dick Lee owners sought to obstruct the investigation and retaliated against workers who spoke up by reducing their hours and firing one of them.

Health and safety violations, including fatalities, are also at unacceptable levels. In 2013, an average of 88 workers died on the job every single week — more than 12 workers a day (AFL-CIO 2015). Foreign-born Latinos are especially vulnerable, averaging 15 deaths a week. Many workplace injuries are preventable: in 2014 more than 6,000 Occupational Safety and Health Administration (OSHA) citations were issued to businesses failing to provide fall protections, over 5,000 for not communicating dangerous workplace hazards, 4,000 for not having proper scaffolding, and over 3,000 for not providing adequate respiratory protection (OSHA 2015).

As an example, car wash workers in Los Angeles and New York City, are frequently found to be working without protective gear, routinely exposed to dangerous chemicals and getting feet crushed or fingers caught in machinery. One in 13 workers in Texas is employed in the construction industry and the state has the fastest growing housing market in the United States, accounting for more new housing construction permits in the past few years, than New York, New Jersey, Pennsylvania, and Illinois combined. But it is also the only state in the union that does not require building contractors to provide workers' compensation and has the highest construction fatality rate in the country, along with very high rates of injury and wage theft. According to a 2013 University of Texas study, 52 percent of workers surveyed earned poverty-level wages and 22 percent had suffered wage theft. Undocumented construction workers were 2.5 times more likely to experience wage theft and twice as likely to be injured on the job (Workers Defense Project 2013).

There is little doubt that workers in low-wage industries benefit substantially from unionization. An empirical analysis of 15 low-wage occupations found that unionized workers in low-wage industries earn more than 16 percent more than their non-union counterparts and are significantly more likely to receive additional benefits (Schmitt et al. 2008). Unions have historically played a central role in setting and defending labor standards but private sector union coverage is at 7.3 percent (BLS 2017). Moreover, the ability of low-wage workers to unionize depends heavily on the protection of their rights as laborers and the enforcement of labor standards. While there are substantial benefits for unionizing, violations such as employer retaliation or intimidation of workers attempting to exercise their rights to organize are widespread (Bernhardt et al. 2009, 24-25). In addition, immigrants are especially hesitant to voice concerns and exercise their labor rights out of fear of retaliation (Gordon 2005; Smith, Avendano, and Ortega 2009; Gleeson 2010).

Immigrants are entering a domestic labor market that has undergone considerable deterioration over the past few decades. The erosion of labor markets and widespread violations, de-unionization, and decentralized firm management practices have upended traditional labor markets in myriad ways (Luce et al. 2014; Stone 2013; Weil 2014). An influx of immigrants is often commonly seen as undermining labor conditions, yet as Milkman (2008) documents, de-unionization and the erosion of labor markets in the three industries she investigates — trucking, construction, and building services — *preceded* the arrival of immigrants. In those industries, the shift to non-union subcontracting is what led native workers to leave those jobs. The industries then shifted to immigrant labor, but labor standards in the industries had diminished. As Milkman (2008) notes, immigrants tried to unionize by the late 1970s and 1980s, but by that time, de-unionization had penetrated so deeply that workers had little leverage against employers.

This deterioration of labor markets and working conditions, however, cannot be understood as an inevitable product of market forces. Much of the change has been shaped by a combination of firm management practices, outdated employment laws and the lack of effective labor standards enforcement. Labor markets are subject to social, political, and institutional processes that inevitably include the labor laws regulating the market itself, employer discrimination, the actions of the state, and the mediating effects of unions and worker organizations (Peck 1996, 11-13).

The well-known gap between laws and regulations on the books intended to insure against exploitation and the implementation and enforcement of these laws, however, is a pervasive problem for vulnerable workers. As Zatz (2008) demonstrates in delineating the role of law in shaping working conditions, labor protections are inherently legal and institutional structures, yet often circumvented through misclassification of employees as independent contractors and through the use of subcontracting. This problem is exacerbated for immigrant workers who may be particularly reluctant to raise concerns with employers (Gordon 2005; Fine 2006; Smith, Avendano, and Ortega 2009; Gleeson 2010).

A 2011 memorandum of understanding (MOU) between the DOL and the US Department of Homeland Security (DHS) specifically addressed the importance of keeping immigration enforcement separate from labor standards enforcement (DOL/DHS 2011). This agreement recognized the vital role of labor standards enforcement in its own right and both agencies agreed to keep labor enforcement activities and investigations separate from immigration enforcement. This is particularly important to ensure that immigrant workers can voice concerns and complaints about working conditions and exercise their labor rights without fear of reprisal. The MOU explicitly states, “Effective enforcement of labor law is essential to ensure proper wages and working conditions for all covered workers regardless of immigration status” (ibid., 1).

Some argue that this unstable and insecure realm of the labor market is an inevitable feature of modern, advanced economies. Due to demand for services and the nature of labor markets, low-wage jobs are a natural feature of an economy that has a built-in demand for low-wage migrant labor. Obscured, in this view, is the integrative capacity of the state as a force to intervene, shape, and structure domestic labor markets and the latent resources of societal stakeholders such as worker and community organizations in ensuring labor standards are upheld.

## Segmentation and Labor: Probing the Inevitability of the Secondary Sector

Prominent labor market theorists argued that modern industrial economies possess an inherent demand for immigrant labor as a consequence of the “segmented” nature of the labor market (Piore 1979). Piore argued that migration stems not from conditions in immigrants’ countries of origin such as low wages, but rather from an insatiable demand for low-wage labor in advanced economies. As detailed below, the need stems from three principal sources: structural inflation, social constraints resulting from the motivational bases of a hierarchical labor market, and the inherent duality of capital as a fixed factor and labor as a mobile and variable factor of production (*ibid.*, 31-43).

Structural inflation begins with the premise that jobs are not merely economic functions, as conventional economic theory assumes, but are imbued with social functions as well. Employees do not just do their jobs for the incomes they derive from them. The jobs employees do and the wages they earn are also indicators of social status. A variety of informal social expectations and formal institutional mechanisms ensure that wages correspond to the status and prestige attached to specific jobs. Raising wages for those performing unskilled jobs at the bottom of this hierarchy would disrupt the wage-status equivalency that workers above the bottom expect, leading to pressure to increase their wages as well. An illustrative example offered by Piore is that, under these constraints, the likelihood is very low that the owner of a restaurant would raise the wages of a dishwasher without raising those of the waiters or cooks. Instead of raising the wage of the dishwasher, the owner recruits low-wage migrant labor to perform the job with little structural disruption.

Since people are assumed to work for both economic and social reasons — income and status — the absence of the latter at the lowest levels of the job hierarchy presents a motivational problem for employers seeking to fill the lowest positions. Since there is naturally a bottom to any hierarchy, employers need to fill these jobs with employees who conceive of employment solely as a means to earn income and are unconcerned with the social implications for prestige or status. Motivational problems do not arise at the bottom of the employment hierarchy among temporary migrant workers, because they “are a group of people divorced from a social setting, operating outside the constraints and inhibitions that it imposes, working totally and exclusively, for money” (*ibid.*, 55). Social status in the home country is what counts, and workers and their families measure this by how much money they are able to send home.

The inherent duality of capital and labor constitutes the third source of demand for migrant labor (Berger and Piore 1980). Put simply, capital is a fixed factor of production and must be expended on permanent and stable areas of production such as high-skilled workers and machinery. Labor is variable and can be used by firms as a buffer to ensure sustained profitability by shifting the burdens of economic cycles to low-skilled workers to suffer the losses rather than the firm absorbing the costs. Variable labor is added on the basis of seasonal fluctuations in demand and the result is a dual labor market that creates distinctions between seasonal, expendable workers, and stable, high-skilled laborers. This dualism, and the distinctions it confers, produces a bifurcation of the labor force itself.

Segmentation theory, as applied to migration, explicitly considers both the economic and social dimensions of labor and how the interplay between the two spurs demand for migrant labor. The application of segmentation theory to migration emerged in response to conventional economic theories of migration that posited that the wage differential between a worker's home country and that which can be obtained in the destination country is the driving force of migration. Although there are a number of empirically tenuous assumptions that undergird this theory (Portes and Rumbaut 2006), the implication is that migration will flow uncontrollably, fluctuating in accordance with episodic economic expansions and contractions characteristic of capitalist economies.

Whether the flow of migration is amenable to state attempts to restrict or increase levels is heavily debated. Marshall (2007) argues that the state is capable of regulating the flow of immigration and should do so by setting admission numbers based upon a determination of a long-term labor shortage in an industry. Others argue that the migration flow is largely driven by market forces beyond the reach of the state and attempts to curtail it are futile (Massey 1988). Massey, Durand, and Malone (2002) also highlight the role of social capital and the process of "cumulative causation" that takes over once immigrants establish ties and networks in a country.

The state's capacity to control immigration is fundamentally distinct from controlling labor standards in at least two respects. First, as we outline below, in domestic labor markets, government authority can be complemented by worker-based labor market institutions that provide lateral enforcement. In domestic labor standards enforcement, unions, worker centers, community organizations, and high road firms supply enforcement capacity to government while in the realm of border enforcement, government acts alone. Second, if assured of protection from retaliation, immigrant workers have an incentive to come forward about labor market violations and exploitation, whereas in immigration enforcement, there is no incentive for immigrants to call attention to their circumstances.

According to segmentation theory, firms in host countries are the stimulus for migration, to which the labor market, workers and migrants alike, adapt. Missing from this approach, however, is the constitutive capacity of the state as an actor capable of conditioning and governing domestic labor market conditions. To the extent that firms have an incentive to recruit and exploit low-wage labor, often immigrants, the state is also capable of altering that incentive through setting wage and hour floors and health and safety standards, and actively ensuring these standards are enforced across all classes of workers.

The segmented nature of the labor market is borne out in two sectors of work — primary and secondary. The primary sector is characterized by stable, well-paying jobs with potential for advancement, while work in the secondary sector is inherently unstable, low paying, and often performed under poor conditions. Sociological work has explored the contours of this secondary labor market and how immigrants have navigated the secondary labor market and dealt with the often explicit segmentation at the hands of firms (Waldinger and Lichter 2003; Waldinger 2015). However, exploitation in the labor market is not inherently tied to the presence or absence of immigrants as has been commonly assumed. Reducing the number of immigrants in the labor market will not automatically diminish the exploitation of African Americans, women, and others who have been subject to persistently unequal treatment by employers.

Viable labor standards enforcement is instrumental to eroding in essence and in practice the notion that secondary sectors of the labor market are somehow inevitable features of modern industrial societies. Society can choose to value certain forms of labor more highly and place a premium on well-compensated employees to produce certain goods and services (Attewell 1990; Lafer 2004). Businesses can choose to pay workers performing vital functions such as health services higher wages and enshrine fair scheduling practices. And, most importantly, the state can condition labor markets by strengthening the policies and strategies it uses to set and enforce labor standards.

Evidence from comparable industrial societies further militates against the notion that low-wage, unstable work is inherent in modern economies (Alderman and Greenhouse 2014). In a comprehensive empirical analysis of low-wage work in the United States and Europe, Gautié and Schmitt (2010) find vast differences in labor market conditions across countries. For instance, Mason and Saavedra (2010, 39) find that in the United States, 25 percent of workers are engaged in low-wage work (defined as earning two-thirds of the national median wage), whereas in France the percentage is 11.1 percent, and in Denmark is even lower at 8.5 percent. Furthermore, greater numbers of immigrants do not result in larger proportions of low-wage workers. The authors note, “[T]he impact of immigration and migrant work is ‘filtered’ through national institutions. Strongly inclusive industrial relations systems appear able to absorb current levels of immigration and migrant work without significant increases in the national share of low-wage work” (Mason and Saavedra 2010, 10). The inclusive industrial relations regime refers to “formal — and sometimes informal — mechanisms to extend the wages, benefits, and working conditions negotiated by workers” in industries and sectors with greater leverage to those with less bargaining power (Appelbaum et al. 2010, 7).

The combination of formal and informal mechanisms in ensuring labor standards enforcement for immigrants entering the labor market is a key, but often overlooked, provision to be integrated into immigration reform. If the state, along with lateral enforcement with worker organizations and unions, effectively enforces labor standards, it erodes the incentives for firms to exploit vulnerable workers. In doing so, firms that depend on exploitation to keep wages low begin to face constraints. The pressure to uphold labor standards forestalls the depression of the wages of all workers as it erodes both the incentive, and the ability, to hold wages down through exploitative practices. In a well-functioning immigration system, migrant workers should not be used as a strategy for employers to evade basic labor and employment laws. Labor standards are increasingly diminished and this is especially true for low-wage industries that disproportionately employ immigrants from Latin America. Calls for greater numbers of labor inspectors have been important in drawing attention to the diminished capacity of the state in redressing deteriorating working conditions (ILO 2006). Exploitation of vulnerable laborers, many of whom are immigrants, must be counteracted by strong vertical strategic enforcement by the state (Weil 2010), complemented by lateral enforcement by worker centers, unions, and high road firms and business associations (Fine and Gordon 2010; Fine 2013; Fine 2015; Fine 2017; Amengual and Fine 2016). The state alone cannot ensure comprehensive labor standards enforcement as it lacks fundamental links to workers and their industries including the ongoing trust, communication, and daily presence necessary to systematically redress violation-prone industries.

As the empirical work on comparable developed economies above illustrates, the persistence of an insecure, low-wage labor market in modern economies is far from inevitable. Strong co-enforcement represents a substantial step toward undercutting the ability and incentives of firms to undercut and exploit immigrant workers. We now turn to co-enforcement and two cases studies that provide important examples of labor standards enforcement in practice.

## Labor Standards and the Corrective of Co-Enforcement

There are two dimensions of labor standards enforcement: government and society. These two dimensions are complementary, yet most proposals to improve enforcement consider only government and overlook the latent resources in society that are essential to establish a comprehensive labor standards enforcement regime.

Vertical enforcement comes in the form of the state, whether federal, state, or local. The vertical enforcement of the state entails power to set and enforce labor policies.<sup>1</sup> WHD's strategic enforcement strategy entails focusing at the top of industry structures, targeting entire business entities rather than individual workplaces, holding joint employers liable for violations, expanding the use of the "hot goods" provision of FLSA and ensuring that firms pay the full fines and penalties owed (Weil 2010). High-risk sectors include residential construction, eating and drinking establishments (especially fast food), hotels/motels, janitorial services, landscaping/horticultural services, retail trade, health care and home health care services, domestic work and agriculture (Weil 2012). Complaint-based enforcement had long been the dominant approach taken by the federal government, but by 2015, directed enforcement accounted for a remarkable 45 percent of investigations — an unprecedented percentage in WHD's history (DOL 2017). Yet, while state enforcement is essential, government does not have enough investigators to monitor all employer sites, nor is it likely to ever have an adequate number (Wial 1999; Bernhardt, McGrath, and DeFillipis 2008). Additionally, government is unlikely to have as much information about conditions on the ground as workers in the workplace, and it generally lacks the relationships with vulnerable workers that strong organizations can build.

This is why lateral enforcement mechanisms are necessary to an effective co-enforcement regime capable of sufficiently protecting workers' rights, particularly in low-wage industries. Indeed, effective deterrence in low-wage sectors necessitates co-enforcement: *worker*, *worker organization*, and *high road firm* participation in enforcement and *greater transparency* between government, workers and worker organizations. Without the tacit knowledge that workers have about workplace practices and problems and the relationships of trust they have with worker organizations, government will lack the information and trust required for vulnerable workers to come forward. Visually, this is akin to trying to squeeze the air out of a half-filled balloon. Pressing down from above, the air is displaced.

1 There are numerous important state policies besides strategic enforcement that can enhance labor standards enforcement including: joint employer liability; permitting investigations with or without complaints; strong remedies such as treble damages and attorneys' fees; tying enforcement to licensing; agencies filing liens, garnishing wages, revoking licenses for unpaid final orders, city contract debarment, no bidding on new contracts until a final order paid in full; settlement agreements and compliance monitoring; increased resources for more robust enforcement; third party complaints; private right of actions; reinstatement and high penalties.



Therefore, in order to contain the displacement, lateral mechanisms that surround the sides and abet the vertical force are necessary to ensure comprehensive coverage.

Co-enforcement of labor standards thus involves a joint effort, drawing in those closest to the action, with the most information and the greatest incentives to ensure compliance, asking them to partner with government to augment its capacity, and making them accountable to government in the enforcement of existing labor standards and health and safety laws (Amengual and Fine 2016; Anuradha and Moore 2004; Ayres and Braithwaite 1991; Ayres and Braithwaite 1992; Bovaird 2007; Cohen and Rogers 1992; Ostrom 1996; Thomas 2012; Moffitt 2012). Unlike situations where government contracts with a third party to take over a service that had previously been delivered by a government agency, co-enforcement complements, rather than replaces, government enforcement.

The following case studies of Seattle and California illustrate the ways that vertical state enforcement is complemented by lateral enforcement mechanisms embedded in civil society to hold the floor on labor standards. Both cases provide compelling evidence of the potential for future labor standards enforcement and the role it can play in immigration reform more generally.

### *Seattle and the Office of Labor Standards*

Seattle is the largest city in King County, which has a foreign-born population of approximately 441,000 — a 64 percent increase since 2000. The foreign-born population has grown more than five times faster than the native-born population, with Asians making up the largest group of foreign-born residents. A Pew Research Center report found the Seattle metropolitan area, which includes Tacoma and Bellevue, to be among the 20 areas with the highest populations of undocumented/unauthorized immigrants in the nation (Pew Research Center September 2016). Organizations that work with immigrants in Seattle spend a significant portion of their time and resources helping workers, especially those employed in restaurants, construction, landscaping, and the janitorial sector, with wage theft cases.

The city of Seattle became the first major city to adopt a \$15 per hour minimum wage in June of 2014 (Rolf 2016; Rosenblum 2017). Winning this wage was the most significant achievement of a dynamic coalition of labor, community and immigrant rights organizations, and progressives in city government. The Seattle Office of Labor Standards (OLS) was established three months later. OLS was only the second local labor standards enforcement agency in the country (San Francisco is the first) and included a substantial commitment to lateral enforcement from the beginning, building contracts with community organizations into its core budget and applying racial equity frameworks to its policies and procedures.

OLS enforces six municipal ordinances: Paid Sick and Safe Time, Fair Chance Employment, Minimum Wage, Wage Theft, Secure Scheduling, and the Hotel Employees Health and Safety Initiative. The city's vertical enforcement powers are robust. All six ordinances imbue the city with subpoena and criminal enforcement power, the ability to garnish wages, and the right to refuse to issue, revoke, or refuse to renew business licenses from employers found guilty of a violation (Karina Bull, pers. comm.). The minimum wage law contains

strong penalties for repeat violations as well as for retaliation, with explicit language about threatening to report the suspected citizenship or immigration status of an employee or a family member because the employee has exercised her rights under the ordinance.

The Labor Standards Community Outreach and Education Fund was set up to ensure outreach to demographic populations most likely to occupy low-wage jobs and experience workplace violations including female workers, workers of color, immigrant and refugee workers, lesbian, gay, bisexual, transgender, and queer (LGBTQ) workers, workers with disabilities, and youth workers. It also identified targeted industries with low-wage workers and high rates of violations including (but not limited to) construction, food services and drinking places, health care, home health care, hotel and motel, manufacturing, transportation and warehousing, personal and repair services, retail trade, security, building and grounds services, social assistance, education, and childcare.

The fund seeks to build trust with low-income worker communities so that workers are able to access labor standards enforcement and complaint resolution services throughout the city. As Jenn Round, one of the first OLS investigators put it, “It is obvious to everyone that most people, especially vulnerable workers, don’t want to talk to government. We are calling workers and a lot of times, no one calls us back. It can be really hard to get information. We understand that we are not going to be the trusted messenger for low-wage workers, and we need the trusted messenger. We will access more if we work with organizations” (Jenn Round, pers. comm.). OLS explicitly states that it is establishing collaborative relationships with community-based organizations in order to:

- Increase workers’ knowledge and understanding of the rights provided by Seattle’s labor standards through methods that are community centered, culturally relevant and accessible, and language specific;
- Expand workers’ access to resources to enforce, or otherwise resolve, labor standards violations;
- Build capacity among community organizations and service providers to provide labor standards services and information to a diverse range of workers, including low-wage earners, people of color, and immigrants and refugees;
- Foster increased collaboration between the Office of Labor Standards and community organizations serving Seattle’s workers, including through strategic enforcement strategies.

The fund’s largest contract is with the Fair Work Center, a nonprofit organization that was established to be a community base for workers because, in the words of its founding director, Nicole Vallestra Keenan, “We were passing and winning some of the most cutting edge laws, but workers were not seeing the benefits of that work . . . Employers were saying ‘maybe I will listen, and maybe I won’t’” (Nicole Vallestra Keenan, pers. comm.). The Fair Work Center provides Know Your Rights and Train the Trainer workshops on employment rights, including health and safety standards, wage and hour laws, and other labor standards. The Fair Work Center collaborates with a set of community-based organizations including the Latino Community Fund, Al Noor Islamic Community Center, Somali Community Services, Vietnamese Friendship Association, LGBTQ Allyship,

Puget Sound Sage, and the Northwest Immigrant Rights Project. These organizations are contracted to translate and provide labor standards information to workers in culturally appropriate, language-specific, and otherwise accessible formats and languages. They also provide labor standards training, labor standards counseling, referral, and/or complaint resolution services to worker communities, and assist OLS with identifying and training workers to support investigations and enforcement. The Fair Work Collaborative estimates that its outreach has already touched more than 9,000 workers (Fair Worker Cent 2016).

The Fair Work Center's case briefs highlight some important issues. In one situation, a Korean immigrant who worked as an assistant to a hairdresser was working 45 hours per week but being paid about \$1,000 a month, less than \$5.50 per hour. She was misclassified by her employer as an independent contractor. The center also worked with a Mexican immigrant worker, employed as a painter at a large construction firm, who was also misclassified by his employer as an independent contractor and did not receive overtime pay. In a final example, a newly arrived refugee from Somalia was offered a job as a security guard, but the offer was rescinded after a routine background check falsely reported that he had criminal convictions from another state.

Casa Latina, the flagship worker center in Seattle, has long been targeting wage theft violations. It received a \$250,000 contract from OLS which has made it possible for the organization to hire an outreach coordinator, expand its organizing efforts to a new area of the city, and investigate roughly quadruple the number of wage theft cases it took on in 2015.

Since its founding, OLS has received 4,599 inquiries from employers, 1,388 inquiries from employees, conducted 280 investigations and recovered monetary remedies for 272 individuals (Seattle OLS 2016). OLS has received a high number of complaints and prioritizes by the number of workers affected, egregiousness of the violations, income level of employees, size and capacity of the business, alleged harm, industries with high levels of underlying violations, and whether retaliation is occurring (Kailin Tajjias pers. comm.; Dylan Orr, pers. comm.). It settles about half of its cases and closes between 8 to 10 cases per month (Tajjias pers. comm.). Some cases involve specific settlement agreements. For example, in a 2016 case involving non-McDonald's owned restaurant franchises, a manager was routinely penalizing workers who used the paid sick days they were entitled to by reducing their schedules for two weeks. The OLS settlement required the employer to provide every worker two days of Paid Sick and Safe Time and to provide a declaration that employees could use these days without repercussions (Jenn Round, pers. comm.). OLS also engages in compliance monitoring of every settlement agreement reached with an employer.

The OLS budget was dramatically increased from \$1.9 million in 2016 to \$5.3 million in 2017. During this same period, funding for community organizations was raised from \$1 million to \$1.5 million and contracts for business outreach were added. In March of 2017, the city council voted down efforts to fund OLS through a new regulatory fee on business, choosing instead to establish a dedicated account within its general fund that uses existing revenue from the city's business and occupation tax to fund the agency.

The integrated co-enforcement approach in Seattle throws into relief the interconnected nature of the state and civil society organizations and workers in labor standards enforcement. The complementary impact of vertical and lateral enforcement has slowly begun to chisel away at secondary labor markets and calls into question their inevitability.

### *Redefining Labor Standards Enforcement in California*

California has the highest number of immigrants in the United States and is confronting major wage theft and safety and health issues. In 2015, 27 percent of the population was foreign-born and half of the state's children had at least one immigrant parent. Most of California's immigrants are from Latin America (52%) or Asia (39%). Eight of every 10 immigrants (80%) in California are working-age adults (age 18 to 64), which means that more than a third (34%) of working-age adults in the state are immigrants (Public Policy Institute of California 2017). In California, noncitizens are estimated to be approximately 1.6 times more likely to suffer from a minimum wage violation. The 2014 study commissioned by the DOL referenced above, estimated there were 372,000 weekly minimum wage violations in California, representing approximately 3.8 percent of covered, nonexempt jobs. These violations were associated with \$22.5 million in weekly lost income (49.3 percent of the earned income of those experiencing the violations). Lost weekly income totaled almost \$28.7 million, which was 70.9 percent of the earned income of those experiencing violations (ERG 2014).

Over the past six years, the broadest implementation of co-enforcement has been taking place in California, following Governor Jerry Brown's appointment as labor commissioner of Julie Su, the former leader of the Asian American Legal Defense Fund. While under the previous administration, the Division of Labor Standards Enforcement (DLSE) and the Bureau of Field Enforcement (BOFE) had a policy not to collaborate with community organizations, Su saw these organizations as central to establishing a strong logic of deterrence. She met with the advocates early in her tenure, arranged for organizers in key sectors to make presentations to agency staff and created access to the field investigators whose main job was to enforce the law.

Su implemented major changes in vertical and lateral enforcement. In terms of vertical enforcement, her staff rewrote every intake form and removed any question that was indicative of immigration status. In addition, they removed questions such as, "how much overtime are you owed?" that assumed a level of legal knowledge that many low-wage and immigrant workers did not have. Su strongly believed calculating back wages was the responsibility of the state, not the workers. Similarly, the form on employer retaliation activity asked, "What was your protected activity?" Su argued that this was a legal term and that the agency needed to ask appropriate questions that did not assume knowledge that workers may not have possessed (Julie Su, pers. comm.).

While the labor commissioner has implemented sweeping internal changes in the way intakes are conducted, as well as investigations and hearings, Su believes that "the consistent turnaround in the agency's efficacy would not have been possible without the collaboration between the agency and community-based organization partners" (Su 2016).

Su reports that working with community-based organizations is one of the more effective approaches to detecting violations: “They already have the trust of the workers, speak the language of workers, understand how violations occur and are often masked, and [they] are willing to collaborate with us by giving us leads and helping to bridge the trust gap between workers and law enforcement” (Su 2015). Su credits co-enforcement with community organizations with making strategic enforcement possible. Investigators used to conduct randomized sweeps, identifying their targets through the yellow pages and internet searches. They now work with community organizations that, because of their relationships with vulnerable workers in at-risk sectors, know where the violations are occurring and how they are masked.

As an example of targeting a highly noncompliant industry in partnership with civil society, Su entered into a partnership with the Warehouse Workers Resource Center in the Inland Empire, where hundreds of thousands of immigrant warehouse workers are employed, many as temporary workers and independent contractors. Resource center leaders briefed her staff on employment relations in the sector, which relied heavily on sourcing from unscrupulous temporary agencies that had high incidences of wage theft and subcontractors with high rates of safety violations. Based on what they learned about staffing practices and hours, agency investigators created a new operations plan to investigate targeted warehouses that were sourcing from the agencies, arriving at the workplace by 5:45 a.m. to speak with workers and assisting them in filing wage and hour claims, as well as meeting workers off-site, at local churches.

In October 2011, working together, the labor commissioner investigated the largest Walmart warehouse in the region, run by Schneider Logistics, and levied charges against two staffing agencies for more than \$1 million in violations. That same year, workers filed a lawsuit in federal court against three Walmart contractors and subcontractors, alleging millions of dollars in stolen wages over the previous 10 years. A federal judge issued several orders and injunctions in favor of the workers, including a temporary restraining order against a mass firing of workers who had filed the lawsuit. Finally in 2014, the Walmart contractor Schneider agreed to pay \$21 million in back pay to warehouse workers who had been systematically shorted on pay for years (Warehouse Workers United 2017).

In August of 2015, after an investigation uncovered wage theft violations affecting 12 workers, many of them recent immigrants from El Salvador, Su issued citations of \$459,573 to a janitorial employer. The investigation and a two-year pay audit from June 2012 to June 2014 revealed that managers threatened to fire workers who complained about working up to seven days in a row every week, for up to 9 hours a day, without breaks of any kind. Some of the janitors had initially contacted the Maintenance Cooperation Trust Fund (MCTF), a janitorial watchdog organization, about the workplace abuses and MCTF helped them file a complaint with the Labor Commissioner’s Office. “Janitors’ work is often hidden from public view, which can lead to abuse by unscrupulous employers. I applaud MCTF for assisting these workers in exercising their labor rights,” said Su. “MCTF’s partnership with my office has helped us tremendously in our effort to level the playing field for honest janitorial businesses and protect the wage floor in California” (Su 2016). The sanctions against Norcal Floor Services include \$456,073 in assessments for unpaid minimum wages and overtime, liquidated damages, and rest and meal period

premiums. Additionally, the labor commissioner assessed \$3,500 in penalties for violating overtime, minimum wage, rest and meal period requirements, and for failing to provide itemized wage statements. The janitors' payments ranged from \$560 to \$81,915, based on the amount of time worked during the audit period.

Su credits the agency's partnerships with labor and community organizations for helping it to achieve the highest amount on record of minimum wages and overtime wages assessed, as well as the highest amount of civil penalties for minimum wage and overtime violations assessed in a decade. In addition, she acknowledges the importance of partnerships that provide lateral enforcement to complement the agency's more efficient and targeted use of inspections, which resulted in the highest rate of civil penalty citations in 10 years (California Department of Industrial Relations, Labor, and Workforce Development 2013).

Convinced of the substantial benefits of co-enforcement for ensuring labor standards for workers, in early 2017, working with the National Employment Law Project, Su approached the Irvine Foundation to support an unprecedented level of formalized co-enforcement. She pitched them to support proactive industry-based strategies, in particular, geographic areas in partnership with community groups that would focus on high-violation industries: restaurant, carwash, agricultural, janitorial, and residential care homes. The goal of the project is "to build sustainable strategic enforcement system in California . . . By institutionalizing the public-private partnerships so they are embedded in the labor commissioner's policy and practices, as well as those of the funded organizations" (California Strategic Labor Partnership Proposal to the Irvine Foundation, unpublished data).

Su's co-enforcement efforts in California involving both vertical and lateral enforcement have yielded real gains for workers in the low-wage, high-violation industries in which many immigrants work. By explicitly reforming vertical enforcement authority and strategy while actively drawing on lateral enforcement mechanisms closer to workers and conditions on the ground in these industries, the California labor commissioner provides a strong and compelling illustration of co-enforcement to be emulated elsewhere.

## Conclusion

Political debate over immigration is likely to persist into the foreseeable future. While the nature of the discourse and the proposals on offer will inevitably shift depending on partisanship, world events, social movements and so on, redressing the conditions of the labor market that immigrants enter into must be central. Effective labor standards enforcement is, for the reasons we have outlined this article, a crucial area of immigration reform that cannot be neglected in future proposals.

In the last few years, two pieces of federal legislation — the Wage Theft Prevention and Wage Recovery Act<sup>2</sup> and the Protect Our Workers from Exploitation and Retaliation Act<sup>3</sup> — that have been proposed in the US Congress have aim to strengthen labor standards and take important steps toward consolidating the kind of effective enforcement outlined in this article. The two bills, either as standalone bills or as viable frameworks on which to build

2 Wage Theft Prevention and Wage Recovery Act, H.R.4763, 114th Cong. (2016).

3 Protect Our Workers from Exploitation and Retaliation Act, H.R.2169, 112th Cong. (2011).

in future proposals, also serve as important indicators of the extent to which labor standards enforcement is beginning to penetrate political debate.

In 2016, Senator Patty Murray (D-WA) introduced the Wage Theft Prevention and Wage Recovery Act. This bill would yield substantial improvements by adjusting and strengthening provisions in the FLSA. Specifically, the bill would amend the FLSA and the Portal to Portal Act, to double the amount of unpaid wages or unpaid overtime compensation workers could receive if employers violated minimum wage or maximum hour rules; increase to treble damages the penalty for retaliatory discrimination or discharge of a whistle-blowing employee; repeal the requirement that an employee consent in writing to become a party plaintiff in an action to recover damages from an employer; require employers to make certain disclosures to employees regarding their work, including a pay stub corresponding to work the employee performed during the applicable pay period and make final payments to a terminating employee for uncompensated hours the employees has worked; and directs the DOL to refer any case involving a covered offender to the Department of Justice for prosecution. It also establishes a new fund, through the Wage and Hour Division, to award grants to assist “eligible entities” (i.e. worker organizations, center, and unions) in enhancing the enforcement of wage and hour laws.

In addition to strengthening the enforcement of wage laws, ensuring immigrant workers can report labor law violations without fear of reprisal is another key provision to consider in immigration reform. To this end, Representative Judy Chu (D-CA) introduced the Protect Our Workers from Exploitation and Retaliation Act (POWER Act) in 2011. The bill, in important ways, builds upon the memorandum of agreement between DHS and DOL discussed above by ensuring immigrants are able to report labor law violations and assist with investigations into labor violations at the workplace. The POWER act would enable immigrants to come forward to report abuse, exploitation, labor law violations, and serve as witnesses to workplace investigations, without fear of deportation under the Immigration and Nationality Act. The bill would corroborate and solidify the agreement issued in the DOL/DHS MOU which states that, “Effective enforcement of labor law is essential to ensure proper wages and working conditions for all covered workers regardless of immigration status” (DOL/DHS 2011, 1).

In addition to these proposals, temporary worker programs often have been discussed as a viable approach to immigration reform. A common practice of employers has been to use the immigration status as leverage against workers to hold down wages. Therefore, temporary programs must avoid reinforcing immigrant workers’ vulnerability by ensuring that new temporary visa proposals remove every link between work and immigration status that, historically, employers have used to depress migrant wages and control their employees. Temporary visa holders must possess rights equivalent to every other worker in the United States, and access to the same mechanisms to enforce those rights, including government agency enforcement, unionization, and private lawsuits. An essential aspect of any new temporary worker program must be strengthening these enforcement prongs to ensure that workplace rights are enforced and enforceable for *all* workers (Future Flow Working Group 2008).

Labor migration may be an unavoidable part of a globalized world, but as we have argued, secondary, unstable, low-wage sectors of the labor market to which many immigrants

are exposed are not. Downward pressure on wages must be addressed by mandating complete labor market equality between immigrant workers and other workers, and by working toward effective mechanisms to enforce basic workplace laws for all workers. Co-enforcement of labor standards that integrates strong vertical labor law enforcement with complementary lateral mechanisms including workers, unions, and organizations has yielded substantial improvements in working conditions and upheld worker rights, as seen in the cases highlighted above. Expanding the scope of immigration reform to include labor standards enforcement is fundamental to ensuring that the rights of immigrants are upheld and all workers, immigrants or otherwise, stand on equal footing not just with each other, but with their employers as well.

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