Effects of Senate Bill 4 on Wage-Theft: Why All Workers Are at Risk in Low-Income Occupations

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EFFECTS OF SENATE BILL 4 ON WAGE-THEFT:
WHY ALL WORKERS ARE AT RISK
IN LOW-INCOME OCCUPATIONS

DANIELLA SALAS-CHACON

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I. INTRODUCTION

Rosa worked for her employer for less than six months before she was fired.¹ The employment description advertised for a nanny, but after just two days on the job, her employer increased her responsibilities beyond caring for his three daughters. In addition to caring for the girls, Rosa was the driver and housekeeper for the entire family. Her hours were long and some of her shifts extended overnight. Rosa was never compensated for her out-of-pocket expenses: driving her own vehicle to take the girls to their various after-school commitments; spending her own money to buy the girls dinner; and spending her own money to purchase cleaning supplies to clean her employer’s house. In fact, her employer never paid her at all for the last two weeks of employment, which included well over eighty hours of work.

In June of 2017, Rosa’s employer fired her for asking him to reimburse her for her out-of-pocket expenses incurred while on the job. Not only did he fire her and refuse to reimburse her, he outright refused to honor his responsibility as an employer to pay his employee. Rosa did not waste any time in seeking legal aid. Although she took a brave step in securing help, she stopped pursuing recourse shortly after beginning the intake process. “I do not want to get the police involved.” She admitted she feared deportation. Her employer had already threatened to call immigration officials if she insisted on recovering her wages.

Rosa’s experience of wage-theft is similar to that of most wage-theft victims: employees are confronted with employers that retaliate upon demand for payment.² There are various avenues employees in Rosa’s

¹ Rosa’s name has been changed to protect her identity.

situation can take to recover their stolen wages, including filing wage claims with the Wage and Hour Division (WHD) of the Department of Labor (DOL)\(^3\) or the Texas Workforce Commission (TWC).\(^4\) Additionally, law enforcement has the authority to arrest employers that commit wage-theft without inquiring into the employee’s legal status.\(^5\) However, with the enactment of anti-immigration laws like Texas Senate Bill 4 (S.B. 4), less wage-theft victims are willing to speak out against employers that refuse to pay earned wages.\(^6\)

In May of 2017, Governor Greg Abbot signed S.B. 4, more commonly known as the “Show Me Your Papers” law.\(^7\) Thousands of members from the community, half a dozen local governments, various community organizations, and even law enforcement officials protested against S.B. 4, arguing the new law would make their cities more dangerous.\(^8\) They

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5. TEX. PENAL CODE ANN. § 31.04 (2016); see also Stephen Lee, Policing Wage Theft in the Day Labor Market, 4 U.C. IRVINE L. REV. 655, 665 (2014) (arguing police officers have complete discretion in how they police; they have authority to either adopt policies that enforce criminalization of wage-theft or avoid enforcing immigration laws altogether).

6. See Lee, supra note 5 (explaining the pressure from federal government to enforce immigration laws combined with police departments’ willingness to comply has created a general mistrust in police among the immigrant community, preventing undocumented workers from reporting wage theft); see also Yomara Lopez, Empleadores Usan la Amenaza de la Deportación Para No Pagar Salarios, TELEMUNDO (Aug. 16, 2017), http://telemundoaustin.com/news/local/empleadores-usan-la-amenaza-de-la-deportacion-para-no-pagar-salarios [https://perma.cc/KW6L-KZTT] (interviewing an undocumented construction worker in Texas who declined to call the police after his employer threatened to lock him in the warehouse and call immigration officials if the worker tried to recover a month’s worth of stolen wages).


argued S.B. 4 discouraged undocumented immigrants from reporting crime and participating in active investigations out of fear of being deported.9 In *City of El Cenizo v. Texas*,10 six major cities, four counties, six non-profit organizations, and six other plaintiffs in their official capacity filed suit against Governor Greg Abbott, the State of Texas, and other defendants, claiming S.B. 4 is unconstitutional.11

On August 30th, two days before S.B. 4 was due to take effect, Chief Judge Orlando Garcia for the United States District Court for the Western District of Texas blocked portions of S.B. 4 with a preliminary injunction.12 The United States Court of Appeals for the Fifth Circuit has since reviewed the District Court’s decision.13 In their September 2017 opinion, the Fifth Circuit largely denied defendants’ request, only staying two of the five provisions of the injunction, but ultimately left the most controversial provision of the law intact.14 Indeed, while many celebrated the outcome, police officers are still legally permitted to ask for proof of an individual’s legal status.15 Most recently, the Fifth

9. See Limón & Wilonsky, supra note 8 (citing Executive Chief Deputy’s, Jesse Flores argument that the vulnerability of the undocumented community has increased because of S.B. 4—especially for women and children—because undocumented immigrants are less likely to report crimes out of fear of deportation).


12. *Id.* The original injunction prevented the state from enforcing § 752.053(b)(3) which prohibits local entities form limiting or prohibiting persons with the authority to effect immigration from assisting immigration officials; § 752.053(a)(1) which prohibits the endorsement of policies that limit enforcement of immigration laws; § 752.053(a)(1) and § 752.053(a)(2)’s provisions prohibiting the adoption of policies that limit the enforcement of immigration laws; and § 2.251(a)(1) which requires the fulfillment of any immigration retainer request sent to them by Immigration and Customs Enforcement (ICE)).


14. *Id.*

Circuit’s May 2018 opinion held that with one exception, § 752.053(a)(1), S.B. 4 in its entirety is constitutional.\footnote{City of El Cenizo v. Texas, 890 F.3d 164, 173 (5th Cir. May 8, 2018).}

One argument supporters of S.B. 4 advanced was that if there are less undocumented immigrants in the United States as a result of the local policy in enforcing immigration laws, there will be less crime.\footnote{See Defendants’ Response to Applications for Preliminary Injunctions at 2, 73, City of El Cenizo v. Texas, 264 F. Supp. 3d 744 (W.D. Tex. 2017) (No. SA17-CV-404-OLG) (blaming the threat of crime on law enforcement’s failure to collaborate with immigration officials on deporting undocumented immigrants).} Among the crimes usually hypothesized in this argument are homicide, sexual assaults, and burglaries.\footnote{See Id. at 2, (estimating over 220,000 undocumented immigrants have been charged with 1,196 homicides, 6,274 sexual assaults, and 16,996 burglaries in the past six years).} While the potential of these crimes demands attention, S.B. 4 supporters fail to recognize the negative effect S.B. 4 will have on one crime that is already underreported: wage-theft in low-income occupations.\footnote{Theodore Et Al., Build A Better South supra note 2, at 12. See also Julien Ross, A Fair Day’s Pay: The Problem of Unpaid Workers in Central Texas, 10 Tex. Hisp. L. & Pol’y 117, 126 (2004) (warning that wage theft statistics can also be skewed by undocumented employees that do not report wage claims because they fear deportation).}

Wage-theft persists in Texas because employers anticipate most of their low-wage, undocumented workers are unlikely to report wage-theft to local, state, or federal agencies.\footnote{See Janice Fine & Gregory Lyon, Segmentation and the Role of Labor Standards Enforcement in Immigration Reform, 5 J. on Migration & Hum. Sec. 431, 432 (2017) (reporting industries with the most wage theft violations nationwide are heavily populated by immigrant employees); see also Ann Beeson Et Al., Immigrants Drive the Texas Economy: Economic Benefits of Immigrants to Texas 9 (Sept. 17, 2014), http://forabettertexas.org/images/EQ_2014_09_PP_Immigration.pdf [https://perma.cc/QV8H-KY22] (emphasizing immigrant workers far outnumber native workers across industries in Texas including construction trades, material handlers, food service, housekeeping, agriculture, and child care).} State and federal agencies have implemented policies that clarify undocumented workers are legally entitled to the same wage protections as documented workers.\footnote{See Employment Rights of Undocumented Workers, Tex. L. Help 3, https://texaslawhelp.org/printpdf/1807 [https://perma.cc/Q9ZF-7TED] (last visited Mar. 12, 2018) (noting undocumented workers are covered by the Texas Payday Law); see also Fact Sheet #48, Wage & Hour Div., https://www.dol.gov/whd/regs/compliance/whdfs48.pdf [https://perma.cc/47CR-2PLA] (last updated July 2008) [hereinafter WAGE & HOUR DIV., Fact Sheet #48] (clarifying the DOL will enforce the Fair Labor Standards Act (FLSA), which requires employers to pay covered employees the federal minimum wage and time and a half for overtime hours, despite the employees’ immigration status).} However anti-immigration laws make it easier for employers to abuse
their employees by stealing their wages and harder for labor agencies to resolve the issue of wage-theft.22 Assuming workers know the DOL or TWC were created to protect their labor rights,23 they still face many barriers in trying to recover lost wages when seeking assistance from either agency.24 In a workforce where the employer-employee relationship already suffers from a substantive power imbalance, labor agencies’ ability to protect workers from wage-theft is further reduced while S.B. 4 remains in effect.25

Immigration laws significantly impact workplace conditions in low-wage occupations.26 While demand for skilled labor is increasing,27 anti-immigration legislation is also negatively effecting undocumented immigrants, native, and naturalized workers in the workplace.28 The

22. See Lee, supra note 5, at 665 (using Arizona as an example for how a state’s anti-immigration laws can facilitate wage-theft and how the enlisting of local authorities to enforce immigration laws created an environment of mistrust, thus isolating immigrants); see also Eric Cortellessa, How Trump Made Wage Theft Routine, AM. PROSPECT (June 5, 2017), http://prospect.org/article/how-trump-made-wage-theft-routine [https://perma.cc/2R2M-CFDA] (blaming the Trump Administration’s anti-immigrant rhetoric for the restored fear in undocumented workers reporting wage-theft); see also Lopez, supra note 6 (quoting a community organizer estimating that over 50% of construction workers in Texas are undocumented and employers exploit this to avoid having to pay employees).


25. See Verga, supra note 24, at 286–89 (arguing federal and state wage protection laws lack enforcement); THEODORE ET AL., BUILD A BETTER SOUTH, supra note 2, at 13 (listing obstacles in recovering wages, like lengthy proceedings, cost, and difficulties in collecting actual wages).

26. See Fine & Lyon, supra note 20, at 431–32 (suggesting that protecting immigrant rights in the workplace creates an even playing field for all workers because it undercut employers’ incentives to exploit workers—whether undocumented, native, or naturalized).


solution is to reform the structure of labor agencies to better enforce labor laws, and to reform immigration laws resulting in a path toward permanent legal status. Without a permanent solution to the worker’s immigration status, employees like Rosa will remain vulnerable to the threat of deportation in trying to recover lost wages.

II. WAGE-THEFT AND ANTI-IMMIGRANT LEGISLATION

A. The Department of Labor and the Texas Workforce Commission Protect Low-Income Workers from Wage-Theft

Wage-theft is the nonpayment of hours worked,29 including failure to pay the minimum wage,30 overtime,31 work completed, the amount promised, or failing to pay the worker at all.32 Wage-theft can also take the form of paying an employee with a bad check33 or taking illegal deductions from wages rightfully earned.34 Wage-theft is a crime for which employers can be arrested and receive criminal penalties ranging from a $500 fine to prison time.35 The Theft of Service Act permits Texas law enforcement to investigate wage-theft claims.36 The State can charge employers with theft of service if the employer intentionally or knowingly agrees to pay for a service, but fails to pay once the service is rendered.37

29. See 29 U.S.C. § 203(o) (2016) (establishing that hours worked will be used to measure minimum wage and overtime). See also PRICE ET AL., supra note 23, at 3 (defining wage-theft); THEODORE ET AL., BUILD A BETTER SOUTH, supra note 2, at 12 (defining wage-theft).


32. See TEX. PENAL CODE ANN. § 31.04(a)(4) (2016) (defining the crime of theft of service as failure to pay in full); see also TEX. PENAL CODE ANN. § 31.04(d-1)(2) (2016) (noting that making a partial payment of wages is not a defense to negate theft of service).

33. TEX. PENAL CODE ANN. § 31.06(a) (2016) (defining theft by check as the issuing of a check for the payment of a service despite not having sufficient funds).

34. See TEX. LAB. CODE ANN. § 61.018 (2016) (limiting the only instances under which deductions can be made, including when it is ordered by a court of jurisdiction, authorized by state or federal law, or the employee has provided written authorization to the employee to deduct from the wages for lawful purposes).

35. TEX. PENAL CODE ANN. § 31.04(c) (2016) (categorizing offenses ranging from a Class C misdemeanor to a first-degree felony).

36. Id.

37. Id.
Throughout the country, low-income occupations are riddled with the problem of wage-theft. Some of the most common high-violation, low-income industries include construction, restaurants, small home-care facilities, retail, daycare, landscaping, agriculture, food manufacturing, poultry processing, and building services like janitorial and custodial employment. Historically, these industries were the main source of income for middle class families. Prior to the turn of the century, skilled employment in low-wage occupations was perceived as a “bad” job. These industries suffer from a wide range of negative working conditions that discourage younger generations from seeking

38. See Annette Bernhardt et al., Broken Laws, Unprotected Workers 2 (2009), https://www.labor.ucla.edu/publication/broken-laws-unprotected-workers/ [https://perma.cc/9T47-UDNM] (reporting on recent working conditions in 28 low-income occupations in Chicago, Los Angeles, and New York, including restaurants, hotels, private households, apparel and textile manufacturing, retail, and drug stores where 26% of workers surveyed were not paid minimum wage and 76% were not paid overtime); see also BLS Reports, Characteristics of Minimum Wage Workers, 2016, U.S. Bureau Lab. Stat. 8 tbl.3 (Apr. 2017), https://www.bls.gov/ops/reports/minimum-wage/2016/pdf/home.pdf [https://perma.cc/P7VP-T5F5] (highlighting Texas as having the largest number of workers paid below the minimum hourly wage).

39. See Fine & Lyon, supra note 20, at 432(drawing a correlation between high-violation industries and those that are most heavily populated with immigrant workers); David Weil et al., Improving Workplace Conditions Through Strategic Enforcement 2 fig.A.1 (May 2010), https://www.dol.gov/whd/resources/strategicEnforcement.pdf [https://perma.cc/Y43F-5QQ9] (listing these industries as “priority industries” where the WHD and DOL should focus their efforts to enforce compliance with wage laws); BLS Reports, supra note 38 (listing industries with most frequent minimum wage hourly rate, indicating the restaurant and retail industries had the most minimum wage violations in 2016).

40. See Theodore et al., Build a Better South, supra note 2, at 15 (describing how construction jobs used to be “good” blue-collar jobs when formal training programs educated workers and opportunities for advancement in the industry were plentiful); see also Robert I. Lerman & Stefanie R. Schmidt, Urban Inst. for U.S. Dep’t Labor, An Overview of Economic, Social, and Demographic Trends Affecting the US Labor Market 79 (Aug. 1999), https://www.dol.gov/oasam/programs/history/herman/reports/futurework/conference/trends/trends.pdf [https://perma.cc/Y82Z-SNH2] (dating labor shortages in low-income occupations as early as the 1970s, growing rapidly into the early 1990s, and stabilizing thereafter as workers returned to similarly-skilled occupations).

41. See generally Chinhui Juhn et al., Wage Inequality and the Rise in Returns to Skill, 101 J. Polit. Econ. 410, 411–12 (1993) (proposing wage trends follow industrial trends favoring high-skilled employees); see also Theodore et al., Build a Better South, supra note 2, at 2 (explaining a relatively recent decrease in middle-wage jobs led to an increase in wage disparity between low-income and high-income jobs); Stephen Moore, The Great Worker Shortage, Forbes (Mar. 31, 2015), https://www.forbes.com/sites/stevemoore/2015/03/31/not-hard-at-work-hardly-working/#4cbb030b462e [https://perma.cc/952Z-AKMT] (listing one cause of labor shortages is a lack of skilled employees ready to work; many believe blue-collar jobs do not lead to middle class income).
employment, including health and safety violations that create a dangerous working environment, lack of employment benefits, and few opportunities for advancement.42

The construction industry in particular suffers from poor working conditions.43 Texas has the fastest growing housing market44 and the largest general construction market in the nation.45 The 2010 U.S. Census estimated that over 952,000 Texans worked in the construction industry.46 Texas’s workforce is estimated at 12.6 million, indicating roughly one of every thirteen workers is employed in the construction industry.47 However some sources indicate these numbers may be larger due to the underrepresented undocumented immigrant population living in the shadows.48

42. See Fine & Lyon, supra note 20, at 432–33 (listing working conditions for immigrants in low-wage occupations across the United States); see Theodore et al., Build a Better South, supra note 2, at 11–16 (summarizing working conditions in the South’s construction sector and describing it as unstable work). But see Moore, supra note 41 (arguing blue-collar jobs can place employees and their families in middle and higher socioeconomic classes). Stephen Moore, however, only references highly skilled trades, like welders and technicians, while the majority of construction jobs have a poor reputation, particularly among graduating high school students because of the decrease in “good” jobs with benefits. See, e.g., Price et al., supra note 23, at 28 (citing a high injury rate, lack of benefits, low wages, and no training as deterrents for entry into the construction industry).

43. See Ross, supra note 19, at 129 (citing statistics from the Project Wage Claim survey of low-wage workers in Austin from August 1, 2002 and March 31, 2003, that revealed 70% of wage claims were from the construction industry, demonstrating that the problem of wage theft is long standing); see also AFL-CIO, Death on the Job: The Toll of Neglect 9 (Apr. 2016), https://aflcio.org/sites/default/files/2017-03/1647_DOTJ2016_0.pdf [https://perma.cc/5D6X-2SLH] (finding that of the 3,846 workplace inspection conducted in 2015, well over half were related to construction).

44. Fine & Lyon, supra note 20, at 433 (stating “[o]ne in 13 workers in Texas is employed in the construction industry” and Texas issues “more new housing construction permits . . . than New York, New Jersey, Pennsylvania, and Illinois combined.”).

45. Price et al., supra note 23, at i (acknowledging that despite the 2008 recession, the Texas construction industry fared better than the U.S. construction industry with respect to the rate of employment).

46. Id. at i, vi n.8.

47. Id. at vi n.8.

One-fourth of all Texas construction workers are based out of the Dallas-Fort Worth Metroplex. In Dallas alone, 30% of construction workers surveyed in 2017 experienced wage-theft in the form of not getting paid overtime, not getting paid at all, or both. This number reflects an increase in the number of workers who experienced wage-theft because the State’s average in 2013 was 20% of 1,194 workers surveyed in Austin, Dallas, Houston, San Antonio, and El Paso.

While reports indicate an increase in the number of employees experiencing wage-theft, the most common proposed solution to the problem is the improvement of existing polices. There are two agencies assigned to address wage-theft: (1) the Wage and Hour Division of the Department of Labor (DOL), and (2) the Texas Workforce Commission (TWC). Under each agency, different laws were designed to provide relief for victims of wage-theft. The DOL enforces the Fair Labor Standards Act (FLSA), which protects the employee’s right to receive minimum wage and overtime. For example, if Rosa’s employer hired her for $9.95 an hour to watch his children and she decided to file a wage claim with the DOL, FLSA would only protect her

49. Theodore et al., Build a Better South, supra note 2, at 30.
50. Id. at 32.
51. Price et al., supra note 23, at 5, 46.
52. See Fine & Lyon, supra note 20, at 432 (listing solutions, including increased penalties for workplace violations, strategic targeting of high violation industries, and an increase in resources for agencies enforcing labor standards in the form of more investigators and co-enforcement by the state and the industry); see also Theodore et al., Build a Better South, supra note 2, at xi (reiterating the agencies who enforce this legislation lack funding despite wholly existing to protect workers.) This lack of funding stifles the legislation’s efficiency, limits involvement from local municipalities, and creates a void between policymakers and community organizations. Id.
55. Ross, supra note 19, at 133 (listing Texas contract law, unjust enrichment doctrine, and the Mechanic’s and Materialman’s Lien provisions as other methods employees can recover lost wages under).
right to $7.25 per hour. In effect, Rosa would not be able to recover the remaining $216 through her FLSA claim, based on a forty-hour work week paid every two weeks. Additionally, if she wanted to file a claim for her overtime pay, FLSA would only allow her to recover up to $10.88 instead of the $14.93 she would have been entitled to otherwise.

The TWC enforces the Texas Minimum Wage Act which, in part, ensures employees receive the federal minimum wage. TWC also enforces the Texas Payday Law. The Texas Payday Law further outlines when employees should be paid, proper notice of paydays, form and delivery of payment, and allowable deductions. While FLSA could protect Rosa’s right to earn the federal minimum wage, the Texas Minimum Wage Act could not because it exempts employees that provide domestic services in a private home.

In spite of resources provided by the DOL and TWC, few low-wage workers are even aware these resources exist to protect their labor rights. In 2013, 63% of construction workers surveyed in Texas reported they had never heard of the DOL; 77% reported the same with respect to the TWC. One of the reasons workers have never heard of these two agencies is lack of the agencies’ presence. For example, TWC does not conduct field investigations, making it less likely workers will come into personal contact with representatives from the commission.

58. Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b) (2016) (allowing employees to recover under FLSA for a maximum of the federal minimum wage, which is currently $7.25, for regular hours worked).

59. See id. (calculating overtime based on federal minimum wage, thus currently capping overtime wages at $10.88).

60. See id. (allowing for liquidated damages equal to the minimum or overtime wages granted, and attorney’s fees).


62. Id. § 61.011.

63. Id. §§ 61.011–61.018.

64. Id. § 62.154 (exempting some forms of domestic employment from the minimum wage provisions).

65. PRICE ET AL., supra note 23, at 29.

66. Id.

67. See Ross, supra note 19, at 150–51 (describing the TWC wage claim procedure, and noting that it is solely based on written correspondence and some phone communication between the parties and the investigator); see also PRICE ET AL., supra note 23, at 30 (describing the procedure as inadequate because the TWC has to rely solely on the written complaint).
The TWC limits their investigation to the worker’s filed complaint; any possible future communication with either the employer or employee, (or both) is likewise limited to an “as needed” basis.\textsuperscript{68} In contrast from the TWC, the DOL is authorized to perform field investigations.\textsuperscript{69} Still, the few workers who confront employers by filing complaints with either the DOL or TWC generally face long and expensive court proceedings, disappearing employers that fail to respond, and difficulties in actually collecting unpaid wages despite receiving a favorable judgement from one of the two agencies.\textsuperscript{70}

Wage-theft is a serious threat to the livelihoods of workers that are already receiving below living wages.\textsuperscript{71} Although there are expensive consequences and criminal convictions for committing wage-theft, employers have little incentive to stop because penalties are rarely imposed.\textsuperscript{72} Present labor laws fail to protect a large, vulnerable sector of the population employed in low-income occupations.\textsuperscript{73} Indeed, wage-theft is one of the key reasons low-wage workers are struggling in today’s economy.\textsuperscript{74}

\begin{footnotes}
\item[69] See 29 U.S.C. § 211(a) (2016) (allowing onsite investigations in violations of FLSA provisions); Oklahoma Press Publ Co. v. Walling, 327 U.S. 186, 208–09 (1946) (discussing the DOL’s authority to conduct investigations into alleged FLSA violations, “[i]t is enough that the investigation be for a lawfully authorized purpose, within the power of Congress to command.”); see also Ross, supra note 19, at 156 (noting the ability to field investigations as one of the few advantages an employee’s wage claim receives if filed with the WHD instead of the TWC).
\item[70] THEODORE ET AL., BUILD A BETTER SOUTH, supra note 2, at 13; see Ross, supra note 19, at 151 tbl.4.3 (showing the time elapsed from file date to action in a TWC wage claim process).
\item[71] See PRICE ET AL., supra note 23, at 18 (stating “[f]ifty-two percent of workers surveyed were found to be earning wages that placed them below the federal poverty line.”).
\item[72] See id. at 30 (noting the TWC can fine employers who fail to pay their workers up to $1,000, but rarely impose any fine at all); see also Priscila Mosqueda, El Paso Becomes Second City to Indict Employer for Wage Theft, TEX. OBSERVER (Apr. 26, 2013), http://www.texasobserver.org/el-paso-becomes-second-city-to-indict-employer-for-wage-theft/ [https://perma.cc/R6WM-Z798] (identifying only two employers arrested for wage-theft in the entire state of Texas after two years of amending the Theft by Service Act in 2011).
\item[73] THEODORE ET AL., BUILD A BETTER SOUTH, supra note 2, at 30–31 (estimating about 20% of Dallas households are living below the poverty line and identifying Dallas construction workers as some of the city’s poorest residents).
\item[74] See id. at 30 (identifying wage-theft and lack of benefits as two main issues construction workers face).
\end{footnotes}
Undocumented Workers Are Legally Entitled to the Same Wage Protections as Documented Workers

Besides facing administrative hurdles, many workers experience employer retaliation by firing or reassignment to a less favorable position as a result of claiming stolen wages. Undocumented workers face a more alarming form of retaliation: employers threaten to call or actually do call immigration services. The DOL and the TWC maintain polices to protect undocumented workers’ labor rights, including the right to minimum wage and overtime. However, without legal status in this country, undocumented workers are more likely to experience wage-theft than any other group of low-wage workers.

In 2011, the DOL and the Department of Homeland Security (DHS) addressed the importance of securing the right to proper wages in light of anti-immigrations statutes in the Revised Memorandum of Understanding Between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (MOU). The purpose of the memorandum was to reach a compromise that would ensure immigrant workers’ safety in filing complaints regarding working conditions without fear of reprisal. The DOL’s concern was that too many employers were avoiding workplace complaints because they were reporting their employees to immigration services and DHS was actually

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75. Id.

76. See id. at 13 (indicating the threat of deportation is an exceedingly coercive measure used on undocumented workers); Luz M. Molina et al., Vulnerabilities of Low-Wage Workers and Some Thoughts on Improving Workplace Protections: the Experience of the Workplace Justice Project, 17 LOY. J. PUB. INT. L. 215, 225–26 (2016) (describing the employer’s knowledge of the undocumented worker’s immigration status as a “weapon of intimidation” that is used to commit wage-theft in the first place and then used to keep the worker from reporting the crime).

77. See TEX. L. HELD, supra note 21 (noting undocumented workers are covered by the Texas Payday Law); see also WAGE & HOUR DIV., Fact Sheet #48, supra note 21 (clarifying the DOL will enforce FLSA, requiring employers to pay covered employees the federal minimum wage and time and a half for overtime hours, despite the employees’ immigration status).

78. See Fine & Lyon, supra note 20, at 433 (estimating undocumented workers in construction occupations are two and a half times more likely to fall victims of wage-theft).


80. Id.
responding to the reports.\footnote{See id. ("The parties further recognize that effective enforcement of both labor- and immigration-related worksite laws requires that the enforcement process be insulated from inappropriate manipulation by other parties.").} Sure enough, a large majority of unpaid overtime and other wage-theft violations occurred in industries populated with immigrant workers.\footnote{Fine & Lyon, \textit{supra} note 20, at 432 (estimating, in 2010, over 50% of all workers born in Mexico and Central America were employed in “high-violation industries”).} Since the Texas construction industry is made up of over 40% foreign-born employees, there is an out-sized danger for retaliation in the form of immigration threats.\footnote{See \textit{PRICE ET AL.}, \textit{supra} note 23, at 10, 24 (profiling one construction worker’s experience of being threatened by his employer with a call to immigration when he demanded to be paid earned wages).} In Dallas and Houston, 63% and 77% of the workers in the construction industry, respectively, are foreign-born.\footnote{\textsc{THEODORE ET AL., BUILD A BETTER SOUTH}, \textit{supra} note 2, at 30, 32 (reporting that in both cities, at least 50% of foreign-born construction workers are from Mexico).}

Among the twelve commitments the DHS and DOL agreed to include, one was a promise from ICE to refrain (with few exceptions) from conducting civil worksite enforcement activities if an existing DOL investigation is pending.\footnote{See \textit{U.S. DEP’T LABOR, REVISED MEMORANDUM OF UNDERSTANDING, supra} note 79 (including three exceptions: (1) when the Director or Deputy Director of ICE decides that the enforcement activity is necessary in support of an investigation regarding national security, the protection of vital infrastructure, such as ports and power plants, or a federal crime other than unauthorized employment; (2) when the Secretary of Homeland Security directs the enforcement activity; or (3) when the Secretary of Labor, Solicitor of Labor, or another DOL official designated by the Secretary of Labor requests the enforcement activity).} Another concerned better communication. Specifically, ICE promised to inform the DOL when employers or their surrogates report immigration violations to avoid a pending labor dispute.\footnote{Id.} Ultimately, the DHS agreed to not assist employers attempting to manipulate ongoing labor disputes by tipping off immigration officials to their workers’ immigration statutes.\footnote{\textsc{NAT’L IMMIGR. L. CTR. & NAT’L EMP. L. PROJECT, Immigration and Labor Enforcement in the Workplace: The Revised DOL-DHS Memorandum of Understanding, 2011}, https://www.nilc.org/wp-content/uploads/2015/11/DHS-DOL-MOU-nelpnilc-2011-04.pdf [https://perma.cc/38BQ-57X3] (last visited Mar. 12, 2018).}

The MOU between DHS and DOL was amended in 2016.\footnote{U.S. DEP’T LABOR, \textit{ADDENDUM TO THE REVISED MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF HOMELAND SECURITY AND LABOR CONCERNING THE ENFORCEMENT OF WORKSITE LAWS}, \textit{supra} note 79.} At that time the Equal Employment Opportunity Commission (EEOC) and the
National Labor Relations Board (NLRB) were added as parties. The addendum extended the DOL’s commitment to refrain from conducting civil worksite enforcement activities where an existing DOL investigation is pending to include worksites where an EEOC or NLRB investigation is pending. The addendum also protects workers that attempt to unionize and undocumented workers who file claims of discrimination based on race, color, sex, national origin, religion, disability, and age.

C. Wage-Theft in Low-Wage Occupations in Arizona During the Enactment of Senate Bill 1070

On April 23, 2010, Arizona’s state legislature passed the Arizona Senate Bill 1070 (S.B. 1070), broadening the immigration enforcement powers of Arizona’s local police. The anti-immigration law was designed to discourage the entry and presence of undocumented immigrants in Arizona. In United States v. Arizona, the Federal District Court for the District of Arizona enjoined several provisions related to undocumented immigrants, including § 2(B), which required officers conducting a stop, detention, or arrest to verify the person’s immigration status with ICE; § 3, which criminalized mere presence in the state of Arizona as a misdemeanor; § 5(C), which criminalized seeking or obtaining employment as a misdemeanor; and § 6, which authorized warrantless arrests so long as the officer had probable cause.

89. Id.
90. Id.
91. See id. (explaining the EEOC investigations include the authority to enforce Title VII of the Civil Rights Act of 1964, Title I and V of the Americans with Disability Act of 1990, the Age Discrimination in Employment Act of 1967, and Title II of the Genetic Information Nondiscrimination Act of 2008; and that the NLRA investigations include the authority to enforce the National Labor Relations Act).
to believe the detainee committed an offense that made the detainee removable from the county.95

However, in Arizona v. United States,96 the Supreme Court upheld the most controversial provision, § 2(B), allowing police officers to enforce immigration laws at their discretion by asking individuals they stop, detain, or arrest for their “papers.”97 The Court held it was improper to enjoin § 2(B) because there are three independent limitations that would prevent law enforcement from solely applying immigration laws at their discretion: 1) the presumption that a detainee is lawfully present if the detainee presents a valid Arizona driver’s license or similar identification; 2) the restriction prohibiting officers from considering race, color or national origin beyond what the United States Constitution and Arizona Constitution permit; and 3) the requirement to enforce immigration laws in a manner consistent with federal law.98 The first limitation relied on the fact that by 2010, Arizona had passed a law limiting the issuance of Arizona driver’s licenses and identification cards to people in the country lawfully.99 Presumably, the second and third limitations prevent discretionary enforcement of immigration laws because of federal considerations. In any event, not all officer-civilian encounters require a person to present a valid Arizona driver’s license, particularly when this type of demand unnecessarily extends certain routine encounters.100

The Court went on to address two concerns mentioned by the United States. First, regarding the provision requiring law enforcement to verify immigration status of individuals stopped, detained, or arrested, the Court argued Congress encouraged information sharing about possible

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95. See id. ("[C]hallenging constitutionality of Arizona’s Support Our Law Enforcement and Safe Neighborhoods Act, requiring, inter alia, that police officers check a person’s immigration status under certain circumstances.").
97. Id. at 411–15.
98. Id. at 411.
99. See ARIZ. REV. STAT. ANN. § 28-3158 (2018) (requiring driver’s license and instruction permit applicants “shall give the department satisfactory proof of the applicant’s full legal name, date of birth, sex[,] and residence address and that the applicant’s presence in the United States is authorized under federal law.").
100. See Arizona, 567 U.S. at 413–14 (using jaywalking as an example of the low likelihood of law enforcement performing immigration status checks that only prolong the encounter).
immigration violations. Therefore, according to the Court, there is room in the federal scheme for a policy requiring law enforcement to verify immigration status with ICE. The second concern brought up by the United States was the delay of release from a stop, detainment, or arrest for the sake of verifying immigration status. The government argued that as a result of § 2(B)’s mandatory verification, officers would prolong detainments solely to verify immigration status. However, the Court justified the provision by pointing out it was too early to determine whether this would actually occur.

Prolonged detentions are occurring. According to a review of officers from the Tuscan Police Department conducted by the American Civil Liberties Union (ACLU) of Arizona from June 2014 to December 2015, more than 75% of stops involved either a clear violation or potential violation of constitutional rights. All of these stops led to prolonged detentions due to efforts made to communicate with Border Patrol, many of which resulted in false “hits” that the person was undocumented when they were actually lawfully present. Although many of the reviewed incidents were routine traffic stops that would typically result in a release, the stops lasted an average of one and a half hours.

Additionally, S.B. 1070 had a devastating effect in the workplace. See id. at 412 (quoting 8 U.S.C. § 1357(g)(10)(A), which prohibits restricting communication between local government and ICE regarding immigration status of individuals). See id. at 411–15 (implying that because Congress is silent on the issue, there is a possibility of collaboration between local law enforcement and ICE). Id. at 413. Id. at 414. Id. at 414. See Letter from James Lyall, Staff Att’y, ACLU of Ariz., to Chris Magnus, Chief of Police, Tucson Police Dep’t (May 2, 2016) (on file with ACLU Arizona), https://www.acluaz.org/sites/default/files/field_documents/aclu_ltr_to_tpd_chief_magnus_re_1070_enforcement_0.pdf [https://perma.cc/TP5H-XHL3] (citing specific instances within 110 police stops where individual rights were violated). See id. (describing the process after individuals were picked up by police at traffic stops). See id. (detailing the lengthy process individuals at traffic stops undergo as police officers try to determine whether they are in the United States illegally). See, e.g., Lee, supra note 5, at 664-65 (discussing the difficulties of policing wage-theft after enactments of anti-immigrant policies like S.B. 1070, among others). See generally BBVA Rts., supra note 28 (detailing the effects of S.B. 1070 on the labor market, the economic contribution of immigrants, and the general negative effects on the integral Mexican immigrant community in Arizona); see also Alex Nowrasteh, The Economic Case Against Immigration Policies, supra note 2, at 10-18 (analyzing the effects of S.B. 1070 on the economy and immigration).
Wage-theft in Arizona increased after the enactment of S.B. 1070. The law further pushed undocumented workers into the shadows for fear of deportation if they fought to have their labor rights respected. Not only were victims of wage-theft unlikely to report workplace violations, the undocumented community across the United States was largely unwilling to even campaign for better working conditions despite the fact that S.B. 1070-type laws had not been enacted in every state.

More significantly, the law pushed many undocumented workers and employers out of the state of Arizona all together; the former from fear of deportation and the latter from labor shortages. One report estimated the number of Hispanics in Arizona at 100,000 fewer after the enactment of S.B. 1070 compared to the number of Hispanics at the beginning of 2010. Between the time when the Arizona Legislature passed the Legal Arizona Workers Act (LAWA) in 2007 and the Supreme Court’s ruling upholding controversial provisions of S.B. 1070

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10. See Danny Postel & Ted Smukler, ‘Go Ahead, Try and Make Me Pay You’: Wage Theft and S.B. 1070, IN THESE TIMES (July 27, 2010), http://inthesetimes.com/working/entry/6265/go-ahead_try_and_make_me_pay_you_wage_theft_and_s_b_1070/ [https://perma.cc/VG2Y-DCVH] (quoting an Arizona community organizer who witnessed an increase in the number of workers who experienced wage-theft in the months leading up to the enactment of S.B. 1070); see also Dianne Enriquez, S.B. 1070 Will Not Be Tolerated, INTERFAITH WORKER JUST. (Apr. 24, 2012), http://www.iwj.org/worker-center-network/no-sb1070 [https://perma.cc/99KF-3D75] (reporting an increase in wage-theft cases filed with the Arizona branch of Interfaith Alliance for Worker Justice, an organization that rallied for worker justice).

11. See Lee, supra note 5, at 664–65 (explaining that enforcing criminalization of wage-theft is a solution, but calling police officers to arrest employers ultimately exacerbates the situation where the worker is an immigrant; this is especially true with anti-immigrant laws like S.B. 1070, which create distrust in the immigrant community due to a belief that police officers have no discretion to enforce labor laws over immigration laws).

12. See Postel & Smukler, supra note 110 (quoting a group coordinator who witnessed a decrease in the number of immigrants willing to protest because they felt a general mistrust of police officers even though their state was not passing anti-immigration laws).

13. See BBVA Res., supra note 28, at 21–22 (estimating in the few months following S.B. 1070’s enactment, there were fewer Hispanics in Arizona, either because of fear of the new law’s application or because of Arizona’s economic crisis).

14. See id. (referencing the population survey findings).


Although the recession in 2008 may have contributed to the drop in numbers, in no other state did the number of immigrants drop so drastically.\footnote{Godles, supra note 116 (comparing Arizona’s 40% population drop to New York’s drop of about 25%, Illinois’s drop of roughly 14%, and California’s drop of about 13%).} Neighboring states like California and New Mexico only experienced an approximate 5% decrease in the number of undocumented immigrants during the same time period.\footnote{Nowrasteh, supra note 109, at 13.}

Two industries suffered greatly from Arizona’s anti-immigrant legislation: the agriculture and construction industry.\footnote{Id. at 4–5 (identifying both construction and agriculture as among industries most heavily populated with undocumented immigrants nationwide, particularly in Arizona).} The decline in agriculture employment occurred as early as 2007, prior to the passing of LAWA, because farmers anticipated fewer laborers would be available to harvest crops after the E-verify provision took effect in January of 2008.\footnote{Id. at 5–6 (estimating the number of Arizona agriculture workers dropped approximately 16% from 2007 to 2011; while in neighboring states like California and New Mexico, the number of agriculture workers increased slightly).} Meanwhile, between 2008 and 2011, the percentage of Arizona’s population employed in the construction industry was cut in half.\footnote{Id. at 4–5 (recognizing declines in housing prices influenced the change in construction employment as it did in most states, but still emphasizing LAWA’s ultimate responsibility for the drastic decline in employment by making it more expensive to hire employees and requiring electronic verification of employee information).}

Supporters of S.B. 1070 defended the anti-immigrant legislation because they argued it was meant to free-up employment opportunities for native and documented workers.\footnote{See id. at 4 (“After E-Verify went into effect, the foreign-born population bore the brunt of the employment decline in the construction industry, but native employment in construction did not increase to fill the gap, contrary to the claims of E-Verify supporters.”). Nowrasteh argues that supporters of LAWA were wrong to believe the E-Verify provision would result in an increase in the number of documented immigrants or citizens taking over jobs} However, since 2008, less than
10% of the jobs previously held by undocumented immigrants were taken over by authorized workers.\textsuperscript{123} Despite the labor shortage and mass exodus of thousands of immigrants, Arizona’s unemployment rate continues to be one of the highest in the nation.\textsuperscript{124} Although the law was successful in driving out thousands of immigrants, it did not cure or even mitigate the problem of unemployment.\textsuperscript{125}

The second major effect S.B. 1070 had in Arizona was a loss of entire industries, such as the immigrant-dependent construction industry discussed above.\textsuperscript{126} A question was therefore raised: if undocumented workers left the state, why did employers follow? One theory is that immigrants took the jobs with them because they and their families created and sustained certain industries.\textsuperscript{127} Under this theory, undocumented workers contribute to the economic growth as entrepreneurs, workers, and consumers.\textsuperscript{128} Stated differently, they increase the demand for goods and services. By leaving the state of Arizona, undocumented immigrants took with them their money and spending power, which lowered the demand in all industries.\textsuperscript{129}

\begin{footnotesize}
\begin{enumerate}
\item See Davis, supra note 116 (“[L]ow-skilled U.S. natives and legal Hispanic immigrants since 2008 picked up less than 10% of the jobs once held by undocumented immigrants.”).
\item See Godles, supra note 116 (noting supporters also hoped anti-immigration laws would raise wages for native workers).
\item See Davis, supra note 116 (noting supporters also hoped anti-immigration laws would raise wages for native workers).
\item See Godles, supra note 116 (describing the results of Arizona’s exodus failed in lowering unemployment rates).
\item See Nowrasteh, The Economic Case Against Arizona’s Immigration Laws, supra note 109, at 8 (arguing Arizona’s anti-immigration laws actually increased the price of labor and left Arizona in a poor financial state).
\item See id. at 4 (“Arizona’s employment of construction workers declined 14 percentage points more than in the neighboring states of California and New Mexico between LAWA’s passage in July 2007 and September 2011.”).
\item Nowrasteh, The Economic Case Against Arizona’s Immigration Laws, supra note 109, at 12.
\item Id.
\end{enumerate}
\end{footnotesize}
It is undisputed that Arizona’s economy suffered terribly in the months leading up to and following the enactment of S.B. 1070.\textsuperscript{130} Despite the passage of time, Arizona’s economy is still suffering after the enactment of anti-immigration legislation culminating with S.B. 1070.\textsuperscript{131} In 2016, the construction industry had only half the number of jobs it did ten years prior.\textsuperscript{132} Many employers were forced to move their companies out of Arizona; these moves were either premised on a labor shortage in positions traditionally filled by undocumented workers, or because patrons were wholly formed from immigrants and their families.

D. Texas’s Senate Bill 4: How Members of the Community Fought Against the Texas Legislature

During his Facebook live video stream, Governor Abbott explained the purpose of S.B. 4 was to ban sanctuary cities which, he claimed, harbored criminals who were in the country unlawfully.\textsuperscript{133} He argued S.B. 4 is meant to ensure safety for all.\textsuperscript{134} He also warned public officials that the law imposed penalties of up to $25,000 per day, jail time, and removal from office for non-compliance.\textsuperscript{135} Like Arizona’s S.B. 1070, Texas’s S.B. 4 broadens local law enforcement’s authority to enforce federal immigration laws.\textsuperscript{136}

Community-organizing groups throughout Texas and from various parts of the country, including Arizona, came to protest and rally in what became known as the “Summer of Resistance.”\textsuperscript{137} Some of the dozens
of groups that participated in the organization of various protests included the Workers Defense Project,138 Voto Latino,139 United We Dream,140 and Texas Organizing Project.141 The protestors made their disapproval of the new Bill known when close to one thousand protesters united at the Texas State Capitol on the last day of the 85th legislative session.142 Protesters created a sea of red t-shirts inside of the Capitol Rotunda and conveyed a simple message: “Fight back; No S.B. 4.”143

Even local law enforcement from major cities withheld support from the anti-immigration law.144 Dallas’s law enforcement officials asked their city mayor, Mike Rawlings, to file suit.145 Two law enforcement officials from the Dallas County Sheriff’s Department argued the law


140. United We Dream (UWD) is a campaign in support of the Development, Relief, and Education for Alien Minors Act (DREAM Act). See About UWD, UNITED WE DREAM, https://unitedwedream.org/about/ [https://perma.cc/W99X-EF9H] (last visited Jan. 21, 2018) (stating UWD is one of the largest immigrant youth-led organizations).


142. Huber, supra note 137.


144. See Limón & Wilonsky, supra note 8 (summarizing Dallas County Sheriff’s argument that S.B. 4 would create fear in the community, leaving more crimes unreported).

145. Id.
would lead to fewer reported crimes from the immigrant community for fear of deportation.146 Houston Police Chief Art Acevedo argued the anti-immigrant legislation would only make protecting the community more difficult as less immigrants would report crimes or be willing to participate in ongoing investigations.147 Instead of making their city safer, law enforcement officials argued legislation like S.B. 4 would make their city more dangerous.148

In City of El Cenizo v. Texas,149 major cities including Houston, San Antonio, Dallas, Austin, and El Paso, along with Maverick County and the League of United Latino American Citizens (LULAC) filed suit in opposition of S.B. 4.150 The City of El Cenizo, Maverick County, and LULAC were the first to file suit—just one day after the signing of S.B. 4.151 The plaintiffs’ oral arguments against S.B. 4 began on June 26, 2017 in San Antonio.152 Two months later, the court partially granted the plaintiffs’ request for a preliminary injunction to stop portions of S.B. 4 from taking effect on September 1, 2017.153 Among the provisions the injunction blocked were: 1) the mandate on local officials to assist in

146. Id. (quoting Dallas Executive Chief Deputy, Jesse Flores, who spoke against S.B. 4 alongside Dallas Chief Deputy, Jesse Herrera).

147. See Meagan Flynn, Houston’s Chief Acevedo, Defiant and Introspective, Rails Against SB 4, HOUSTON PRESS (Apr. 28, 2017), http://www.houstonpress.com/news/hpd-chief-acevedo-lambasted-sb4-in-defiant-candid-monologue-9394376 [https://perma.cc/HHQ4-EC6Y] (quoting Chief Acevedo, “[T]he number of Hispanics reporting rapes has dropped 43 percent compared to the same time last year, with a 13 percent drop in other violent crimes. That’s compared to an 8.2 percent increase in non-Hispanic victims reporting other violent crime.”).

148. See Id. (quoting Houston Police Chief, Art Acevedo, “When undocumented immigrants are afraid to report a crime for fear of police handing them over to ICE . . . that means a criminal goes free to prey on more people.”). See generally Limón & Wilonsky, supra note 8 (quoting Dallas Executive Chief Deputy, Jesse Flores, “If members of the community are afraid to come forward and report crimes due to fear of deportation, then those crimes will not be reported or investigated . . . . We believe our community is safer when they report crimes without fear of deportation.”).


150. Id.

151. Id. at 756.


153. City of El Cenizo, 264 F. Supp. 3d at 812–13 (stating the District Court, “enjoin[ed] those portions of S.B. 4 that [it] preliminarily determined are preempted or are constitutionally invalid on their face.”).
federal immigration enforcement under penalty of a fine; 2) the prohibition on local officials from speaking out publicly against anti-immigration laws like S.B. 4; and 3) the requirement on sheriffs and police departments to accept requests to continue detention from federal immigration agents.\footnote{154}{Id.}

However, just like in Arizona, the injunction did not block the most controversial provision: the right of a local official to ask about immigration status.\footnote{155}{Id.} The court justified its decision not to enjoin this provision on the basis that, although police officers had the right to ask for immigration status, status could not be the basis for arrest.\footnote{156}{City of El Cenizo, 264 F. Supp. 3d at 764–65 (“If for example, during a lawful stop an officer obtains information that the detained individual is undocumented, the officer may not arrest the individual or prolong the detention on this basis”).} Using similar language found in the opinion of Arizona v. United States, the court clarified the arrest would have to be lawful for law enforcement officials to inquire into a detainee’s status.\footnote{157}{Id. at 762–63.} The court went on to declare that even if officers did obtain the detainee’s legal status, the officer would not be forced to share this information with immigration agents, as S.B. 4 originally schemed.\footnote{158}{Id. at 764–65.}

Subsequently, the defendants moved for a stay of the injunction.\footnote{159}{Id.} In late September, the Court of Appeals for the Fifth Circuit stayed two of the five provisions enjoined by the District Court.\footnote{160}{City of El Cenizo v. Texas, No. 17-50762, 2017 WL 4250186, at *1 (5th Cir. Sept. 25, 2017).} First, § 752.053(b)(3), which prohibited law enforcement from interfering with those choosing to cooperate with ICE.\footnote{161}{Id.} Second, § 752.053(a)(1), which restrained law enforcement from adopting, enforcing, or endorsing a policy that would prohibit or limit the enforcement of immigration enforcement.
laws.\textsuperscript{162} Although the courts enjoined large portions of the “Show Me Your Papers” law, S.B. 4 took effect on September 1, 2017.\textsuperscript{163} Most recently, the Firth Circuit withdrew their September 2017 opinion.\textsuperscript{164} The Fifth Circuit only stayed the injunction for § 752.053(a)(1), only as it prohibits elected officials, not public employees, from endorsing policies that prohibit or materially limit the enforcement of immigration laws.\textsuperscript{165} The rest of S.B. 4 was upheld in its entirety.\textsuperscript{166}

In the aftermath of the District Court’s decision in 2017, advocacy groups began educating members in the community on how best to interact with law enforcement.\textsuperscript{167} The first piece of advice is detainees have a right to remain silent with respect to their immigration status.\textsuperscript{168} In the event detainees are pulled over in their vehicles, organizers, such as the ACLU, urge they do not provide false documentation or foreign identification.\textsuperscript{169} Once under arrest, the detainee should only provide their name, residence address, and date of birth.\textsuperscript{170} Finally, detainees should make clear they wish to remain silent, not sign anything, and not make any decision without a lawyer’s counsel.\textsuperscript{171}

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\item \textsuperscript{162} Id. at *2.
\item \textsuperscript{163} City of El Cenizo v. Texas, 264 F. Supp. 3d 744, 756 (W.D. Tex. 2017), granting stay in part, 2017 WL 4250186 (5th Cir. 2017).
\item \textsuperscript{164} City of El Cenizo v. Texas, 890 F.3d 164, 173 (5th Cir. May 8, 2018).
\item \textsuperscript{165} Id. at 184–85 (holding the provision unconstitutional if applied to elected officials because it violates the First Amendment by infringing on the elected officials’ political speech).
\item \textsuperscript{166} See generally id.
\item \textsuperscript{168} ACLU OF TEX., supra note 167.
\item \textsuperscript{169} Id.
\item \textsuperscript{170} Id.
\item \textsuperscript{171} Id.
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III. YOU CANNOT HAVE ONE WITHOUT THE OTHER:
AN ANALYSIS OF THE DIRECT CORRELATION BETWEEN WAGE-THEFT
AND ANTI-IMMIGRATION LAWS

A. Current Workplace Conditions in Low-Wage Occupations

At first glance, workplace regulation and immigration monitoring would seem independent of one another.172 However, the fact that low-income industries typically experience the most workplace violations,173 and most low-wage positions are occupied by undocumented immigrants,174 means a sector of the population is at high risk of exploitation: those employees in low-income industries. Thus, to address either issue, the government must simultaneously reform immigration and labor laws.175 Reforming labor laws alone will not be enough to protect undocumented workers as there are already, albeit ineffective, federal and state policies in place meant to protect undocumented immigrants from wage-theft, yet large numbers of employees continue to suffer—fearing employer retaliation for asserting their right to a fair wage.176 Indeed, even current policies prohibiting employer retaliation

172. See Lee, supra note 5, at 657 (suggesting those who support criminalization of wage-theft fail to recognize the disconnect between labor and immigration laws).

173. See Fine & Lyon, supra note 20, at 432 (citing studies from across the country concluding that low-wage industries are also high-violation industries; violations that include failure to pay minimum wage and overtime, failure to provide safety equipment, and exposure to hazardous workplace dangers).


175. See Fine & Lyon, supra note 20, at 439–446 (analyzing case studies of Washington and California and arguing that the co-enforcement of labor standards by the state and complementary lateral mechanisms should be considered within immigration reform to expand the number of workers protected).

176. See id. at 433–34 (asserting that the gap “between laws and regulations on the books intended to insure against exploitation and the implementation and enforcement of these laws” discourages immigrants from exercising their labor rights in the face of employer violations such as retaliation or intimidation of workers).
have been unsuccessful specifically because anti-immigration laws inadvertently allow employers to avoid labor laws and take advantage of undocumented employees. Because the two issues are intertwined, these workers need protection outside of labor laws in the form of an enduring legal status.

Modern immigration is driven, in part, by the pursuit of better employment.\textsuperscript{177} In the United States, the majority of undocumented immigrants come through the U.S.-Mexico border from Mexico and Central America.\textsuperscript{178} Crossing the border means leaving behind their families and risking their lives, but undocumented immigrants continue to come to the United States because United States employers are hiring.\textsuperscript{179} Although many immigrants envision a country of opportunity that defends rights and freedom, many individuals are soon faced with a harsh reality: undocumented immigrants’ rights are routinely violated in the United States.\textsuperscript{180} Nevertheless, immigrants continue to stay and more continue to come because it is richer to be poor in the United States than it is to be poor in their country of origin.\textsuperscript{181}

Since undocumented workers are motivated by economic reasons to cross the border,\textsuperscript{182} employers can use this as leverage. By the time an undocumented immigrant has reached the United States, they have invested time and money.\textsuperscript{183} They are willing to take employment in

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\item[177.] See Laque, supra note 28 (asserting trends in modern human migration indicate most migration “[s]erves the purpose of uniting families, escaping persecution, or more importantly, finding better employment opportunities”).
\item[178.] Id.
\item[179.] See BBVA Res., supra note 28, at 10–11 (concluding Mexican migration to the United States stems from the U.S. economy’s demand for cheap labor, rather than a lack of opportunities in Mexico); see also U.S. Chamber of Com., supra note 27 (reporting immigrants actually contribute to the creation of jobs in the U.S. by virtue of their roles as entrepreneurs, consumers and taxpayers).
\item[180.] Laque, supra note 28.
\item[181.] See BBVA Res., supra note 28, at 10–12 (identifying three factors that most influence migration from Mexico to the United States: 1) demands in the U.S. labor market, 2) lack of employment in Mexico, and 3) the wage discrepancy between Mexico and the United States).
\item[182.] See Douglas S. Massey & Kristin E. Espinosa, What’s Driving Mexico-U.S. Migration? A Theoretical, Empirical, and Policy Analysis, 102 Am. J. Sociology 939, 990 (Jan. 1997) (“Growing economic insecurity coupled with a strong desire to participate in [the] new political economy have led Mexican households to search for ways to self-insure against threats to family income and to gain access to scarce capital.”).
\item[183.] See id. at 962 (noting price inflation in the U.S. dollar and devaluation in the Mexican peso are likely to deter immigration because these factors increase the cost of immigrating illegally,
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almost any industry for almost any pay. The employer knows this. The employer takes advantage of the immigrant’s vulnerable position by offering low wages; lower than the rate corresponding to the position. Lower, even, than what an employer might have offered other employees who are working in the United States lawfully.

The employers’ lack of incentive to offer undocumented workers a “good” paying job does not end at poor wages. For example, in the construction industry, workers are never formally trained, rarely provided with any safety equipment, and hardly ever offered employment benefits. Many receive improvised training—new hires are trained by observing and copying a veteran worker’s technique, sometimes in an unfamiliar industry, handling foreign tools. Employment benefits, like health insurance and paid vacation or sick days are almost nonexistent, despite the fact that low-income industries are the most dangerous to work in.

Financial gain motivates immigrants to take substandard jobs as well as employers to create substandard workplaces. Failing to provide

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184. See PRICE ET AL., supra note 23, at 18 (reporting the majority of construction workers in Texas suffer from economic hardship and are faced with potential exposure to hazards that result in workplace injuries and fatalities).

185. See id. 23 (illustrating wage-theft through the personal experience of a construction worker and highlighting the issues associated with prevailing wage mandates that require employers to pay higher wages when working on publicly funded worksites).

186. THEODORE ET AL., BUILD A BETTER SOUTH, supra note 2, at 11 (estimating that on average, undocumented construction workers earn lower wages than the average of all other construction workers).

187. PRICE ET AL., supra note 23, at 19 (noting employees with low-wages are more likely to lack workplace benefits, labor in risky and unsafe conditions, and be misclassified as a contractor; yet these same workers are less likely to be protected by workers’ compensation).

188. THEODORE ET AL., BUILD A BETTER SOUTH, supra note 2, at 16 (describing how on-the-job “training” is one method used by construction workers to compensate for the lack of formal training). On-the-job training is sometimes combined with cross-training, mentoring systems, and frequent job rotations. Id.

189. See id. at 31 (estimating less than half of Dallas construction workers were offered health insurance by their employer, only 30% of workers have paid personal days, a mere 20% receive paid sick days, and just 18% were offered some form of retirement or pension benefit).

190. See PRICE ET AL., supra note 23, at 14 (estimating Texas construction workers are four and a half times more likely to be killed at work than the average non-Texas construction worker).

living wages, safety equipment, training, or employment benefits further reduces costs on the already money-saving practice of hiring cheap labor from the immigrant community.\textsuperscript{192} These four employer practices comprise only some of the main problems plaguing low-wage industries.\textsuperscript{193} Although undocumented immigrants are most affected by poor working conditions because they have less access to public resources and face the threat of deportation, other employees lawfully working in the United States are also impacted by the lack of living wages, benefits, and training.\textsuperscript{194} Thus, the entire community should care about the unjust labor practices employers use to reduce costs in low-wage industries because the social cost of poor labor practices is placed on Texas taxpayers.\textsuperscript{195}

In addition to wage-theft, undocumented workers are also more likely to suffer from employee misclassification.\textsuperscript{196} Misclassification is occasionally included in the definition of wage-theft\textsuperscript{197} and takes place when an employer classifies an employee as an independent contractor.\textsuperscript{198} This practice strips from workers basic employee rights
such as the right to a federal minimum wage and overtime pay. 199 In 2013, more than 300,000 construction workers in Texas were misclassified as independent contractors. 200 Today, in Houston alone, about 38% of construction workers are misclassified. 201 If these workers filed a wage-theft complaint with the DOL or TWC, they would bear the heavy burden of proving they qualify as employees and are not subcontractors or contractors. 202 Overcoming this burden is difficult when the employee has never received formal training, receives minimal supervision, and has signed tax forms indicating a subcontractor position rather than a regular employee. 203

Some employers misclassify to keep their employees off their records for tax purposes and pay them in cash or under the table. 204 Employers go as far as requiring their employees to sign subcontractor tax forms. 205 Misclassification is appealing to employers because it allows them to escape paying employment taxes in addition to regular employee benefits employers are generally responsible for securing, like contributing to the Texas Unemployment Compensation Trust Fund. 206

Admittedly, misclassification is appealing to some workers in low-income occupations—they put more of their already low gross income in

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199. THEODORE ET AL., BUILD A BETTER SOUTH, supra note 2, at 14 (“Misclassified workers often lose the basic protections of employees, such as the right to minimum wage and time and half for overtime hours, and they must pay their employer’s share of payroll taxes”).


201. THEODORE ET AL., BUILD A BETTER SOUTH, supra note 2, at 33.

202. E.g. TEX. WORKFORCE COMM’N, Employment Status–A Comparative Approach, http://www.twc.state.tx.us/files/businesses/form-c-8-employment-status-comparative-approach-twc.pdf [https://perma.cc/QW3U-KLJN] (last visited Mar. 12, 2018) (distinguishing an employee from a contractor by comparing the relationship each has to the workplace, including factors like who receives instruction on how the job will be performed, who provides tools and equipment to perform the job, and whether the person has any investment or potential for loss in the business).

203. See generally id. (discussing the complications being classified as an independent contractor can create for an employee without proper resources).

204. See PRICE ET AL., supra note 23, at 24 (explaining how payroll fraud and misclassification deprive employees of their legal rights).

205. See THEODORE ET AL., BUILD A BETTER SOUTH, supra note 2, at 14 (reporting certain employers ask employees to sign an IRS 1099 form instead of the W-2 form that is legally required for employees).

206. See id.
their pockets without having taxes and other employee deductions taken out of their paycheck. However, when an employee reports a claim of wage-theft, a common defense for not paying minimum wage or overtime is that the worker was hired as a contractor or subcontractor—not an employee. Thus, misclassification has many negative consequences that employers do not disclose to their employees; consequences employees do not learn about until it is generally too late. Although misclassification is not typically considered a form of wage-theft, it can lead to devastating consequences for a low-wage worker if the employer decides not to pay his employee.

B. How S.B. 4 Negatively Impacted Workplace Conditions for All Workers

The large number of undocumented workers experiencing wage-theft in low-income industries is compounded by the government’s failure to enact immigration laws that protect them. This failure creates an environment in which employers can easily take advantage of an already vulnerable sector of the population. Inefficient labor laws and anti-

207. See Price et al., supra note 23, at 24. According to Juan Girón, a drywaller in Houston, Texas, even workers like him who have the proper documentation to work in the United States lawfully stay in these jobs because “you’re receiving money week after week. What happens if you lose your job, and then two, three, four weeks pass without getting another job that’s why I decided to stay quiet about it in the end.” Id.

208. Goodwyn, supra note 191 (illustrating how classifying a worker as a sub-contractor insulates the employer from paying taxes, Social Security, unemployment, and overtime compensation).

209. See Theodore et al., Build a Better South, supra note 2, at 33–34 (relating the story of a residential construction worker who only learned of his misclassification as an independent contractor after he was injured on the job; his employer was thus able to escape liability for the injury).

210. See id. at 34 (explaining the worker’s struggle even after seeking legal aid).

211. See id. at 25–39 (explaining how the issue and its effects are nationwide). The negative impacts of misclassification of workers in the construction industry can be found in most major cities across the country like Atlanta, Georgia, Dallas, Texas, and Nashville, Tennessee. Id.

212. See Elizabeth Fussell, The Deportation Threat Dynamic and Victimization of Latino Migrants: Wage Theft and Robbery, 52 Soc. Q. 593, 594 (2011) (explaining the result of labor demand and restrictive immigration policies is an exploitative relationship between immigrants and those who seek to exploit them); see also Molina et al., supra note 76 (elaborating on Fussell’s explanation a step further by concluding this exploitative relationship usually manifests in the employer threatening the employee with calling immigration officials).
immigration laws only make the workplace worse—for all workers.\textsuperscript{213}

Native and naturalized workers, although not fearful of deportation, are generally caught in the cross fire: employers commit wage-theft against lawful workers because the agencies charged with handling wage-theft claims are inefficient, diminishing the likelihood of recovery of wages for any employee filing a claim.\textsuperscript{214} In other words, the low risk of being penalized for committing unfair employment practices is outweighed by the free labor obtained. Agencies tasked with investigating and punishing wage-theft claims lack the resources necessary to carry out their mandate.\textsuperscript{215} This inefficiency allows employers to steal wages with impunity.\textsuperscript{216} As a result, the consequence of anti-immigration laws, such as S.B. 4, that create distrust between immigrant communities and law enforcement, gives employers yet another incentive to create and maintain a draconian workplace.\textsuperscript{217}

The advantage an employer has over his unauthorized workers has directly increased with anti-immigration laws like S.B. 4 which makes it easier for employer violations of labor laws to occur and go unnoticed.\textsuperscript{218} Employers that set out to commit wage-theft depend on their employee’s fear of deportation and mistrust of the police and government.\textsuperscript{219}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{213} See Theodore et al., Build a Better South, supra note 2, at 13 (“Several workers reported that employers retaliated against those who pursued wage claims by firing or reassigning them or by calling immigration authorities.”).
\item \textsuperscript{214} See Verga, supra note 24, at 286–88 (arguing that criminalization of wage-theft is necessary because the federal and state agencies responsible for handling wage claims are inefficient, which reduces the likelihood that workers will actually recover wages); Lee, supra note 5, at 661–62 (2014) (“[D]ay laborers often face grim choices when pursuing the recovery of wages. Their relatively low wages often deter private attorneys from taking on those cases . . . [a]nd while day laborers may proceed on their own through administrative or civil channels in some states, such a choice can be daunting.”).
\item \textsuperscript{215} Verga, supra note 24, at 286–89 (enumerating the inefficiencies within the DOL to meaningfully respond to complaints to the Wage and Hour Division because of issues like the lack of resources or the inexistant political will to investigate the claims of low-income workers).
\item \textsuperscript{216} See id. at 287 (“In addition to the federal FLSA, almost every state deals with non-payment of wages in its state labor laws. Like their federal counterparts, the state agencies charged with enforcing labor laws are understaffed, have very limited investigative resources, and generally lack the political will to assist low-wage workers.”).
\item \textsuperscript{217} Lee, supra note 5 at 664–65.
\item \textsuperscript{218} See, e.g., Verga, supra note 24, at 293 (suggesting police department handling wage-theft complaints implement a formal policy to refrain from enforcing immigration law so as to not silence victims and impede officers in enforcement of criminal penalties).
\item \textsuperscript{219} See Lee, supra note 5, at 664
\end{enumerate}
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Employers use this fear to intimidate their unauthorized employees from trying to collect stolen, unpaid wages.220

It is well known among the immigrant community that police officers can ask questions regarding an individual’s immigration status.221 However, police departments in major cities throughout Texas have refrained from doing so.222 Officers avoid inquiring into a person’s legal status, particularly when the person is a complaining victim, in an attempt to strengthen the community’s cooperation and trust in the police department.223

However, law enforcement’s efforts to gain trust with the immigrant community was directly affected by the signing of S.B. 4.224 In the

Where, for example, a subcontractor refuses to pay a day laborer for a day spent laying asphalt, wage theft laws empower that worker to call the police, thereby injecting a bit of urgency, discomfort, and fear into the process of recovering lost wages . . . [if the employee is unauthorized to work though] the wage theft fix becomes much more complicated, and in fact, the fix may end up making a bad situation worse.

220. See Price et al., supra note 23, at 17–18 (quoting Adrian Magallanes, a Dallas ironworker: “If you tell [the foreman] something is unsafe, they tell you to still do it. If you don’t do it, you’re fired.”).

221. See Nik Theodore, Dep’t of Urban Planning & Pol’y, Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement 1 (May 2013), http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF [https://perma.cc/QH7W-KKGK] (demonstrating a decrease in crime reports through a telephone survey of 2,004 Latinos living in Cook County (Chicago), Harris County (Houston), Los Angeles County, and Maricopa County (Phoenix)). A substantial number of these residents were less likely to voluntarily contact police out of fear of questions regarding immigration status. Id.


223. The Grand Prairie, Texas Police Department has a support system for Spanish-speaking residents called UNIDOS. UNIDOS, GRAND PRAIRIE TEX., http://www.gptx.org/city-government/city-departments/police-department/unidos/ad-image-2 [https://perma.cc/6WJB-QZUR] (last updated Jan. 6, 2016). UNIDOS is a Hispanic community outreach program that originated in 2002 by the efforts of a Grand Prairie Police Officer with a goal to provide assistance to Spanish-speaking residents of Grand Prairie. Id. However, even with this program in place, Sgt. Munoz of the Grand Prairie Police Department expressed concern after the passage of S.B. 4 that the community would begin to fear calling the police, causing a breakdown of confidence in the uniform. Solis, supra note 222.

224. Brooke A. Lewis, HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year, HOU. CHRON., http://www.chron.com/news/houston-
months leading up to the enactment of S.B. 4, police departments across Texas noticed a drop in the number of immigrants reporting crimes.225
The Houston Police Department reported a significant drop in the number of Hispanics reporting rape and other violent crimes as compared to the year prior.226 Specifically, there was a 43% drop in the number of rape cases reported by Hispanics victims despite a 12% increase in the number of rape cases reported by non-Hispanic victims.227

Carrolton’s Police Department reported a similar finding with respect to neighborhood crime calls.228 In February of 2017, District 11 (the predominantly Hispanic southern part of Carrolton) did not receive a single vehicle burglary, home burglary, or car theft report.229 This is significant as exactly one year prior, four car burglaries, two home burglaries, and two stolen vehicles were reported.230 Carrolton’s Police Department speculates the lack of reports might be due to a fear of deportation.231

As a result of today’s anti-immigrant environment, wage-theft is among the list of crimes left under or unreported.232 Fewer victims of wage-theft are coming forward.233 One indicator wage-theft is on the rise is the increased number of organizations mobilizing to counteract wage-theft.234 In the past six years, Workers Defense Project (WDP) has tripled in size, expanding their efforts to provide legal aid to low-

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225. Solis, supra note 222 (quoting Grand Prairie police chief, David Dye, “It has already hurt our trust, . . . we already have a lot of fear out there because of Senate Bill 4. It has already created damage.”).
226. Lewis, supra note 224.
227. Id.
229. Id.
230. Id.
231. Id.
232. See Verga, supra note 24, at 293 (discussing the vulnerability of undocumented workers in the workplace as victims of wage theft).
233. See id. at 293–94 (suggesting the lack of a rule regarding non-enforcement of immigration laws “inevitably silences immigrant crime victims and witnesses”).
234. See WORKERS DEF. PROJECT, About Us, supra note 138 (describing their organizational work as part of a national movement against wage theft).
wage workers by opening offices in Dallas and Houston. More recently, in the aftermath of Hurricane Harvey, organizations tailored emergency resources to prevent wage-theft.

While laws like S.B. 4 are meant to drive out undocumented immigrants, the result will affect Texans beyond the immigrant community. All low-wage employees are working under the same inferior working conditions that undocumented workers labor in. Without a labor law reform that incorporates the protection of undocumented immigrant workers, and vice versa, employers will have no incentive to follow labor laws.

IV. COMPREHENSIVE IMMIGRATION AND LABOR LAW REFORM: A VIABLE SOLUTION TO WAGE-THEFT IN LOW-INCOME OCCUPATIONS

A. Why Temporary Legal Status Will Not Work

In the past, the U.S. Government has addressed the issue of immigration and domestic labor shortages with a comprehensive regulatory effort. For example, the Mexican Farm Labor Program Agreement, also known as the Bracero Program of 1942, permitted Mexican citizens to work in the U.S. agriculture industry. The Mexican Farm Labor Program Agreement, also known as the Bracero Program of 1942, permitted Mexican citizens to work in the U.S. agriculture industry. The Mexican Farm Labor Program Agreement, also known as the Bracero Program of 1942, permitted Mexican citizens to work in the U.S. agriculture industry.

235. See id. (describing Workers Defense Project’s roots in Austin and highlighting its growing influence across Texas).


237. Price et al., supra note 23, at 11 (concluding that preserving jobs employing undocumented individuals is essential to Texas’ long-term economic growth and prominence in the national economy).

238. See id.

239. Id. at 22 (showing that although the effects of wage-theft on construction workers can be devastating, employers committing the crime are not affected in the slightest).


241. See Alice J. Baker, Agricultural Guestworker Programs in the United States, 10 Tex. Hsp. J. L. & Pol’y 79, 84 (2004) (describing some of the process employed to permit Mexican workers to seasonally cross the border along with protections granted to them by the federal government).
Program alleviated two problems: 1) it managed the migration of Mexicans into the United States, and 2) solved the U.S labor shortage due to the number of working-age men fighting in World War II.242 However, despite being in the country lawfully, Mexican workers under the Bracero Program still suffered from wage-theft and other issues, such as poor living conditions and discrimination.243

The Deferred Action for Childhood Arrivals (DACA) is a more recent example of how immigration reform has a direct impact on the labor field.244 Approximately 20% of DACA recipients work in health care and education—two industries already suffering from a labor shortage.245 As a result, DACA recipients have made large contributions to the Social Security and Medicare fund.246

In both the Bracero and DACA programs, immigration laws sought to protect immigrants, which ultimately had a positive effect on the labor market.247 However, temporary programs like DACA have proven to be ineffective in light of the fact that they can easily be revoked, displacing any positive impact the program may have had.248

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242. Id. at 83–84
243. Id. at 84, n.12 (blaming exploitation on the lack of government oversight over employers).
244. Nicholson, supra note 127 (summarizing the economic benefits of DACA, including large sums of contributions to the Social Security and Medicare fund from income).
248. See VIVIAN S. CHU & TODD GARVEY, CONG. RES. SERV. EXECUTIVE ORDERS: ISSUANCE, MODIFICATION, AND REVOCA TION 7–8 (2014) https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2271&context=key_workplace (detailing various revocations of past presidential executive orders by sitting presidents); see also Ike Brannon & Logan Albright, The Economic and Fiscal Impact of Repealing DACA, CATO INST. (Jan. 18, 2017, 3:00 PM), https://www.cato.org/blog/economic-fiscal-impact-repealing-daca [https://perma.cc/N7VV-5P4G] (estimating a $60 billion cost to deport existing DACA recipients over the next ten years, in addition to a loss of $280 billion in economic growth over the same time period).
While many claim the nation was on the verge of comprehensive immigration reform for undocumented immigrants living in the United States in 2001, the terrorist attack on September 11, 2001 left the political climate drastically off balance.\textsuperscript{249} Immigration reform was the last thing Americans considered safe in post-September 11th era.\textsuperscript{250} Those opposing immigration reform argued that opening legal immigration would make it easier for terrorists to repeat similar attacks.\textsuperscript{251} Current legislation signaling a return to restrictive immigration policy embodies an overt “Hispanophobia.”\textsuperscript{252} Such bias was on display in rhetoric deployed by Republican candidates during the 2016 presidential campaign.\textsuperscript{253}

B. \textit{Permanent Legalization of Undocumented Workers and Enforcement of Labor Laws}

Temporary programs that do not offer secure legal status to Texas’s workers have thus far failed. Anti-immigrant initiatives, such as S.B. 4 calling for mass deportation of undocumented immigrants only serve to threaten and target low-income undocumented workers. The solution to protecting both the undocumented and low-income community is a collaboration between both immigration law and labor law reform.\textsuperscript{254} Activists have proposed comprehensive immigration reform and more efficient labor enforcement.\textsuperscript{255} But, to protect immigrant workers from wage-theft, the solution must prohibit employers from threatening their

\textsuperscript{249}. Laque, \textit{supra} note 28, at 29 (estimating that in the first half of 2007, over 1,400 state bills were filed on immigration issues alone; virtually none of which treated immigration issues from terroristic concerns).

\textsuperscript{250}. \textit{See id.} at 32 (suggesting the 9/11 terroristic attack “blurred the lines between immigration and terrorism”).

\textsuperscript{251}. \textit{See id.} (“Since 9/11, policies regarding terrorism have misappropriated immigration laws to promote anti-terrorism goals. As a result, immigration policy has lost its independent policy agenda.”)

\textsuperscript{252}. Nill, supra note 92, at 43 (explaining that Hispanophobia is the fear of Latinos and Latin culture, and is easily utilized to generate opposition of immigration because of how closely Latin culture is intertwined with immigration to the United States).


\textsuperscript{254}. Fine & Lyon, \textit{supra} note 20, at 446.

\textsuperscript{255}. Id. at 444–45.
workers with deportation by providing a permanent road towards legalization of undocumented workers. Out of fear of deportation, employees will not report wage-theft claims thereby hindering the benefit of increasing the number of investigators, the amount in penalties employers could face, and the number of jurisdictions willing to enforce the investigators’ findings and maximum penalties. Additionally, anti-immigration laws facilitating deportation further limit the benefit of any such labor reform.

One of the most recent attempts to strengthen labor laws was the proposed 2017 Wage Theft Prevention and Wage Recovery Act.\textsuperscript{256} The proposed legislation addresses three important barriers preventing workers from recovering wages: the bill 1) amends the FLSA test by doubling the amount awarded for unpaid wages and overtime; 2) directs the DOL to refer cases involving certain offenders to the Department of Justice for criminal prosecution; and 3) begins a new fund through the WHD that awards grants to eligible entities that assist in enforcing the wage and hour laws.\textsuperscript{257} The problem with this Act is that it still fails to shield the most vulnerable population from employer retaliation: undocumented immigrants.\textsuperscript{258} The Act increases a penalty rate for a rarely-employed punishment,\textsuperscript{259} expects the DOJ will punish a crime rarely prosecuted,\textsuperscript{260} and distributes funding to entities undocumented immigrants are afraid to seek refuge from out of fear of deportation.

An earlier attempt to protect immigrant workers from wage-theft was the Protect Our Workers from Exploitation and Retaliation Act (POWER Act), introduced in 2011.\textsuperscript{261} The POWER Act aimed to protect immigrant workers from reprisals of deportation in the event they chose to report a labor law violation.\textsuperscript{262} However, the POWER Act fails to

\textsuperscript{257} Id.; see also Fine & Lyon, supra note 20, at 445.
\textsuperscript{258} Fine & Lyon, supra note 20, at 436.
\textsuperscript{259} E.g. Ross, supra note 19, at 152 (quoting TWC investigator that acknowledged that their policy avoided imposing penalties even when the employer demonstrated they committed wage-theft in bad faith).
\textsuperscript{260} See Verga, supra note 24, at 292 (noting that one of the hardships prosecutors and law enforcement face is not having proper training in investigating wage theft crimes).
\textsuperscript{261} Protect Our Workers from Exploitation and Retaliation Act, H.R. 2169, 112th Cong. (2011).
\textsuperscript{262} Id.
address many of the issues closely related to wage-theft.263 For example, the POWER Act does not address a workers’ lack of knowledge of their right to be paid, earn a minimum wage, earn overtime, and for some, earn a specific rate.264 Returning to our example, if Rosa were to demand payment and her employer responded by threatening to call ICE, Rosa would risk deportation when first filing her wage claim, and only after her employer retaliates will the POWER Act step in to provide her protection, assuming she even qualifies.265

Each of these solutions are one-sided.266 They reform labor laws while proposing base-level protection to undocumented workers despite the fact that those most vulnerable to wage-theft are undocumented.267 The solution to wage-theft among unauthorized workers therefore must include comprehensive immigration reform.268 Without immigration reform that creates a path to legal status, any attempt at labor reform will still have to overcome the problem of enforcement.269

V. CONCLUSION

Supporters of S.B. 4 claim their goal is to reduce crime by broadening the local law enforcement’s ability to enforce Federal immigration laws.270 But many, including local law enforcement, do not believe S.B. 4 will make Texas safer.271 Ultimately, laws, such as S.B. 4, make it easier for employers to commit wage-theft crimes and misclassification

263. See id. (omitting content that would address overarching concerns associated with combating perpetual wage-theft).
264. See id. (failing to provide any language addressing the concerns described).
265. Id. § 2(b) (listing requirements for application of temporary protection provided by the Secretary of Homeland Security).
266. See Verga, supra note 24, at 286–88 (describing the drawbacks of the many available, albeit one-sided, solutions to combat wage-theft).
269. Verga, supra note 24, at 286.
271. Limón & Wilonsky, supra note 8.
because it contributes to undocumented immigrants’ fear of deportation and mistrust in local law enforcement. Although employers can be arrested for wage-theft, only a handful of employers are ever indicted. As a result, all workers in low-income occupations are at risk of becoming victims of wage-theft because employers have little incentive to abide by labor laws that are rarely enforced. 

Success in recovering wages by filing a wage claim with the TWC or DOL is minimal. These agencies have been largely unsuccessful because 1) workers do not know they exist, and 2) the lack of resources within the agencies themselves. The first factor makes it easy for employers to take advantage of their employees. The second factor takes away any incentive for employers to self-correct since penalties are not being enforced.

Undocumented workers are legally entitled to the same wage protections as documented workers. Yet, undocumented workers are more likely to suffer from wage-theft because employers use the threat of deportation as a method of retaliation to avoid paying wages owed. Although undocumented workers are the most vulnerable to wage-theft and other workplace violations, all workers run an increased risk of suffering from these violations. Lawful workers are facing some of the same obstacles undocumented workers are facing, including hazardous working conditions, poverty-level wages, lack of training, and dead-end jobs without benefits.

Labor agencies have tried to reconcile the disconnect between immigration laws and labor laws by extending protection to immigrant
workers through policies and legislation. However, current labor laws are not protecting undocumented workers. Simply put: employers of low-wage occupations lack the incentive to create “good” jobs as current labor legislation is not being enforced.

Arizona is an example of how closely immigration laws can influence the workplace. Arizona’s LAWA and S.B. 1070 serves as an example of how anti-immigrant legislation that isolates entire sectors of the population fails to benefit anyone. LAWA and S.B 1070 manipulated the labor market and created devastating results to Arizona’s economy. Economic motive is a prime reason undocumented immigrants cross the border and employers use this to their advantage when hiring for low-wage occupations. After risking their lives and financially investing in journeying to the United States, undocumented workers would rather have their right to earned wages be violated than risk deportation. Legislation should not allow employers who are motivated by their own economic interests to escape liability for such extortion. Revocable and temporary efforts to simultaneously address immigration and labor issues are ineffective and not sustainable. The solution to protecting both the undocumented community and the documented community in low-income occupations is a permanent reform effort addressing both immigration law and labor law. Only by removing this vulnerability will working conditions improve for all low-wage employees.

278. Nowrasteh, The Economic Case Against Arizona’s Immigration Laws, supra note 109, at 4 (explaining that due to the high number of immigrant workers in the agriculture and construction industries, these industries suffered the most from anti-immigrant laws).
279. Id. at 9.
280. Id.
281. See Massey & Espinosa, supra note 182, at 957 (identifying income-security as one of the three leading forces in promoting Mexican migration).
282. See Bryce Covert, Houston is Being Rebuilt on a Foundation of Wage Theft; IN THESE TIMES (Jan. 22, 2018), http://inthesetimes.com/article/20815/the-exploitation-after-the-storm [https://perma.cc/KU79-KKDH] (describing the time a day laborer in Houston “was driven to a job site far away and left stranded there without being paid. When he tracked down the man who hired him, he was shot in the arm and stomach. He survived—and is still showing up looking for work.”).
283. Fine & Lyon, supra note 20, at 444–45.