

BUILD A BETTER NATION



A CASE FOR COMPREHENSIVE IMMIGRATION REFORM

A Report from Workers Defense Project
in collaboration with the Division of Diversity and Community Engagement at the University of Texas at Austin

**DEDICATED TO
THE UNDOCUMENTED WORKERS
THAT BUILD TEXAS.**

EXECUTIVE SUMMARY

“AS TEXAS GOES, SO GOES THE NATION.”

Texas is facing a crisis in construction. *Build a Better Nation* uncovered that the current failures in immigration policy make working conditions increasingly untenable for both workers and the employers who depend on their labor. Undocumented workers have few protections, resulting in deadly, illegal working conditions that lower standards for all workers laboring in the industry. Current policy has left employers with few options other than to hire undocumented workers, forcing them to put their businesses in legal jeopardy or remain unable to compete. A healthy economy requires sensible immigration policies that encourage growth, protect workers, and allow business to compete on a level playing field.

WHY USE THE TERM “UNDOCUMENTED”?

Most civil rights organizations consider the term “illegal alien” to be derogatory and legally inaccurate. The word illegal carries a series of negative implications. For example, it is often assumed that “illegal” people have no civil or workplace rights, when in fact, all people have rights regardless of immigration status. Additionally, some people falsely think that entering the country without a visa is a felony crime, when in fact it is a civil violation (such as not paying your taxes accurately). “Undocumented” is a more accurate term, as it simply means an immigrant’s status is not documented by immigration authorities.

THE TEXAS ECONOMY DEPENDS ON UNDOCUMENTED LABOR

As one of the most important industries in the nation, construction serves as a model of what is to come if our country continues down a path of failed immigration policy. Nationally, nearly 7 million workers labor in the construction of buildings. An estimated 14% of construction workers are undocumented, meaning that there are more than 1 million workers nationwide that lack legal status, though this estimate likely underestimates the true count of undocumented construction workers. Various industries including construction, agriculture, food service, meatpacking, and landscaping are heavily reliant on undocumented labor. This study looks at construction in Texas, one of the most important and vibrant markets in the country, and forecasts the implications of failed immigration policies for workers and business.

With construction accounting for one out of every \$20 generated by the Texas economy and over 10% of all construction output in the US, the economic stability of this industry is critical to state’s future economic growth. Between 1997 and 2010, population in the state increased by nearly 25%, twice the percentage growth the US experienced during that same period, creating demand for housing, infrastructure, and industry needs in the state. In 2011, Texas single-handedly accounted for 16% of all new housing construction permits in the US, more than both Florida and California combined. Texas is one of the largest and most important construction markets at both the regional and national level, driving construction at a time when most of the country is still reeling from the recession.

Build a Better Nation found that 50% of surveyed construction workers in the industry were undocumented. Approximately one in every thirteen people in the Texas workforce labors in construction, meaning as many as 400,000 Texas construction workers are undocumented¹¹. Given the important role immigrant labor plays in the Texas construction industry, immigration policies that support workers are crucial to the long-term sustainability of Texas’—and the nation’s—economic and social wellbeing.

This study helps explain why enforcement-only immigration policies—carried out against both workers and employers—have not been successful in reducing the number of immigrants present in the US. Now that undocumented immigrants comprise significant portions of industries like construction, more employers are left with few choices other than to hire unauthorized workers, or risk going out of business. Employers need an immigration system that allows them to legally hire the workers they need so they can focus on managing their businesses, not managing immigration policy.

BUSINESSES DEMAND IMMIGRATION REFORM

In Texas, businesses that depend on immigrant labor have been demanding significant reforms to federal immigration policy. The Associated Builders and Contractors, the Texas Construction Association, and the American Subcontractors Association are among the numerous industry groups supporting comprehensive immigration reform that “recognizes the need for continued employment of the current immigrant workforce and a program to meet future employment needs ...”

Current immigration policy is failing the construction industry. Businesses must be able to legally hire the hardworking men and women they need to address the labor shortage and the aging construction workforce. Immigration policy must also allow responsible businesses to fairly compete against those who abuse the current broken system.

**50% OF CONSTRUCTION WORKERS
REPORTED THAT THEY WERE
UNDOCUMENTED.**

POLICY RECOMMENDATIONS

“YOU MAY NOT BE HIRING [UNDOCUMENTED] WORKERS, BUT YOUR COMPETITION IS. THE SYSTEM IS CLEARLY BROKEN AND WE’VE GOT TO FIX IT... [A LOT OF PEOPLE] ARE AGAINST AMNESTY, BUT I MEAN, THEY’RE HERE. A LOT OF THE BLUE COLLAR WORK—WHETHER IT’S FARM WORKERS OR CONSTRUCTION WORKERS—IS DONE BY IMMIGRANT WORKERS.”

—NATIONAL-LEVEL COMMERCIAL SUBCONTRACTOR FROM HOUSTON

The Texas construction industry is highly dependent on a foreign-born workforce that is largely undocumented. Overall the US construction industry is increasingly dependent on a foreign born and undocumented workforce, though they comprise a significant proportion of the workforce. Policymakers at the federal level must enact immigration reform. Construction companies must be able to hire their workforce legally to ensure that all companies are operating on a level playing field. Furthermore, workers must be protected to curb workplace abuses and allow workers to feel they can step forward and report dangerous and illegal working conditions. It's time to build a sensible immigration policy that benefits workers, businesses, and our economy.

> KEEP FAMILIES TOGETHER. Too many families have been separated by our broken immigration system. Comprehensive immigration reform must include provisions to guarantee families can stay together without fear that their loved ones may be deported. This protection will limit an unscrupulous employer's ability to intimidate a worker exercising his or her workplace rights.

> HONOR HARD WORK. Our nation has long valued and rewarded hard work. However, our current immigration system fails millions of hardworking people every day. Policymakers must ensure that immigration policy protects the employment rights of undocumented workers, guaranteeing that they will not face deportation if they come forward to report workplace abuses and giving them the opportunity to earn a pathway to citizenship. These policies honor the hard work of those doing some of the most difficult, dangerous, and necessary jobs in our nation.

> REWARD HONEST BUSINESSES. Current immigration policy forces employers to break the law and turn a blind eye to illegal practices, or face unfair competition. In industries that depend on undocumented labor, companies must be able to hire their workforce legally to ensure that all companies are operating on a level playing field. Guest worker programs reward unscrupulous employers; a worker's legal status should not be dependent on employment with a specific employer.

> CREATE A SYSTEM THAT WORKS FOR THE INDUSTRY. Providing all undocumented workers with a pathway to citizenship is necessary to ensure that the industry can continue to employ its current workforce. Because of the problems of rampant misclassification and the fact that many workers change employers frequently, it is necessary that any reform employ a flexible standard of proof for workers who have been living and working in the US. All workers who are free of serious convictions and can demonstrate they are self-sustaining should qualify for legal status as they build an employment record in the mainstream economy.

WHY H2B VISA PROGRAMS DON'T WORK

In 2010, three concrete workers came to Workers Defense Project (WDP) seeking help to recover wages their employer had failed to pay them for their last two weeks of work. The workers had come to the US from Mexico on H-2B visas, which allow workers to come to the US seasonally and remain as long as they are working for the employer who petitioned for them. The workers had signed contracts with their employer that had promised \$15 per hour, but when they arrived were told they would be making \$8 per hour instead. After two months, their employer stopped paying them altogether.

WDP referred the cases to the Department of Labor's Wage and Hour division, which is responsible for resolving wage claim cases. Patricia Zavala, Workplace Justice Program Coordinator at WDP remembered the case. "By the time Wage and Hour had finally gotten the case into the hands of an investigator, three months later, the workers had already gone back to their home country." Patricia explained some of the problems with the visa system:

"You can bring workers here, exploit them, and no one can effectively do anything about it. The enforcement mechanisms that exist to protect workers' rights are oftentimes slow and bureaucratic, which leaves workers that are here temporarily effectively unprotected, giving an unfair advantage to unscrupulous employers while punishing responsible businesses."

Worse, the visa system can act as a method of intimidation:

"If you're a visa worker and your rights are being violated, you can't speak up to your employer. If they fire you, you'll have to leave because you lose your authorization to work. The visa program silences workers who are experiencing workplace abuses because whether they can stay in the country is dependent on the person perpetuating the abuse. Visas like the H-2B enable employers to break the law with essentially no consequences."

CONCLUSION

Despite the fact that many sectors of the US economy are dependent on immigrant labor, immigrant workers have not benefited from their contributions to national progress. Current federal immigration policy denies them the right to work legally, forcing them into an underground economy where low pay, dangerous working conditions, and illegal practices are rampant. Current policy hurts workers, honest businesses, and taxpayers in Texas and the US. Policymakers and businesses are realizing the importance of creating better federal immigration policies that can meet the needs of our dynamic and growing nation, while ensuring the millions of undocumented people living and working in the US can fully participate in their communities and local economies.

END NOTES

i “Employed persons by detailed occupation [dataset],” US Department of Labor, Bureau of Labor Statistics [Current Population Survey], 2011, accessed January 15, 2013, <http://www.bls.gov/cps/tables.htm#charemp>. This figure accounts for workers directly involved in the construction process as laborers in the various construction trades or first-line supervisors who work on construction sites. It excludes highway and rail workers as well as any office staff or other related positions within construction companies.

ii Jeffrey Passel, “The Size and Characteristics of the Unauthorized Migrant Population in the US [research report],” Pew Hispanic Center, March 7, 2006, 12.

iii “Gross Domestic Product by State [Texas],” Bureau of Economic Analysis (BEA), June 2012, accessed October 12, 2012, <http://www.bea.gov/>; “Construction Industry Top 10 States by GDP,” EconPost, accessed November 10, 2012, <http://econpost.com/industry/construction-industry-top-10-states-gdp>.

iv Federal Reserve Bank of St. Luis (St. Luis Fed), “Texas Population and US Population [indexed to 1/1/1997 = 100],” accessed October 12, 2012, <http://research.stlouisfed.org/>.

v “Permits by State – Annual,” US Census Bureau, accessed October 12, 2012, <http://www.census.gov/const/www/permitsindex.html>. Percent changes are computed from unrounded data. Prepared by Economics Department, NAHB.

vi According to the US Census, there were 952,875 construction workers in Texas in 2010. The overall size of the Texas workforce is approximately 12.6 million workers, making construction workers 7.6% of, or slightly more than one out of every 13, workers.

vii Texans for Sensible Immigration Reform (TxSIP), accessed January 12, 2013, <http://www.txsip.com>.

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Workers Defense Project is a Texas non-profit organization that promotes fair working conditions for construction workers by educating them about their employment rights and ensuring they are treated fairly and humanely at work. Workers Defense Project provides direct services for and organizes low-wage workers to advocate for stronger protections at the state and local level. Workers Defense Project believes that by ensuring safe, fair working conditions for all workers, Texas can build a strong and sustainable construction industry that works for all Texans.

IMMIGRATION AND CONSTRUCTION

**50% OF TEXAS CONSTRUCTION
WORKERS REPORTED THAT THEY WERE
UNDOCUMENTED.**



Construction is big business in Texas. The economic impact of the Texas construction industry extends far beyond the state, as one the largest and most important markets regionally and nationally. However, the number of undocumented workers in the industry lacking full protections to ensure fair working conditions, and employers who are pressured to hire an undocumented workforce to compete, threaten the construction industry's long-term economic sustainability. Given that 50% of the construction workforce in Texas was found to be undocumented, immigration reform is necessary to create a stable, sustainable workforce. Key findings from official sources show:

> IMMIGRANTS ARE VITAL TO THE CONSTRUCTION INDUSTRY. As baby boomers nationwide retire, an immigrant workforce is filling the blue-collar jobs they once occupied. A large undocumented immigrant population bolsters the construction industry. Undocumented immigrants account for at least 1 million construction workers.

> IMMIGRANT WORKERS ARE CONTRIBUTING TO THE STATE AND NATIONAL ECONOMY.

Undocumented immigrants across the US paid \$11.2 billion in taxes in 2010. ¹⁰ In Texas alone, they contributed \$1.6 billion. ¹¹ Nearly 75% of undocumented workers pay income taxes, helping support a social security system they cannot access with contributions of up to \$7 billion annually.

> IMMIGRANTS ARE SUSCEPTIBLE TO WORKPLACE ABUSES. Immigrant workers are paid less, more likely to be victims of wage theft, and are more likely to be injured or killed on the job than their US-born counterparts. Further, immigrant workers often have fewer options for recourse when violations occur, and in some cases they are not granted equal protections before the law.

> IMMIGRATION REFORM IS NEEDED TO BUILD A STRONG ECONOMY. The Texas construction industry accounts for over 10% of all construction output in the US. ¹² Yet, the broken immigration system in the U.S. has led to a crisis within the construction industry as well as within the national economy.

WHY USE THE TERM “UNDOCUMENTED”?

Most civil rights organizations consider the term “illegal alien” to be derogatory and legally inaccurate. The word illegal carries a series of negative implications. For example, it is often assumed that “illegal” people have no civil or workplace rights, when in fact, all people have rights regardless of immigration status. Additionally, some people falsely think that entering the country without a visa is a felony crime, when in fact it is a civil violation (such as not paying your taxes accurately). “Undocumented” is a more accurate term, as it simply means an immigrant’s status is not documented by immigration authorities.

IMMIGRANTS IN TEXAS AND THE UNITED STATES

It is estimated that there are 11 million undocumented immigrants living in the US today.^{vii} These immigrants represent roughly 4% of all people living in the US, and 5% of the overall labor force.^{viii} Texas, which has the second largest undocumented population behind California, is home to 15% of all undocumented immigrants—7% of its total population.^{ix}

Undocumented immigrants in Texas are more likely to participate in the labor force than their US-born counterparts. The Pew Hispanic Research Center estimates that undocumented residents make up 9% of the Texas workforce, larger than their share of the state’s population.^x Despite their large employment share in Texas, undocumented workers earn less than 2% of all employee compensation due to their overrepresentation in the lowest-paid occupations.^{xi}

Although immigrant workers are critical for the state’s economy, they often labor in low-wage and dangerous jobs. A 2005 study found that immigrants are significantly more likely to be employed in riskier, lower-paying occupations than US-born workers.^{xii} In fact, 26% of foreign-born construction workers are estimated to be laborers, while only 11% of US-born workers are.^{xiii} US-born workers are most heavily concentrated in managerial positions, rather than performing direct labor, within the construction industry.^{xiv}

Industries like agriculture, construction, and services disproportionately employ undocumented workers, and depend on their labor to meet demands for goods and services both within the state and around the world.^{xv} The jobs in these industries cannot be “off-shored”—they must be filled with a domestic labor force for production to occur. The immigrant workforce is critical to the health of these industries. For example, Georgia’s House Bill 87, designed to stop immigrants from entering the state, caused severe labor shortages in the agricultural sector. Within nine months of the bill’s passage, the agricultural industry suffered at least \$1.3 billion in losses because undocumented immigrants fled the state.^{xvi}

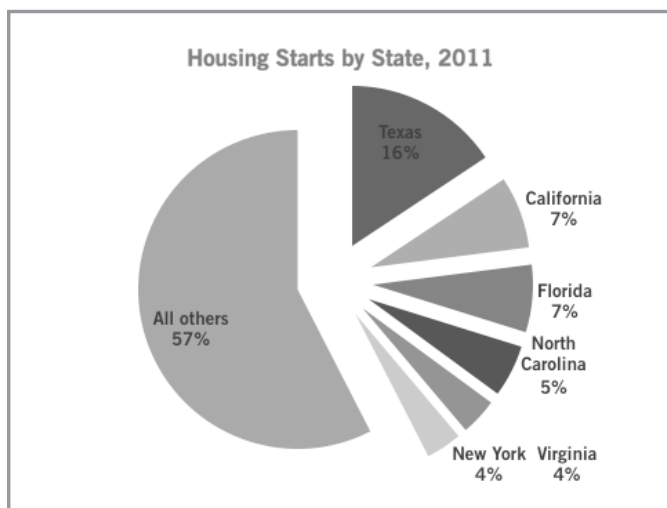
Undocumented workers do not only contribute to the economy through the labor they provide. In 2010, undocumented immigrants nationwide paid \$11.2 billion in taxes. In Texas alone, they paid \$1.6 billion in property and sales taxes.^{xvii} The IRS estimates that about three-quarters of undocumented immigrants pay their taxes, helping to keep the social security fund solvent by contributing as much as \$7 billion per year to the fund.

^{xviii} The Texas comptroller’s office estimates that without the economic contribution of undocumented immigrants,

the state would have lost nearly \$20 billion to its Gross State Product.^{xix} The comptroller's study also found that undocumented immigrants contribute more to state revenues than they use in services, providing a net benefit to the state.^{xx} The demands for goods and services generated by this population further stimulate the economy, creating jobs in consumer-driven industries.

TEXAS CONSTRUCTION IMPACTS THE NATION

Between 1997 and 2007 the Texas construction industry grew at an average rate of 7.6% per year to meet burgeoning housing, infrastructure, and industry needs.^{xxi} By 2006, a high point for Texas construction, the industry accounted for 5.3% of the state's economy, making construction one of the most important industries in Texas.^{xxii} Texas single-handedly accounted for 16% of all new housing construction permits in the US in 2011, more than both Florida and California combined.^{xxiii} Construction accounts for one out of every \$20 dollars generated by the Texas economy and over 10% of all construction output in the US.^{xxiv} This growth in recent decades has been built by an increasingly immigrant labor force.



The national construction industry also depends on immigrant labor to meet the needs of a growing economy and population. Nationally, nearly 7 million workers labor in the construction of buildings.^{xxv}

The Pew Hispanic Center estimates that 14% of all construction workers are undocumented, though the actual number varies significantly by region and trade.

^{xxvi} For example, about 30% of insulation workers, roofers, and drywall installers are undocumented.

^{xxvii} These trades typically contain the highest density of undocumented workers. Given these estimates, it follows that at least 1 million construction workers in the US are undocumented.

CONCLUSION

Undocumented construction workers play a vital role in building Texas and the United States, yet many remain excluded from the construction industry's formal labor market. Comprehensive immigration reform that protects the rights of workers and honest businesses can halt the "race to the bottom" that now characterizes the construction industry. By bringing the current workforce out of the shadows, opening access to formal training, and improving the employment standards across the whole industry, comprehensive immigration reform has the power to transform the national construction industry and improve outcomes for workers, businesses, and local economies across the country.

WORKING CONDITIONS



***“THERE ARE MANY IMMIGRANTS IN THIS COUNTRY, AND WE COME WITH ONE PURPOSE:
TO WORK AND TO TAKE CARE OF OUR FAMILIES.”—HOUSTON DRYWALL WORKER***

The information presented in this section is the result of 1,194 individual worker surveys conducted at randomly selected construction sites in Austin, Dallas, El Paso, Houston, and San Antonio, as well as 35 in-depth interviews with workers, employers, and industry leaders. The data present the implications of failed immigration policies on workers and business.

Results showed undocumented immigrants comprise 50% of Texas construction workers. Though undocumented workers are vital to the industry, they were more likely to face workplace abuses in the construction industry, including:

> EARNING POVERTY LEVEL WAGES. Undocumented workers, on average, earn \$3.12 less per hour than workers who are citizens, and were the only workers found to be earning wages below the legal minimum wage.

> NOT BEING PAID FOR THEIR WORK. Though wage theft occurs throughout the industry, it is significantly more common among undocumented workers. While one in ten US-born workers have experienced wage theft, one in four undocumented workers have.

> LABORING UNDER DANGEROUS WORKING CONDITIONS. Undocumented workers were 21% more likely to be required to bring their own drinking water to work, in violation of federal law. They were also 18% less likely to be granted rest breaks during the day, despite working outside in temperatures exceeding 100 degrees during the summer. They were also 33% less likely to have received basic safety training.

> RETALIATION FOR SPEAKING OUT AGAINST POOR WORKING CONDITIONS. Undocumented workers were twice as likely as US-born workers to be threatened with loss of their job or other forms of retaliation when exercising their workplace rights.

> WORKING FOR LESS. Researchers found that 50% of construction workers are undocumented, and another 20% are naturalized citizens, legal residents, or visa workers. In total, 70% of the workforce is foreign-born. Despite their importance to the industry's vitality, undocumented workers receive lower pay, are more likely to experience workplace abuses, and are less likely to have received safety or skills training than their native-born counterparts.

Further, immigrants are needed to fill skills gaps in the construction industry. Undocumented immigrants qualify for few construction training programs, giving them little opportunity to advance in the industry. Business leaders are left with a limited pool of skilled craftsmen, and with limited options to invest in the current workforce to build quality projects.

LOW PAY

Researchers found that the average hourly wage of construction workers was \$12.24 per hour. US-born workers, however, earned \$3.12 more per hour than undocumented workers (see table 1). US-born workers were significantly more likely to earn a living wage than their undocumented counterparts, who were most likely to earn poverty-level wages.

TABLE 1		
Workers earning various wage levels		
	US-BORN	UNDOCUMENTED
Average hourly wage	\$14.22	\$11.10
Earning poverty-level wage (<\$11.08/hour)	43%	61%
Earning low wage (\$11.09–13.99/hour)	15%	25%
Earning a living wage (>\$14.00/hour)	42%	14%
Source: Build a Better Texas survey data		



WORKPLACE ABUSES

“LOTS OF PEOPLE THAT WORK IN CONSTRUCTION AT ONE POINT HAVE HAD THEIR WAGES STOLEN. THE PROBLEM IS SO SERIOUS BECAUSE THE STATE OF TEXAS DOESN’T HAVE GOOD ENFORCEMENT IN TERMS OF LABOR. IT’S VERY EASY FOR THE BOSS TO STEAL THE SALARY OF HIS EMPLOYEES, ESPECIALLY IF YOU’RE AN IMMIGRANT”—EL PASO CARPENTER

TABLE 2		
Workers experiencing various workplace abuses		
	<i>US-BORN</i>	<i>UNDOCUMENTED</i>
Didn’t receive rest breaks	28%	46%
Required to bring his/her own drinking water	29%	50%
Experienced wage theft	11%	25%
Experienced retaliation for trying to improve working conditions	7%	14%
Source: Build a Better Texas survey data		

Undocumented workers labor under dangerous working conditions for low pay, and they are also more likely than US-born workers to suffer from a number of workplace abuses (see table 2). Undocumented workers were 21% more likely to be required to bring their own drinking water or go without, in violation of OSHA regulation, than US-born workers. They were 18% less likely to receive rest breaks during the workday. They were also 2.5 times more likely to have suffered wage theft, and twice as likely to experience retaliation for trying to improve their working conditions.¹

“THE SUPERVISORS ARE QUICK TO SAY WE DON’T WANT TO WORK IF THEY SEE US TAKING A BREAK, EVEN WHEN IT’S REALLY HOT OUT. WE ARE SCARED BECAUSE THEY THINK CAN FIRE US BECAUSE WE’RE UNDOCUMENTED.”—AUSTIN CONCRETE MASON

Wage theft and other workplace abuses are much more likely to occur among undocumented workers than U.S. citizens. Many workers are afraid to come forward to report illegal working conditions for fear of deportation either at the hands of their employer or a government agency charged with enforcing employment law. In order to curb workplace abuses, workers need to be able to come forward and report unscrupulous employers without fear.

¹ Wage theft occurs when an employer refuses to pay his or her employee for services performed, and includes paying below the legal minimum wage of \$7.25 per hour. Wage theft is a violation of state and federal employment law, and employers who engage in wage theft may face criminal charges punishable by prison time. Retaliation occurs when a worker attempts to correct workplace abuses or poor working conditions and an employer takes some measure against that worker to induce fear or punish him/her. Retaliation includes physical assault or threats of physical violence; verbal threats, including threatening to call immigration or fire the worker; and firing the worker or cutting his/her hours as a punishment, among other abusive treatment.

EMPLOYER THREATENS WORKERS WITH DEPORTATION

In 2012, a subcontractor hired Miguel and Dolores, a husband and wife from El Salvador, to do construction cleaning work at a commercial construction site in Austin. The workers were promised \$100 dollars per day each for their labor, and worked on the site for two weeks. Their employer refused to pay them for any of the work they had performed, which totaled \$2,000 between them. The couple came to WDP to file a wage claim.

When Miguel and Dolores' employer discovered that they had taken action to recover their wages, he told Miguel, "If you continue with this case, I'm going to call immigration. You're undocumented, and it's not difficult to report you." The couple persisted with their case, and shortly after Miguel had received the threat, he was detained by immigration officials and then deported to El Salvador.

Although the case is still open, Dolores is afraid to move forward because of what happened to her husband. "I'm scared to try and recover my wages because my husband was deported, and I'm afraid [our employer] will do the same thing to me." For workplaces to be safe and fair, and for responsible businesses to have a fair chance to compete, workers need to know they can report poor working conditions without risk of deportation or any other form of retaliation.

DANGEROUS WORKPLACES

"WORKING CONSTRUCTION IS STRESSFUL BECAUSE I AM CONSTANTLY WONDERING, 'WHAT IF I GET HURT? HOW WILL I PAY FOR IT?' NOT EVERYBODY KNOWS HOW TO WORK SAFELY, SO YOU MIGHT GET HURT EVEN WHEN YOU'RE BEING CAREFUL. I'VE SEEN A LOT OF PEOPLE GET REALLY HURT WORKING IN TEXAS."

—AUSTIN CARPENTER

SAFETY TRAINING

The Occupational Safety and Health Administration (OSHA) recommends that all construction workers complete a basic ten-hour safety course that covers hazards commonly seen on construction sites. While researchers found that 60% of construction workers reported had not received a basic health and safety training, workers who reported that they were undocumented were much less likely to have received one than US-born workers (see table 3).

² Names have been changed because the case is still pending.

TABLE 3	
Workers who have not received safety training	
US-born	40%
Foreign born, documented status	55%
Undocumented	73%
Source: Build a Better Texas survey data	

A disproportionate number of immigrant workers die working in the construction industry, showing that safety training for this group is especially necessary if workplace accidents are to be prevented. Mexican-born workers were found to be four times more likely to be killed working in construction as US-born workers, and their workplace injuries are less likely to be reported when they occur.^{xxxiii}

WORKERS' COMPENSATION COVERAGE

Among all construction workers, 40% reported being covered by a workers' compensation policy, although US-born workers were 36% more likely to have coverage (see table 4). Workers' compensation coverage encourages employers to maintain safer worksites, as providers often reduce premiums due to an employer's good safety record and safety training programs he or she provides.^{xxi}

TABLE 4	
Workers covered by workers' compensation	
US-born	65%
Foreign born, documented status	40%
Undocumented	29%
Source: Build a Better Texas survey data	

ACCESS TO RESOURCES

Undocumented construction workers in Texas face numerous barriers in attempting to improve their working conditions. Fear of retaliation or deportation keep them from coming forward to report abuses, but workers also face a significant lack of access to the employee protection resources that do exist (see table 5). A Dallas ironworker explained:

"There are no unions or any type of organizations that support workers, especially [immigrant workers]. There's no information in Spanish. There's nobody to go and tell them they have rights on the job, they've got rights at work."

IMMIGRATION AND WORKFORCE DEVELOPMENT CHALLENGES

Despite the presence of the large undocumented workforce within the construction industry, a labor shortage of two million workers is expected in the construction industry nationally by 2017.^{xxx} Immigrants are entering the construction workforce at a faster rate than other industries.^{xxxii} These workers are younger, less likely to speak English, and less likely to have had formal training than past generations of construction workers.^{xxxii}

Construction is skilled work, and training is organized among nearly 500 different specialty trades such as carpentry, electrical, concrete, and plumbing. Department of Labor (DOL)-accredited programs require that classroom instruction be coupled with on-the-job training. Formal training programs are usually offered through union apprenticeship programs, community colleges, private vocational or technical schools, military programs, or construction associations, many of which are out of reach for undocumented workers. These programs often allow workers to increase their wages as they increase their skill level, providing a career pathway to workers who complete them.

TABLE 5		
Knowledge of worker protection agencies		
	<i>US-BORN</i>	<i>UNDOCUMENTED</i>
Has not heard of Occupational Safety and Health Administration (OSHA)	16%	24%
Has not heard of Department of Labor (DOL)	30%	77%
Has not heard of Workers' Compensation Division, Texas Department of Insurance (TDI)	33%	87%
Has not heard of Texas Workforce Commission (TWC)	21%	91%
Has not heard of the National Labor Relations Board (NLRB)	72%	96%
Source: Build a Better Texas survey data		

Construction is skilled work, and training is organized among nearly 500 different specialty trades such as carpentry, electrical, concrete, and plumbing. Department of Labor (DOL)–accredited programs require that classroom instruction be coupled with on–the–job training. Formal training programs are usually offered through union apprenticeship programs, community colleges, private vocational or technical schools, military programs, or construction associations, many of which are out of reach for undocumented workers. These programs often allow workers to increase their wages as they increase their skill level, providing a career pathway to workers who complete them.

Language barriers, lack of formal education, and legal status exclude large numbers of Texas’ construction workers from receiving the formal training they need. While only 11% of undocumented workers reported receiving formal training, 32% of US–born workers had (see table 6). While many employers face a severe shortage of skilled workers, little has been done to allow access for the hundreds of thousands of undocumented workers already laboring in the industry to formal skills training.



TABLE 6 Barriers to receiving formal training		
	<i>US-BORN</i>	<i>UNDOCUMENTED</i>
Have no formal training	68%	89%
Have not completed high school or GED	16%	79%
Speak little or no English	6%	70%
Source: Build a Better Texas survey data		

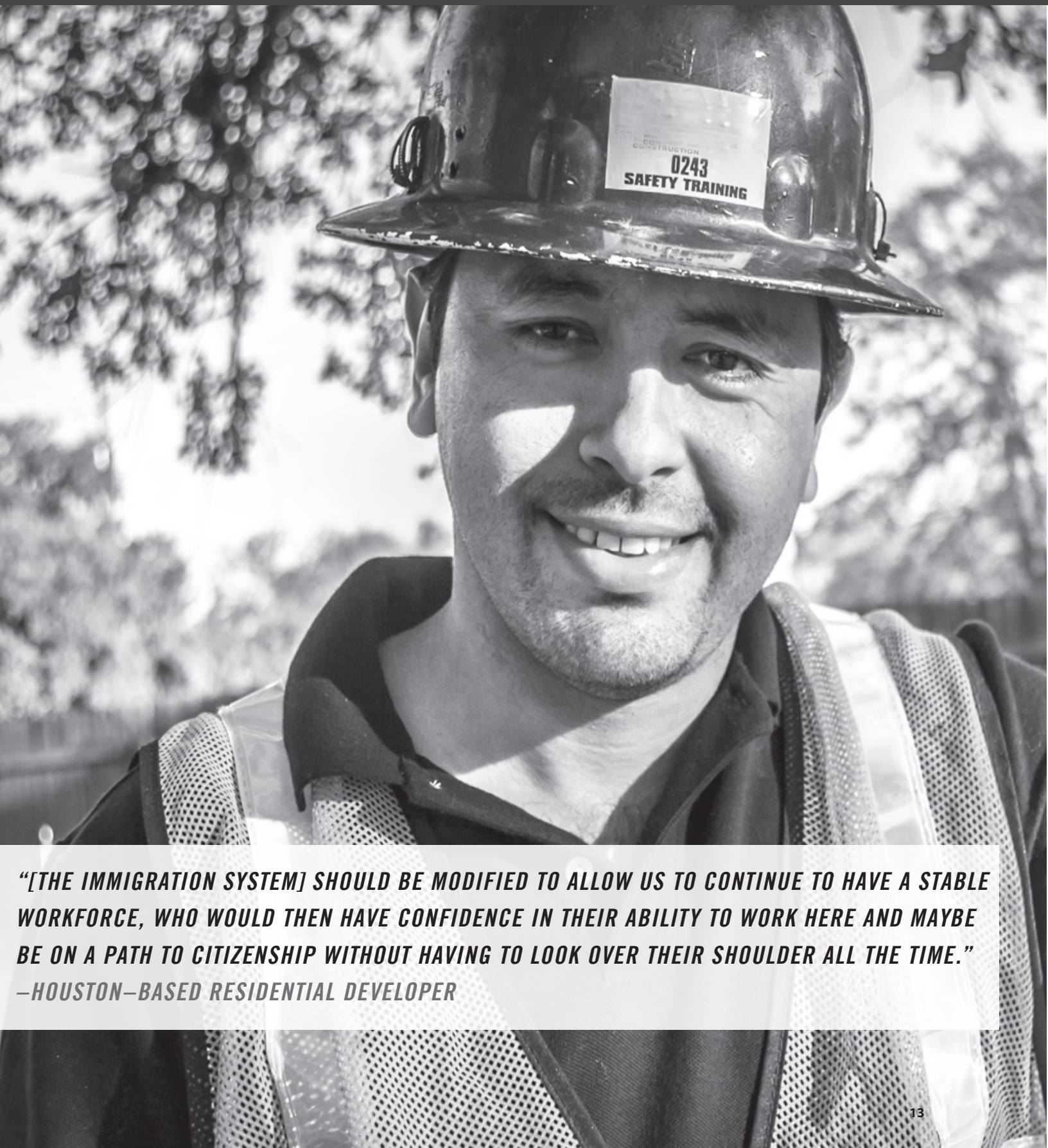
Low wages, dangerous conditions, few benefits, and lack of training make construction a less desirable career path than other sectors. Many industry leaders agree that Texas needs to act quickly to increase the level of skill that workers bring to construction sites. Jane Hanna, president of the Construction Education Foundation, recently testified before the Senate Committee on Business and Commerce that Texas is facing a skilled worker shortage because too few workers have the requisite qualifications to fill construction job openings.^{xxxxiii} There are hundreds of thousands of undocumented workers, cut off from access to formal training, who could meet the needs of the state as it grows. These workers often have decades of experience and informal training that could be readily enhanced with formal training.

Immigration reform that provides a pathway to legal status is necessary to raise standards in the industry by ensuring that more workers have access to formal training that lets them develop a career in the industry. Reform that addresses training issues will also create a better skilled labor pool for employers and help ensure high-quality products for consumers.

CONCLUSION

Half of Texas construction workers are estimated to be undocumented, demonstrating the important contribution this labor force makes to the growth of the state. Nationally, it is estimated that 14% of construction workers are undocumented, and this segment of the workforce is growing. Undocumented workers have fewer workplace protections, fewer opportunities to develop careers in the industry, and face dangerous, illegal working conditions. Comprehensive immigration reform that gives undocumented workers a pathway to citizenship and allows them to legitimately participate in the labor force is necessary to prevent working conditions from worsening in Texas and the rest of the nation.

INDUSTRY PERSPECTIVES



“[THE IMMIGRATION SYSTEM] SHOULD BE MODIFIED TO ALLOW US TO CONTINUE TO HAVE A STABLE WORKFORCE, WHO WOULD THEN HAVE CONFIDENCE IN THEIR ABILITY TO WORK HERE AND MAYBE BE ON A PATH TO CITIZENSHIP WITHOUT HAVING TO LOOK OVER THEIR SHOULDER ALL THE TIME.”

—HOUSTON-BASED RESIDENTIAL DEVELOPER

Enforcement-only immigration policies—carried out against both workers and employers – have not been successful in reducing the number of immigrants present and working in the US. These failed policies hurt businesses and often force employers to choose between following the law and remaining competitive. During interviews with construction project owners, general

> CONSTRUCTION EMPLOYERS NEED IMMIGRANT WORKERS. Many employers cited a looming skilled labor shortage as one of the greatest challenges facing the Texas construction industry, and discussed the difficulty they face in filling the employment gap.

> TEXAS CONSTRUCTION IS IN A STATE OF CRISIS. If major changes aren't made within the construction industry and with regards to immigration policy, the industry will face long-term sustainability issues that limit its ability to prosper. Immigration reform is necessary to ensure the construction industry is able to keep pace with Texas' economic boom.

> CURRENT IMMIGRATION POLICY ENCOURAGES CHEATING. Honest construction companies find it increasingly difficult to abide by the law when they are prevented from hiring half of the existing workforce. Honest businesses cannot compete in the current environment.

> IMMIGRATION REFORM CAN HELP LEVEL THE PLAYING FIELD. Unscrupulous employers may intentionally hire undocumented workers in order to break other employment laws, including cheating on payroll taxes. Immigration reform will help reward honest businesses that follow the law.

A SKILLED LABOR SHORTAGE

“MY OPINION ON YOUNG WORKERS, CRAFTSMEN COMING UP: THERE AREN'T ANY. I DON'T SEE TODAY'S KIDS WANTING TO BE CRAFTSMEN AND BUILD HOMES. I JUST FEEL LIKE IN TEN YEARS, IT'S GOING TO BE REAL TOUGH TO FIND QUALITY CARPENTERS, AND QUALITY TILE LAYERS, AND THINGS LIKE THAT.”

—AUSTIN-BASED RESIDENTIAL CONTRACTOR

According to a report by the DOL, “A *Wall Street Journal Almanac* poll of high school-aged vocational technology students ranked ‘construction worker’ 248th out of 250 possible occupation choices, ahead of ‘dancer’ and ‘lumberjack,’ and just edged out by ‘cowboy.’^{xxxv} Young workers receiving career training in or after high school are not rushing to fill the gaps created by retiring baby boomers. One Austin-based residential contractor noted, “There’s a bunch of trades that have no benefits—typically carpentry jobs and tile jobs and sheet rock—and so it’s hard to attract [qualified] people because there are no benefits.”

BUSINESSES DEMAND IMMIGRATION REFORM

In Texas, businesses that depend on immigrant labor have been demanding significant reforms to federal immigration policy. The Associated Builders and Contractors, the Texas Construction Association, and the American Subcontractors Association are among the numerous industry groups supporting comprehensive immigration reform that “recognizes the need for continued employment of the current immigrant workforce and a program to meet future employment needs.”^{xxxiv}

Current immigration policy is failing the construction industry. Businesses must be able to legally hire the hardworking men and women they need to address the labor shortage and the aging construction workforce. Immigration policy must also allow responsible businesses to fairly compete against those who abuse the current broken system.



As the undocumented workforce has grown, the quality of construction jobs has declined. Employers have little incentive to invest in the workers they cannot legally hire, and a workforce that is increasingly susceptible to retaliation or fear of deportation means illegal working conditions often go unchecked. Construction companies have seen that as the quality of construction jobs has plummeted, it has become more difficult for them to recruit talented new workers to jobs that don't lead to a career path. A residential developer based in Houston described how immigration policy affects the consistency of the workforce:

“I don’t know whether the guys building my houses are citizens or not citizens. There is pressure on those guys from an immigration standpoint, and they may be in one month and out another month, and that avid flow of the workforce is a challenge...It’s not just a big issue for us; it’s a big issue for a lot of industries,

PAYROLL FRAUD: REWARDING COMPANIES THAT BREAK THE LAW

“[IMMIGRATION REFORM] IS HOW YOU FIX SOME OF THE GUYS CUTTING CORNERS BECAUSE THAT’S HOW THEY ARE DOING IT. THEY ARE USING ILLEGAL WORKERS.”—NATIONAL-LEVEL PLUMBING AND A/C SUBCONTRACTOR

Employers are less likely to provide safe workplaces for undocumented workers, more likely to fail to pay them for their work, and more likely to retaliate against them if they speak up about poor working conditions. An Austin-based general contractor explained that wage theft was much more common among undocumented workers. “Immigrant workers don’t know what their rights are here and they’re afraid that if they say anything that they will be deported.”

While not all employers of undocumented workers perpetrate workplace abuses, those employers who do violate safety and labor laws often are able to lower their costs and appear more competitive than businesses that follow workplace law. Project owners and general contractors, often competing for the lowest bid, are encouraged to turn a blind eye, allowing poor conditions to proliferate.

SUBCONTRACTING: HOW BUSINESS IS DONE

Central to the structure of the construction industry is the use of subcontracting. While general contractors and homebuilders are responsible for overseeing the completion of a construction project, they hire subcontractors who focus in a specific construction trade, such as carpentry or electrical work, to perform the specialized aspects of the project. General contractors estimated that 90–95% of workers on their worksites were employed by their subcontractors. While subcontracting is essential to the construction industry, it can also be used to avoid responsibility for poor working conditions. Stan Marek, owner of Houston-based Marek Brothers Systems, explained that with the practice of subcontracting, “You don’t have to know if [a worker] is legal; you don’t have to know anything. You give that responsibility away.”

BAD FOR EMPLOYERS AND WORKERS

The Build a Better Texas survey revealed the widespread practice of payroll fraud, which occurs when an employer pays a worker in cash without withholding taxes or misclassifies him or her as an independent contractor. When employers engage in payroll fraud, they avoid paying federal payroll and state unemployment taxes, and they strip workers of their rights. Further, when some employers break payroll laws, they create an unfair playing field where honest businesses can't compete.

According to many construction employers, the practice of payroll fraud is one of the biggest challenges facing the construction industry. While 41% of workers industry-wide are estimated to be victims of payroll fraud, it is much more common among undocumented workers. Among US-born workers, an estimated 17% are improperly paid as independent contractors or otherwise kept off the books, but among undocumented workers, 55% are paid improperly (see table 7).

TABLE 7	
Workers experiencing payroll fraud	
US-born	17%
Foreign born, documented status	37%
Undocumented	55%
Source: Build a Better Texas survey data	

BAD FOR TEXAS AND THE NATION

“THE GENERAL CONTRACTORS AND OWNERS STICK THEIR HEAD IN THE SAND AND PLAY LIKE [HIRING UNDOCUMENTED WORKERS] IS NOT HAPPENING. BUT WE’RE TRYING TO EXPOSE IT MORE AND WE’RE TRYING TO POINT OUT HOW MANY BILLIONS OF DOLLARS WE’RE LOSING, SOCIAL SECURITY, MILLIONS OF DOLLARS IN UNEMPLOYMENT INSURANCE AND ALL THE ACCIDENTS WE’RE PAYING FOR IN OUR EMERGENCY ROOMS.”—STAN MAREK, MAREK BROTHERS SYSTEMS

Build a Better Texas researchers estimate that there are more than 300,000 employees working in the construction of buildings in Texas whose employers illegally fail to report them as employees.^{XXXXV} These improperly classified Texas construction workers earn at least \$7.05 billion in wages that go unreported each year, resulting in at least \$1.06 billion in lost federal income taxes. Lost unemployment insurance taxes alone due to payroll fraud in the industry stand at an estimated \$54.5 million each year.

Unemployment taxes should be paid by employers for each individual employee and are not the responsibility of workers. Federal income taxes, which should be shared between workers and their employers, should be withheld from employees' paychecks throughout the year and paid through their employer's contribution. Many workers who attempt to pay their taxes upon discovering they have been misclassified find that they are unable to do so because the tax burden is too large for a low-wage worker to pay.

TABLE 8	
The impact of payroll fraud	
Construction employees who go unreported on payrolls each year	308,793
Lost federal income taxes	\$1.06 billion
Lost state unemployment insurance taxes	\$54.5 million
<i>Source: Build a Better Texas survey data</i>	

CONCLUSION

Key to curtailing cheating is an immigration policy that brings workers out of the informal economy and creates a system through which employers can hire the workers they need legally. Immigration reform that protects workers will help level the playing field for honest businesses that find themselves competing in a market that increasingly rewards law-breakers. Employers need an immigration system that allows them to legally hire the workers they need so they can focus on managing their businesses, not managing immigration policy.

POLICY RECOMENDATIONS

The Texas construction industry is highly dependent on a foreign-born workforce that is largely undocumented. Overall the US construction industry is increasingly dependent on a foreign born and undocumented workforce, though they comprise a significant proportion of the workforce. Policymakers at the federal level must enact immigration reform. Construction companies must be able to hire their workforce legally to ensure that all companies are operating on a level playing field. Furthermore, workers must be protected to curb workplace abuses and allow workers to feel they can step forward and report dangerous and illegal working conditions. It's time to build a sensible immigration policy that benefits workers, businesses, and our economy.

> **KEEP FAMILIES TOGETHER.** Too many families have been separated by our broken immigration system. Comprehensive immigration reform must include provisions to guarantee families can stay together without fear that their loved ones may be deported. This protection will limit an unscrupulous employer's ability to intimidate a worker exercising his or her workplace rights.

> **HONOR HARD WORK.** Our nation has long valued and rewarded hard work. However, our current immigration system fails millions of hardworking people and businesses every day. Policymakers must ensure that immigration policy protects the employment rights of undocumented workers, guaranteeing that they will not face deportation if they come forward to report workplace abuses and giving them the opportunity to earn a pathway to citizenship. These policies honor the hard work of those doing some of the most difficult, dangerous, and necessary jobs in our nation.

> **REWARD HONEST BUSINESSES.** Current immigration policy forces employers to break the law and turn a blind eye to illegal practices, or face unfair competition. In industries that depend on undocumented labor, companies must be able to hire their workforce legally to ensure that all companies are operating on a level playing field. Guest worker programs reward unscrupulous employers; a worker's legal status should not be dependent on employment with a specific employer.

> **CREATE A SYSTEM THAT WORKS FOR THE INDUSTRY.** Providing all undocumented workers with a pathway to citizenship is necessary to ensure that the industry can continue to employ its current workforce. Because of rampant misclassification and the fact that many workers change employers frequently, it is necessary that any reform employ a flexible standard of proof for workers who have been living and working in the US. All workers who are free of serious convictions and can demonstrate they are self-sustaining should qualify for legal status as they build an employment record in the mainstream economy.

“YOU MAY NOT BE HIRING [UNDOCUMENTED] WORKERS, BUT YOUR COMPETITION IS. THE SYSTEM IS CLEARLY BROKEN AND WE’VE GOT TO FIX IT...[A LOT OF PEOPLE] ARE AGAINST AMNESTY, BUT I MEAN, THEY’RE HERE. LOT OF THE BLUE-COLLAR WORK—WHETHER IT’S FARM WORKERS OR CONSTRUCTION WORKERS—IS DONE BY IMMIGRANT WORKERS.”
—NATIONAL-LEVEL COMMERCIAL SUBCONTRACTOR



WHY H2B VISA PROGRAMS DON’T WORK

In 2010, three concrete workers came to Workers Defense Project (WDP) seeking help to recover wages their employer had failed to pay them for their last two weeks of work. The workers had come to the US from Mexico on H-2B visas, which allow workers to come to the US seasonally and remain as long as they are working for the employer who petitioned for them. The workers had signed contracts with their employer that had promised \$15 per hour, but when they arrived were told they would be making \$8 per hour instead. After two months, their employer stopped paying them altogether.

WDP referred the cases to the Department of Labor’s Wage and Hour division, which is responsible for resolving wage claim cases. Patricia Zavala, Workplace Justice Program Coordinator at WDP remembered the case. “By the time Wage and Hour had finally gotten the case into the hands of an investigator, three months later, the workers had already gone back to their home country.” Patricia explained some of the problems with the visa system:

“You can bring workers here, exploit them, and no one can effectively do anything about it. The enforcement mechanisms that exist to protect workers’ rights are oftentimes slow and bureaucratic, which leaves workers that are here temporarily effectively unprotected, giving an unfair advantage to unscrupulous employers while punishing responsible businesses.”

WORSE, THE VISA SYSTEM CAN ACT AS A METHOD OF INTIMIDATION:

“If you’re a visa worker and your rights are being violated, you can’t speak up to your employer. If they fire you, you’ll have to leave because you lose your authorization to work. The visa program silences workers who are experiencing workplace abuses because whether they can stay in the country is dependent on the person perpetuating the abuse. Visas like the H-2B enable employers to break the law with essentially no consequences.”

METHODOLOGY

Build a Better Nation was made possible by the efforts of a team of researchers from Workers Defense Project, faculty from the University of Texas at Austin, and other university partners. Build a Better Nation examines the intersection of a broken immigration system and the Texas construction industry by using primary and secondary data sources. Incorporating the perspectives of workers and businesses, this study seeks to build an understanding of how the industry functions with regard to the broader impacts of current employment practices.

Data on the industry's economic impact, employment, and workforce demographics were gathered from secondary sources, including the US Census Bureau, the US Department of Labor (DOL), and the Texas Workforce Commission, among others. Primary data were collected from surveys with construction workers and in-depth interviews with workers and employers, which capture conditions not documented by state and federal agencies.

From May to July of 2012, researchers surveyed a total of 1,194 construction workers in Austin, Dallas, El Paso, Houston, and San Antonio about wages, benefits, training, and workplace health and safety. Together, these regions employ roughly 70% of Texas' construction workforce, according to data from the US Census Bureau. To ensure a representative sample of construction workers, researchers randomly selected construction sites from lists available through each city's construction permitting office and other publicly available sources and conducted surveys with workers at their worksites. Eligible construction sites were limited to new, vertical construction projects. Trained surveyor teams conducted oral surveys with workers in their native languages.

Survey respondents represent working conditions on a diverse range of sites in terms of size value, ownership, and final use. Each survey was assigned a proportional weight based on the city in which it was given to account for differences in the size of the construction workforces in each city and to give each response equal weight in describing the overall population of workers.

From August to November 2012, researchers interviewed 20 construction workers and 15 construction project developers, general contractors, and subcontractors to obtain a better understanding of the working conditions and company practices within the industry. Interviewees were asked to describe their experiences and their perspectives on the challenges facing the Texas construction industry.

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BUILD A BETTER NATION



A CASE FOR COMPREHENSIVE IMMIGRATION REFORM

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