

DEEPER INTO THE SHADOWS

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CONSEQUENCES OF
IMMIGRATION WORKSITE
ENFORCEMENT

By Jeffrey Kaye

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ABOUT SPECIAL REPORTS ON IMMIGRATION

The Immigration Policy Center's Special Reports are our most in-depth publication, providing detailed analyses of special topics in U.S. immigration policy.

ABOUT THE AUTHOR

Jeffrey Kaye is a Los Angeles-based freelance journalist. He has been a longtime contributor to the PBS NewsHour and World Report, the public affairs program of HDNet television. Between 1980 and 1984, Kaye was a reporter and senior producer at KCET-TV (PBS) in Los Angeles. Previously, he worked as a magazine writer, a freelance reporter for National Public Radio, a TV producer, and as a special correspondent for the *Washington Post* and other publications. Kaye's abiding interest in immigration is formed in part by his own history. Along with his parents and sister, he himself immigrated to the United States from England in 1963. His grandparents and great grandparents were immigrants to England from Poland. As a journalist he has covered immigration on four continents. And as a resident of Los Angeles, Kaye has seen the world arrive on his doorstep. Kaye's reports and documentaries have earned him numerous national and local awards, including a Cine Golden Eagle and seven Los Angeles Emmys. Kaye has also previously published with IPC, *Re-Living Our Immigrant Past: From Hazleton to Arizona and Back Again* and *Enforcing Arizona's SB 1070: A State of Confusion*. He is author of the book *Moving Millions: How Coyote Capitalism Fuels Global Immigration* (Wiley).

ABOUT THE IMMIGRATION POLICY CENTER

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy on U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

Introduction by the Immigration Policy Center

Before the onset of the Great Recession, immigrant labor was cited as a boon to the U.S. economy. In towns and cities across the country, immigrant labor—documented or otherwise—filled positions in growing businesses and industries where demand outpaced the supply of native-born workers. Since the onset of the economic downturn in 2008 and the rise in U.S. unemployment, some analysts and politicians—looking for a convenient scapegoat—have turned on that immigrant workforce and their employers, arguing that deporting eight million undocumented immigrant workers will create eight million new jobs for the native-born. This over-simplified equation ignores the complicated and inter-dependent roles that immigrants play in our economy. A 2010 study by the Fiscal Policy Institute on the economic contributions of immigrants in the 25 largest metropolitan areas in the United States makes the point well:

The results were clear: immigrants contribute to the economy in direct relation to their share of the population. In the 25 largest metropolitan areas combined, immigrants make up 20 percent of the population and are responsible for 20 percent of economic output. Together, these metro areas comprise 42 percent of the total population of the country, 66 percent of all immigrants, and half of the country's total Gross Domestic Product.¹

Immigrant workers are an important part of our labor force. Those who are undocumented, in many cases, entered the workforce when demand was high and have lived in this country for many years, setting down roots and becoming productive members of their communities. Ripping them from their jobs and families or driving them deeper underground will only hurt the U.S. economy.

As Daniel Griswold of the Cato Institute recently testified before Congress, “We cannot deport our way out of unemployment.”² Undocumented immigration is not the cause of high unemployment. Deporting undocumented immigrants will not automatically create new job openings for unemployed Americans. High unemployment is not associated with high levels of immigration at the regional, state, or county levels, and immigration is not associated with high levels of unemployment among minorities. Recently arrived immigrants and unemployed U.S. workers live in different areas, have different levels of education and experience, and work in different occupations. Some long-time unemployed Americans may be willing to take lower-skilled, low-paying jobs out of desperation, but that is hardly a long-term solution to our economic problems.

Furthermore, undocumented immigrants are workers, taxpayers, and consumers; forcing them to leave an area means a decrease in tax revenue, economic output, and consumer purchasing power. Economists have estimated that mass deportation would cost the U.S. economy \$2.6 trillion in cumulative lost Gross Domestic Product (GDP) over 10 years, not including the actual cost of deportation.³

Unauthorized workers are also human beings with families, hopes, and dreams. Many lived in “mixed-status” families, which means they are married to U.S. citizens or legal immigrants and have U.S.-citizen children. Deporting undocumented immigrants means separating American families, and tearing parents away from their children. It means that people who have been living in the U.S. for years and have established strong roots here are suddenly displaced.

What is the solution? While there are unscrupulous employers who should be the priority for immigration enforcement, the practical reality, so often overlooked in this debate, is that the vast majority of employers are attempting to do their best to make a good life for themselves and their employees. They want to comply with the law—including our immigration laws, and in many cases are devastated to learn that the immigrants who have been working for them for many years are undocumented. Ironically, it is these employers who are frequently the target of worksite actions, with negative consequences for both employer and employees.

This article by noted journalist Jeffrey Kaye illustrates the dilemmas involved in our current worksite enforcement strategy. What happens to local businesses and economies when audits result in mass firings of workers? What happens to those workers and their families when they are fired? Does the current system really benefit anyone?

The Immigration Policy Center believes that the answer to the last question is “no,” and that only by overhauling our current immigration system and replacing it with one that meets the needs of the 21st century will we get past the hardships and quandaries Mr. Kaye so ably details in his report.

Deeper into the Shadows

Note: To protect their identities, workers interviewed for this article are referred to by their first names or by pseudonyms].

When President Obama delivered his State of the Union speech last month, he repeated a theme that's been a constant in his references to immigration reform: "I am prepared to work with Republicans and Democrats to protect our borders, enforce our laws, and address the millions of undocumented workers who are now *living in the shadows*," he said, pausing for applause. The phrase I've emphasized is one that has resonated for Obama in the past. Bringing workers "out of the shadows" and showing concern for immigrants living "in the shadows" has been a regular refrain in Obama's immigration lexicon. But intentions and rhetoric don't appear to match policy. Current immigration-enforcement strategies are backfiring and, contrary to the President's stated goals, are forcing more people into the shadows. As a result, underground economies and communities are growing, not only harming workers (many of whom have been here for many years and are settled members of our society and labor force), but also their families and the public at large.

The Obama administration has touted a new direction in immigration enforcement—one that places more emphasis on checking the paperwork of targeted employers than on worksite raids and worker roundups. Immigration and Customs Enforcement (ICE) has stepped up audits of companies, checking on documents that new hires must submit to employers when filling out I-9 "Employment Eligibility Verification" forms. If the papers don't check out, ICE notifies companies that the employees are "unauthorized to work in the United States," and that by continuing their employment the firms could face fines or criminal penalties. In response, companies generally ask the workers to produce legitimate documents. If the workers can't produce the documents, the company is forced to fire them.

But the policy is having unintended consequences.

For seven years, Alondra had helped clean the heated skyway tunnels that link buildings in downtown Minneapolis, Minnesota. The 33-year-old immigrant had also been part of the janitorial crew at the city's landmark Target Center arena. As an employee of ABM Janitorial Services (a division of New York-based ABM Industries, one of the largest building-services contractors in the U.S.), Alondra had been a foot soldier in the Twin Cities' vast and silent army of building-maintenance professionals. She and her partner, Juan—also an ABM worker—were living the American dream. They'd bought a house and earned enough to renovate it. Three years ago, Alondra gave birth to a son. But in October 2009, her world turned upside down when she, along with some 1,250 other ABM employees, including Juan, lost their jobs. The dismissals came after ABM informed the workers that ICE had audited the company's personnel files and was requiring employees such as Alondra and Juan with "suspect" records to bring in "documentation that ICE deems acceptable." Alondra and Juan were unable to produce the necessary documents and were fired.

Alondra, a native of Ecuador who has lived in the U.S. since 2000, went from collecting a steady \$528-a-week income with benefits and union representation to barely scraping by. When she is able to find work such as housecleaning, dog walking, and washing laundry, she is paid in cash. Juan works part time for a fraction of his previous pay. The couple has taken in boarders, moved with their son into their attic, and maxed out their credit cards. They don't seek medical care even when they need it. Because of unpaid bills, the utility company is threatening to cut off their water.

But even with the challenges they face, the couple has no intention of returning to Ecuador. Instead, they have gone further underground, earning money off the books, paying fewer taxes, and living in society's margins.

"I have my home here," Alondra said. "I put a lot of money into it. I have my child. I have nothing back in my home country."

The Underground Economy

Like tens of thousands of others who have established families and livelihoods in the United States, Alondra and Juan have been pushed further into the shadows by the policies that have been touted as doing just the opposite. Those who have lost jobs as a result of worksite audits are unlikely to return to their native countries, particularly if they'll be facing poor economic prospects or violence. Instead, dismissed workers, determined to stay and carry on productive lives, are joining America's huge cash economy—estimated at one trillion dollars a year—and increasingly enveloping themselves in a secretive and fearful subculture.

The evidence that migrants are not returning to their home countries is more than anecdotal. A recently released Pew Hispanic Center study found that the number of unauthorized immigrants living in the United States as of March 2010 (estimated at 11.2 million) was "virtually unchanged from a year earlier."⁴

The growth of underground communities and black-market economies has a ripple effect that extends beyond the migrants themselves. Perhaps the best description has come from the White House. Last summer, in his first presidential speech devoted to immigration reform, Obama elaborated on the larger effects of people "in the shadows." The address provided a concise if unintentional description of the consequences of current enforcement policies.

"[B]ecause they live in the shadows, they're vulnerable to unscrupulous businesses who pay them less than the minimum wage or violate worker-safety rules—thereby putting companies who follow those rules, and Americans who rightly demand the minimum wage or overtime, at an unfair [dis]advantage," said the President. "Crimes go unreported as victims and witnesses fear coming forward. And this makes it harder for the police to catch violent criminals and keep neighborhoods safe. And billions in tax revenue are lost each year because many undocumented workers are paid under the table."

Los Angeles immigration lawyer Peter Schey has watched the growth of an underground economy. He represents American Apparel, a major U.S. clothing manufacturer, which—after I-9 audits in 2009—dismissed 1,500 workers. "They don't get deported, they don't leave because where they came from the economic opportunities are worse, so what do they do?" he asks. "They are driven into the arms of criminal employers, driven into the arms of underground sweatshops who pay cash and violate safety and wage-and-hour laws. That's where they go."

Emily Tulli, a policy attorney for the National Immigration Law Center, says that, in some cases, employers have even re-hired the workers they laid off, using subcontractors who pay lower wages.

The New Immigration Enforcement Strategy

In 2009, Department of Homeland Security (DHS) officials announced that ICE (the principal investigative arm of DHS) would implement a new worksite enforcement strategy. In response to complaints by many immigrants-rights advocates about high-profile raids during the Bush administration, the DHS instructed ICE to adopt “a renewed Department-wide focus.” An April 30, 2009 directive from ICE headquarters to regional offices “re-prioritizes and refines the existing ICE worksite enforcement strategy and methodology, in order to emphasize the criminal prosecution of employers who violate the law.” The Department announced that it was “targeting egregious employers who knowingly exploit illegal labor.”

Two months later, ICE announced “a bold, new audit initiative,” declaring it was “issuing Notices of Inspection (NOIs) to 652 businesses nationwide—which is more than ICE issued throughout all of last fiscal year.” In November 2009, Homeland Security Secretary Janet Napolitano announced that the new emphasis was reaping rewards. “[W]e’ve transformed worksite enforcement to truly address the demand side of illegal immigration,” she declared. “We are auditing the books of thousands of employers suspected of relying on illegal labor to achieve an unfair advantage in the marketplace.”

One year later, in October 2010, Napolitano unveiled “record-breaking immigration enforcement statistics.” She said that since January 2009, ICE had audited “more than 3,200 employers ... debarred [from receiving federal contracts] 225 companies and individuals, and imposed approximately \$50 million in financial sanctions—more than the total amounts of audits and debarments than during the entire previous administration.”

According to ICE, in fiscal year 2010 (October 1, 2009 through September 30, 2010), auditors examined records of 2,196 employers with an average size workforce of 209. The inspectors reviewed nearly 300,000 form I-9s, and determined that nearly nine percent of them were fraudulent. In all, ICE auditors identified 25,690 form I-9s containing suspected fake documents. It is reasonable to assume that most, if not all, of the employees who submitted those forms were terminated as a result of the audits.

The questions are: Is ICE truly targeting egregious employers who knowingly exploit their workers? And what’s happened to those nearly 26,000 fired workers and their families? The experience in Minneapolis offers some clues. Elsewhere, most employees fired as a result of workplace audits don’t seem to retain contact with social-service agencies or with labor unions that might have represented them, so it is virtually impossible to determine their fates. But in Minneapolis, Local 26 of the Service Employees International Union (SEIU)—which represents some 5,000 Twin Cities janitors, among other workers—tried to keep in touch with the former ABM employees to assess their needs and to try to organize them as associate members.

Worker Survey

To learn more about the laid-off workers, at our request, in early January, staff members of Local 26 conducted a survey of former ABM employees, using a questionnaire we had designed. Anonymity was guaranteed. The union was able to contact 50 of the 1,200 fired workers. It is impossible to know how representative the sample is of the larger pool of laid-off employees, but, for what they’re worth, the results are interesting.

Employees surveyed had put in an average of seven years at ABM. They are about equally composed of men and women. Most are Mexican nationals with an average age of 38. They have lived in the U.S. between six and 24 years (half came before 1999). Thirty-four have children born in the United States. As for their plans and economic situations, only nine said they would return to their home countries. Of the 50, 31 have found some kind of work, but their earnings are 40 percent less than their ABM wages. Of the 31 earning money, fewer than half—14—said they would report their wages to the IRS. Bottom line: Like Alondra and Juan, most of the workers in our survey have become more marginalized.

The President's use of the term "vulnerable" during his speech last summer and his catalog of abuses, fear, and lost tax revenue aptly describe the aftermath of his administration's worksite-enforcement policy. The Twin Cities, an area that has been hard hit by the audits, offers a microcosm. In addition to the dismissals at ABM, about 100 employees of two St. Paul companies engaged in cattle hide processing and tanning were laid off after ICE audits last October and December. An ongoing ICE audit of another major area company is expected to result in 250 layoffs in March. And audits have recently claimed at least 100 jobs at 50 Minnesota restaurants operated by the Denver-based Chipotle Mexican Grill chain. The company, which operates 1,023 restaurants nationwide, won't say exactly how many employees have been laid off. Workers' advocates believe the number may be as high as 700.

The devastating impact of these enforcement policies on both businesses and families often heightens tensions between employers and employees. "We are pushing Chipotle to do the right thing," union organizer Rafael Morataya told laid-off restaurant workers on January 15, as they, along with dismissed janitors, prepared to board buses that would take them to protest outside a company restaurant.

The workers' complaints against the eight-year-old non-union chain centered on Chipotle's actions in response to the ICE audit. Some fired workers said they had been dismissed on the spot, had not been given sufficient time to provide authentic documents, or were still owed payments. Arriving at the restaurant in suburban Edina, 65 workers and supporters quickly formed a picket line in bone-chilling 15-degree weather. As a startled manager came out to talk to organizers, demonstrators banging on pots and pans chanted, "No burritos! No justice!"

Asked for his reaction to the workers' complaints, company spokesman Chris Arnold said the company "will continue to promptly pay everyone for all hours worked, as well as for unused vacation time and bonuses." In a written statement, Arnold said, "This is a heartbreaking situation for us to be losing so many excellent employees." But he pointed out that in the face of an ICE audit, a company's hands are tied. After being informed that it has employees who are not authorized to work in the U.S., a company has no choice but to dismiss the workers unless they can produce legitimate documents. "If we knowingly employ workers who are not authorized to work in the U.S., we are breaking the law," Arnold said. He explained that Chipotle asked ICE for an extra 90 days for workers to present valid papers, but ICE officials denied the request.

Such public protests may bolster spirits and assert rights (most U.S. employment and labor laws apply equally to all workers, regardless of citizenship status), but in truth, in the face of an audit, there is little that even the most tenacious organizer or company can do, other than beg ICE to delay the inevitable.

So, the upshot according to union officials is that the audits are not forcing employees without proper documents to leave the country. Instead, says Greg Nammacher, secretary-treasurer of SEIU Local 26, "they just make people poorer in the place they are." Minneapolis' burgeoning underground culture and economy are taking their toll.

“We Don’t Go Outside”

After Esther lost her janitorial job with ABM, her daughter Brenda dropped out of high school to help support the family. Brenda now works seven days a week, two shifts a day in a factory. She makes \$8.65 an hour without overtime or health benefits.

Alejandro took work doing deliveries and cleaning offices after he lost his Chipotle job. Employment is hard to come by. When he gets it, he’s willing to take \$6 an hour.

Jaime was dismissed from ABM after six years cleaning offices, including the United Healthcare building. He got a seven-day-a-week janitorial job where he was paid \$25 a night in cash. His hourly rate depended on his speed. “Sometimes, it was like \$5,” he said, with an embarrassed laugh. But he was fired from that job when the temporary agency that paid him found someone who would work more cheaply. With two U.S.-born children, Jaime has no intention of returning to Mexico. But he lives in fear. “I worry,” he said. “I don’t know what’s going to happen to the kids if they catch me. We don’t go outside. We don’t go to church now.”

Among those who do still attend church, attitudes are changing, according to Sister Margaret McGuirk, an administrator at the Holy Rosary/Santo Rosario Catholic church in Minneapolis, whose congregation includes many parishioners laid off from ABM. “They feel terrorized and the children are terrorized,” she explained. “One of the things that happens is the parents—they don’t let their kids go out and play in the park like they used to.” In addition, said McGuirk, victims of crime often hold on to their secrets. “If a woman has been abused, even if she can prove it, she’s afraid to call the police,” she said, referring to one case in which the victim, separated from the husband who attacked her, wouldn’t report the crime.

“When people get robbed, they are reluctant to call the police,” added McGuirk. “We have to accompany them to the police station.”

Money is being slowly withdrawn from the local economy in various ways. Some people are exchanging services and work for barter so that no money changes hands. Miguel shovels snow or tunes up cars in exchange for childcare. To get a rent discount, he does landscaping. Immigrants say that the use of *tandas* is increasing. A *tanda* is a revolving credit association built on trust. Participants agree to pool money. Periodically members of the pool receive funds which they have to repay.

After Patricia, 26, lost her ABM janitorial job, she found a position with another major area cleaning company. She now works part-time for less money. She, her husband, and her two children are living in a basement. “I feel trapped against the wall,” she says. Patricia was brought by an aunt from Mexico at the age of 15 because her family’s income from growing corn wasn’t enough to support them and still isn’t. Their last crop was wiped out by pests. She says she can’t think what she would do if she had to return to Mexico. She interrupted the interview with a question of her own. “We do jobs that American people don’t want to do,” she said. “My question is: Who’s going to do these jobs?”

What Are ICE's Priorities?

Advocates for workers as well as for companies targeted by ICE have their own questions about the government's objectives. "What are the priorities of this kind of I-9 auditing?" wonders John Keller, executive director of the Immigrant Law Center of Minnesota. "A lot of people would like to ask the president what his goal is in bringing this much pain to families and extended families. It's a strategy that has a high political value in trying to prove they're doing enforcement...and going after the bad apples, the worst employers. But the reality is that ABM did not have a serious record of being a bad actor. Why was that a priority?"

The fired Minneapolis janitors worked under a collective bargaining agreement (since renewed) that provided for paid vacations, holidays, and sick leave. Under the contract, employees could buy family health insurance for \$75 per month. Full-time janitors earned an hourly wage of \$12.97; part-timers made \$11.45.

An ABM representative said the company would not comment on the ICE audit.

As for Chipotle, labor leaders who criticized the firm for the way it handled layoffs in the wake of the ICE audit say the company is "definitely above the bottom tier" in its overall treatment of workers. Even though the chain is non-union, the SEIU's Nammacher said Chipotle pays above the minimum wage and offers some basic benefits. "They're an above-board corporate player," he stated.

SEIU's Local 26 President Javier Morillo-Alicea believes ICE is violating its pledge to go after the most egregious cases of worker mistreatment. He and other union representatives have brought their complaints to ICE administrators in Washington. In private meetings, he says, ICE officials have reiterated their priorities. But Morillo maintains that what's promised in Washington essentially stays in Washington. "What [Washington,] D.C. ICE tells us has no connection to what local ICE agents do," he contends. "We are forcing people to the bad actors who profit from the broken immigration system."

Company lawyers have similar complaints about ICE's lack of transparency and intentions. Chicago business immigration lawyer Paul Zulkie also wonders how ICE targets companies for audits. "Companies are investigated on the basis of leads or tips," he says. "Sometimes they're from other government agencies, or it could come from the ever-popular anonymous calls, from disgruntled employees, or from angry boyfriends or girlfriends."

Zulkie says that for companies, the loss of experienced and skilled employees as a result of an ICE audit can also take its toll. One client had to terminate 150 out of 200 workers. Some replacement employees required months of training. ICE agreed to a phased termination, but Zulkie says, "The disruption was incredibly severe."

Los Angeles lawyer Peter Schey faced a similar situation. A company he represents was required to fire 200 of 700 employees working on what he describes as a "sophisticated production line."

"When you take out 200 trained workers who know the system, when you take those people out of the line, it's devastating to the business," he said. "They can't meet existing orders, customers drop off; they're unable to make new sales. They have to spend money to recruit and train workers. That could take them 12 months. In the meantime, the attraction of going offshore increases dramatically." At the

same time, said Schey, there's a snowball effect on the economy. "Innocent shareholders get hit, the surrounding community gets hit, the tax collector gets hit. The fiscal impact is enormous... The net result is really a policy that has a more severe economic impact than anyone at ICE or the White House seems to appreciate."

Brett Dreyer, head of ICE's worksite-enforcement unit, did not respond to repeated requests for an interview to discuss his department's priorities. ICE guidelines specify that agents enforcing worksite laws "will look for evidence of the mistreatment of workers, along with evidence of trafficking, smuggling, harboring, visa fraud, identification document fraud, money laundering, and other such criminal conduct." But lack of transparency makes it impossible to determine whether those guidelines are being followed or how they differ from the Bush administration's practices. (An ICE website's "[Fact Sheet: Worksite Enforcement Cases](#)" is dated August 25, 2008, five months before Obama took office, and features a quote from Julie L. Myers, who was a controversial assistant secretary for ICE during the Bush presidency and who resigned at the end of 2008.

A Fading Beacon?

On July 1, 2010, as President Obama wound up his speech on immigration, he used the occasion to invoke a potent symbol of America's immigrant tradition: the Emma Lazarus poem inscribed at the base of the Statue of Liberty. "Give me your tired, and your poor,/Your huddled masses yearning to be free," he quoted, asking his audience to remember the words. "For it falls on each generation to ensure that that lamp—that beacon—continues to shine as a source of hope around the world, and a source of our prosperity here at home," he concluded.

But, for many, that beacon is not shining as brightly as it once did. Workers such as Alondra, laid off from her janitorial job in Minneapolis, is confused, upset, and angry not only over her firing, but over the fact that money she earned was withheld and is not being returned. "When we get paid, they withhold Social Security and Medicare," she said. "We pay unemployment and everything in each single paycheck, and they hold that." As we talked, we walked through a hallway in her house lined with cleaning supplies that she uses when she's able to obtain her cash jobs. "Our life has changed a lot," she said. "And it's sad because we are not criminals. We are hardworking people."

Endnotes

¹ Fiscal Policy Institute, [Immigrants and the Economy: Contribution of Immigrant Workers to the Country's 25 Largest Metropolitan Areas](#) (New York: December 2009).

² [Testimony](#) of Daniel Griswold, Director, CATO Institute Center for Trade Policy Studies, before the House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, January 26, 2011.

³ Raúl Hinojosa-Ojeda, [Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform](#) (Washington, DC: Immigration Policy Center of the American Immigration Council and the Center for American Progress, January 2010), p. 13.

⁴ Jeffrey S. Passel and D'Vera Cohn, [Unauthorized Immigrant Population: National and State Trends, 2010](#) (Washington, DC: Pew Hispanic Center, February 1, 2011).