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Comprehensive Immigration Reform and U.S. Labor Markets: Dilemmas for Progressive Labor

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Ordinarily, legislation supported by the U.S. Chamber of Commerce, the National Restaurant Association, Silicon Valley moguls, and the editorial page of the *Wall Street Journal* is not supported by people who identify with the American left. But such is the case with Comprehensive Immigration Reform (CIR). In a complex deal between interest groups that ordinarily oppose each other, CIR was first pushed by the administration of George W. Bush. Now it is a priority for President Barack Obama, as it is for congressional Democrats, some congressional Republicans, a host of business lobbies, and a rainbow of Latino, civil rights, labor, and religious organizations.

CIR's most well-known feature is a "path to legalization" for U.S. residents who overstayed their visas or entered the country without permission. The package has two other features that, for anyone on the left, should be controversial. First, at the insistence of corporate employers, the legislation includes much higher quotas for guest workers ranging from field hands to hotel workers to computer programmers. Second, at the insistence of Republicans, CIR includes huge new outlays for border enforcement. Both are included in what passed the Senate in mid-2013 as S.744, then stalled in the Tea Party–dominated House of Representatives.

No one can predict exactly how many additional immigrants will be produced by these changes. According to the Congressional Budget Office, in addition to the roughly one million future citizens admitted legally each

year at present, S.744 would add sixteen million voting-age citizens by 2033.¹ If so, by 2033, some thirty-five million new citizens will be working, looking for work or producing new workers, not to mention higher numbers of guest workers who, legally speaking, are not immigrants because they are supposed to go home again.

Where are all these people going to find jobs? How will their numbers affect our already large population of unemployed workers? These are questions missing from the immigrant-rights advocacy I have seen. The U.S. jobs crisis does not come up in arguments for more generous immigration policies. We have all heard how the U.S. economy is growing again, and how corporate profits are at record highs, yet monthly job growth continues to be anemic. Five years into our current recovery, some twenty million people remain unemployed or underemployed.

If you believe American capitalism is a rising tide that floats all boats, sooner or later there will be employment for everyone who wants it. But no one on the American left believes this. Worse, we are seeing more signs that job-poor economic growth is the new normal. Offshoring has sent millions of manufacturing jobs to cheaper labor markets abroad, and now it is sending back-office jobs as well.

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Computerization is killing off jobs faster than it is creating them. Robotics could kill them off even faster.

Older males are dropping out of the U.S. labor force at an unprecedented rate. Worse, half the Americans who are unemployed and underemployed belong to “generation jobless,” the 18-to-34 cohort. Despite the sunny moniker of the Millennials, their participation in the labor force is sinking to record lows. The standard response from Democrats and Republicans is that jobless Americans should go to college, and millions of us are running up our college loans to do so. Yet the number of jobs requiring college-level credentials is far lower than the number of new graduates. Forty-two percent of recent college graduates are in jobs that require less than a four-year degree.² Of the new jobs created by the recovery, 58 percent are in low-wage sectors.³

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Immigrants are not to blame for how U.S. elites have deunionized, deregulated, and outsourced the economy at the expense of U.S. workers. But how will a labor market like this provide employment for thirty-five million new immigrants, their offspring, and higher numbers of guest workers? What do these flows portend for the immigrant and native-born workers who are already here? Let us look at both questions in terms of a trend that deserves close attention—informalization.

The informal sector refers to employment kept off the books to evade taxes and labor standards. Richard Vogel analyzes it as a survival mode for workers who have been cast off by globalization and its cost-cutting strategies. But as he recognizes, the informal sector also becomes a mode to exploit these same workers. So many informal practices extend so deeply into the formal sector—the part of the economy ostensibly conducted in full compliance with the law—that sociologists and economists no longer presume a firm demarcation between informal and formal sectors.⁴ So informality should be seen less as a discrete sector and more

as a process rolling forward in many parts of the economy. The process takes many different forms and can be analyzed in terms of precarity, wage theft, and deregulation.⁵ But for this occasion, let us look at it in terms of the proliferation of subcontracting chains.

In a subcontracting chain, an employer subcontracts the least profitable or highest-risk components of its labor process to subcontractors, who delegate these to a lower level of subcontractors, until there is a chain of responsibilities that can be shaved or trimmed to increase profits. It is at the bottom of the chain that labor standards are most likely to be “informalized,” that is, violated.

So think of subcontracting as informalization from above. It stems from the relentless drive for lower labor costs. But costs cannot be lowered unless there are workers sufficiently desperate to accept jobs for lower pay than before. The easiest place to find such workers is a migration stream from a low-income to a high-income country. Why do immigrants accept conditions that other workers reject? Some are impelled by desperate circumstances in their countries of origin; others are merely frustrated by limited opportunities there. Whatever brought them to a high-income country, as soon as they face the far higher cost of living at this destination, they become desperate for a job.

So let us think of low-wage migration streams as informalization from below. The availability of migrants, and typically their oversupply in relation to the demand, makes it easier for employers to impose wages and conditions that keep them competitive in the global-wide quest for the cheapest possible labor. With this in mind, let us look at research on informalization in Texas, California, and New York, to see how high immigration flows have already affected the most vulnerable members of the workforce.

The Texas Construction Industry as a Bellwether of Informalization

Whatever shape informalization takes, it is easiest to observe where it has become customary and therefore legitimate behavior, with little need to disguise it. One such place is the Rio

Grande Valley in southeastern Texas. Here, Mexicans have long arrived in search of employment, become U.S. citizens, and developed their own distinctive economy within the U.S. economy. The result unfortunately has been “growth without prosperity” according to Chad Richardson and Rosalva Resendiz in their book *On the Edge of the Law*.

Informalization is a pervasive feature of this environment, encouraged by the many consumers as well as businesses eager to save money by hiring informal labor.⁶ Immigrant workers face shocking conditions not just in the Rio Grande Valley but in the state’s most prosperous metropolitan areas, as demonstrated by a study of the Texas construction industry. Some 60 percent of Texas construction workers are now Latino, and a large majority of these are foreign-born. U.S. Census data indicates that, of the 38,100 jobs added by the Texas construction industry from 2005 to 2010, only 1 percent paid above the poverty level. In a survey of 1,194 construction workers by the Workers Defense Project, more than half reported wages that kept them below the federally defined poverty level.

Over 40 percent of the same sample of workers were improperly classified as independent subcontractors. This is how their employers avoided contributing to social security, Medicare, and workers’ compensation, so it is an obvious index of informalization. Another index of informalization is how many workers are not being paid time-and-a-half, that is, 50 percent above the hourly wage for working more than forty hours per week. No less than half the Texas sample reported not being paid overtime, for working as long as eighty hours per week—one of many ways these workers reported high levels of wage theft.

“We hire someone from another company and they show us their checks and no taxes were taken out,” a Dallas executive told the Workers Defense Project. “We’ve got some very unscrupulous competition. I would say 20 percent of our competitors are underground: no taxes, no workers’ comp, no employment verification.” An industry lobbyist estimated that companies paying required taxes and benefits were being underbid 15 to 25 percent by companies which did not. The competitive advantage of cutting labor costs means that employers

who break the law become the pace-setter for others. And so, informalization has spread rapidly.⁷

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The victims of this process are not confined to Latino immigrants in the most conservative states. Informality is also expanding rapidly in states that are more friendly to organized labor.⁸ According to the National Employment Law Project, “domestic outsourcing”—cutting labor costs by hiring subcontractors to recruit workers—is spreading from its traditional locus in agriculture and day labor to construction, “janitorial and building services, home health care, warehousing and retail, poultry and meat processing, high-tech, delivery, trucking, home-based work, and the public sectors.”⁹

In a survey of 4,387 workers in Chicago, Los Angeles, and New York, NELP found “significant, pervasive violations of core workplace laws in many low-wage industries . . . These problems are not limited to the ‘underground economy’ or to a few ‘bad apples’; we found that both large and small employers violate the law.”

The most astonishing levels of labor code violations are experienced by workers who are paid by the day and in cash. Latinos make up a high percentage of these victims. In the 2008 sample studied by NELP, 63.4 percent were Latino, and the median hourly wage was \$8.02.¹⁰

Immigrant Ethnic Economy in Los Angeles and New York

In 1990, researchers for the Economic Roundtable found a shortfall of 100,000 between the number of Angelenos who claimed to be employed and the number of jobs reported by employers. This is a measure of off-the-books employment, and by 2001, it had widened to almost 500,000. “An employers’ crime wave” is how Ivan Light has phrased it. How were employers able to take so many jobs off the books? One reason is what Light calls supply-driven migration.

Supply-driven migration is driven by pressures in the sending country, not demand for labor in the receiving country. This is not what we have been led to believe by global restructuring theorists, who maintain that mass migration to high-income countries is caused by the labor demands of elites. Yet as a resident of southern California, Light saw migrant flows outstrip any conceivable demand for their labor. Wages fell, rents rose, and new immigrants from Mexico and Central America kept coming, many more than could find jobs in the formal sector. Among the reasons they kept coming, Light points out, were their kin and ethnic networks.

Networks provide entrée to what would otherwise be inaccessible labor markets. Networks also have quite a capacity for absorbing surplus labor through informal hiring. So instead of working for construction firms which comply with legal standards, for example, new immigrants work for subcontractors—typically conationals who make the lowest bids by flouting legal standards. Informal networks become an employment buffer that, in Light's words, "expands the carrying capacity otherwise imposed by mainstream employment, welfare benefits, and transfer payments." But not without cost to immigrants because informal jobs tend to pay less than formal ones.¹¹

In 2000, 54 percent of the Central American immigrants and 45 percent of the Mexican immigrants in Los Angeles worked in ethnic economies according to Tarry Hum. Of the Central Americans who arrived in Los Angeles in the 1990s, Hum found, 88 percent worked in the ethnic ownership economy. The more they worked for other immigrants, the lower their earnings were. They also suffered much higher rates of unemployment than other Angelenos.¹²

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Don't enclave economies protect immigrants? This is why "world cities" such as Miami and New York are supposed to be immigrant-friendly. When Alejandro Portes and Robert Bach studied Miami, they predicted that an ethnic economy run by Cubans would be a

protected niche for immigrants. This was the informal sector, and pay was bad, Portes and Bach conceded. But even bad jobs would provide opportunities for advancement. Employers in immigrant enclaves would be relatively sensitive to cultural needs, and presumably, they would give co-ethnics preferential treatment in promotions.¹³

When Tarry Hum took this model to New York City, she found that ethnic economies are not necessarily a better deal for immigrants. For example, many immigrants work for employers from other ethnic groups, who are not bound by ethnic solidarity. But as far as Hum could see, Latinos do not get much chance for promotion even from co-ethnic employers. She concludes that the ethnic economy "promises little beyond menial wages" for most workers. For Latinos, and especially Central Americans, the New York ethnic economy is even worse than the secondary labor market—that is, jobs in the formal sector that are part-time or temporary.¹⁴

Do Immigrants Take Jobs That Americans Do Not Want?

However badly these New York workers are doing, they are more likely to have jobs than native-born members of the same ethnoracial categories. While Latino and black immigrants in New York have high labor force participation of 68 percent and 71 percent, Hum reports, "their native-born compatriots participate in the urban labor market at a rate well below the city average." In fact, for Latino and black natives, "the double-digit unemployment rates . . . show that even before the full impact of the 2008 economic recession, joblessness was reaching a crisis level in these communities."¹⁵

How could immigrants, often without legal status, have much higher employment rates? Could the reason be that they are willing to do jobs that Americans do not want? This is the usual answer we hear, and we hear it from employers complaining about native-born labor, from native-born workers rejecting bad conditions, and from immigrants vowing to take any job they are offered. On closer examination, the supply of native-born labor has often dried up at

the same time employers were cutting pay and switching to immigrant workers.

Some labor advocates acknowledge that immigrants are becoming the template for how U.S. employers treat their American workers. Hence, Saket Soni in *The Nation* says,

Some Americans resist immigration reform because they sense the transformation in the nature of work in our country and make immigrants the target of their justified anxiety. In fact, all U.S. workers—immigrants and U.S.-born, low-wage and higher-wage, temporary and full-time—are increasingly in the same boat. The sooner we realize that we all face the predicament of immigrant workers, the sooner we can work together to solve structural inequality in our economy instead of fighting over the crumbs.¹⁶

Unfortunately, if employers systematically prefer to hire immigrants, American workers are not in the same boat. Instead, they are getting thrown out of the boat—consider the following example.

In a South Carolina factory where Laura López-Sanders went to work as a production supervisor, plant managers ordered her to help them establish what they called “Mexican enclaves.” Mainly unauthorized Latino immigrants were hired through a temp agency. In two months the plant managers managed to change their graveyard shift from “60 percent black and 40 percent white to being almost 70 percent Latino, 20 percent black and 10 percent white.” In López-Sanders’ own section of the plant, her seven months of observation saw a shift from 80 percent black and 20 percent white to 50 percent black, 40 percent Hispanic, and 10 percent non-Hispanic white. Many victims of this secretive policy were fired for having “wrong attitudes.”¹⁷ How many times has this happened without a sociologist taking notes?

The supposed attitudinal deficiencies of American workers often serve as a euphemism for preferring to hire immigrants. In 2013, the Southern Poverty Law Center (SPLC) was supporting legal actions against onion growers in Vidalia, Georgia. The plaintiffs were mainly black American workers. At issue was whether

they could be required to work as hard as Mexican guest workers. “We are not going to run all the time,” said one American. “We are not Mexicans.” “There used to be lots of American pickers who moved around the country,” an SPLC advocate explained. “But wages have stagnated and conditions have deteriorated, and agriculture is unwilling to make these jobs attractive. Think of trash collection. That’s not very appealing either. But if you offer a decent wage and conditions, people do it.” According to the plaintiffs, “the system is rigged to favor low-cost foreign labor because, given the conditions and the pay, no one else will do it.”¹⁸

Low-wage black workers are the canary in the coal-mine because of their vulnerability to racism. In the 1960s and 1970s, discovered Stephen Steinberg, analysts saw declining birthrates in the U.S. population as a sign of hope for black and Puerto Rican workers stuck in the poorly paid secondary job market. By 2000, the analysts predicted, labor would be in such tight supply that employers would be forced to hire them at competitive wages. Instead, as Steinberg points out, some thirty-five million legal immigrants and another ten million or so unauthorized immigrants entered the labor market.¹⁹ Black and Puerto Rican participation in the labor force is now at a record low.

When Philip Moss and Chris Tilly studied the attitudes of employers, they found that many were afraid of black males. Significantly, employers who rated Latinos, Asians, and immigrants as better workers also tended to pay their workers less.²⁰

[Displaced workers] may not even get the chance to apply for new jobs at lower pay because hiring is conducted through ethnic networks that exclude them.

Several features of informalization encourage the displacement of higher-paid by lower-paid workers. First, employers who respect labor laws are undercut by employers who don’t. Second, displaced workers are reluctant to work for lower pay. Third, they may not even get the chance to apply for the new jobs at lower

pay because hiring is conducted through ethnic networks that exclude them. None of these processes require the direct firing of native-born workers and their replacement by immigrants. Instead, native-born workers are being displaced or bypassed.²¹

Why Not Enforce Labor Laws Rather Than Immigration Laws?

Certainly some native-born workers benefit from immigration flows because of the new opportunities created by a growing economy.²² Other native-born workers seem to suffer. Yet if the crux of the problem is wage theft, and if immigrants contribute to the problem mainly because they are easier to cheat than native-born workers, why not just focus on stopping wage theft? Hence a dramatic suggestion by David Bacon. Instead of spending billions of dollars every year to prevent job-seekers from entering the United States, many of whom get through anyway, why not use the money to stop employer abuses? Why not turn border enforcers into wage and hour inspectors?²³

Merely enforcing current laws would immediately boost the pay of millions of workers. Yet ending border enforcement against job-seekers will enable many more to arrive.

Merely enforcing current laws would immediately boost the pay of millions of workers. Yet ending border enforcement against job-seekers will enable many more to arrive. In the town where I do research in Guatemala, the wage-differential in the United States has attracted something like 20 percent of the male workforce. Many more are under pressure to come because remittances have inflated the price of real estate, such that only migrants can afford to buy cropland and houses. At present, many aspiring migrants are blocked by the high cost of the trip—at least \$5,000 per person. If migrants need only the price of a passport and ticket, many more will come.

Central Americans are not the only people eager to look for a job in the United States. The Gallup world poll, based on interviews with 452,000 respondents over the age of fourteen, reports that 150 million people around the world would like to move to the United States permanently if they could. The estimate includes 22 million Chinese, 15 million Nigerians, and 10 million Indians.²⁴

Another implication of turning border enforcers into labor inspectors is that many of the employers who will have to be inspected, summoned, fined, and possibly shut down will themselves be immigrants. Alejandro Portes and Kelly Hoffman make an important distinction between an “informal proletariat” and “an informal petty bourgeoisie.”²⁵ Owing to all the downward pressure on wages, the only way many immigrants can climb into the middle class is by becoming employers of other immigrants and paying them badly—that is what enables them to undercut employers who obey the law.

Given that many immigrant bosses employ members of their family networks, their businesses can be difficult to distinguish from extended families. To enforce federal labor standards on this kind of kinship-based enterprise could, ironically, require the same harshness employed by border agents.

Could CIR Magnify the Worst Features of the Status Quo?

The U.S. Congress is not about to turn border agents into labor inspectors. Most likely to become law in 2015 is the current version of comprehensive immigration reform, that is, an amalgam of contradictory agendas. Jamming together the path to legalization, higher numbers of guest workers, and higher levels of border enforcement will produce very contradictory outcomes, including more rules to follow and more punitive outcomes.

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Ironically, after so many years of debate, CIR may put only a dent in the undocumented population.

Consider the Congressional Budget Office (CBO) assessment of S. 744's impact. At first, the CBO estimated that S.744 would cut the current flow of unauthorized residents by a mere 25 percent. When that drew horrified reactions, the CBO recalibrated. Pointing to an amendment to add twenty thousand border patrol agents, it hiked its estimate of the reduction to between 33 percent and 50 percent. If so, comprehensive immigration reform will reduce the undocumented U.S. population to five million—or maybe seven million.²⁶

How could a painstaking legalization program fail to bring so many undocumented immigrants aboveground? In the process I call informalization from above and below, employers are accustomed to evading regulation to obtain the cheapest possible labor, and migrants are accustomed to evading regulation to bring more of their relatives.

Why are migrants so eager to bring their relatives? One reason, doubtless, is that they view the United States as an improvement over their previous life. Another reason, which I discovered through my research with Guatemalans, is that our low-wage labor market has the same impact on immigrants that it has on the American working poor. It drives many deeper into debt. To keep their heads above water, they feel compelled to import more family labor from their country of origin. With or without legal status, in competition for scarce jobs, many will continue to be under pressure to accept sub-legal terms of employment.

So what kind of immigration reform will help the most vulnerable workers in the U.S. economy? If the only reliable friend of the poor is a tight labor market, and if U.S. wage levels can be maintained only in a protected labor market, then open borders are not in their interest. As for how the labor movement should respond, it has obligations to immigrants as workers—but not as financial speculators who leverage the patrimony of their relatives to reach the United States, and not as entrepreneurs who climb into the middle class by exploiting other immigrants.

If someone must be excluded from the U.S. job market, who should this be? Future guest workers are the most obvious candidate: any

employer who needs them should instead raise wages until U.S. workers apply. If the job is so brutal that U.S. workers quit, the job needs to be humanized. A large category that can be reduced is family reunification—it should be limited to spouses and children. Nor should standards for political asylum be lowered to include economic migrants who are fleeing low pay. If immigration enforcement is necessary, more of it should focus on visa overstayers who are heavily middle class.

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I will end with a question to which I do not have the answer—are there ways for labor organizations to defend the rights of undocumented workers, and to prevent employers from using immigration law to bust unions, without a massive legalization program? Maybe not. But even if CIR's path to legalization is the only plausible path forward, the labor movement will still have to deal with workplace enforcement against new arrivals who do not have the legal right to work. I doubt that we can reverse the steady informalization of the U.S. economy merely by focusing enforcement on employers.

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