

Threatening migrants and shortchanging workers

Immigration is the government's top federal law enforcement priority, while labor standards enforcement agencies are starved for funding and too understaffed to adequately protect workers

Report • By [Daniel Costa](#) • December 15, 2022

What this report finds: A comparative analysis of federal budget data from 2012 to 2021 reveals that the top federal law enforcement priority in the U.S. is to detain, deport, and prosecute migrants, and keep them from entering the country without authorization. Protecting workplace safety and ensuring that workers get paid for every cent they earn are mere afterthoughts in comparison. In 2021, Congress appropriated \$25 billion to enforce immigration laws—nearly 12 times the \$2.1 billion provided to enforce labor standards—even though the latter is used to protect 144 million workers employed at nearly 11 million workplaces. The average annual amount appropriated for immigration enforcement over the past decade was \$23.4 billion compared with \$2.2 billion for labor standards enforcement. Over the past decade, annual immigration enforcement staffing levels have been an average of 618% higher than staffing for labor standards enforcement. In 2021, immigration enforcement agencies employed nearly 79,000 personnel, compared with the 10 labor standards enforcement agencies combined, which employed fewer than 9,400.

Why it matters: This matters because it is more difficult than ever to ensure workplace fairness for all workers—whether they were born in the United States or abroad. Vastly underfunded labor standards enforcement agency budgets continue to shrink, and this, combined with enforcement-only immigration policies hypercharged by runaway budgets, risks enabling retaliation against those who stand up for their rights on the job. When immigrant workers can't stand up for their rights, it also degrades labor standards for their American counterparts working alongside them.

What we can do about it: The U.S. Department of Homeland Security (DHS) could encourage workers to speak out and help labor standards enforcement agencies without fear of retaliation and deportation by using prosecutorial discretion with more frequency and regularity for workers across a broad range of labor and workplace disputes, issuing temporary grants of deferred action or parole, and providing employment authorization so those workers can support themselves during the dispute process—and DHS should clarify the process for obtaining such relief. Congress should also act by reintroducing and

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passing the Protect Our Workers from Exploitation and Retaliation (POWER) Act that would help prevent and combat employer retaliation and the deportation of migrant workers with bona fide workplace claims or who were witnesses to workplace violations. And finally, Congress should level the funding disparity between immigration enforcement and labor standards enforcement agencies in order to allow the labor agencies to conduct more investigations and thus hold many more lawbreaking employers accountable.

Introduction

For too long, employers have lobbied members of Congress to keep funding levels unrealistically and disastrously low for agencies like the U.S. Department of Labor (DOL) and the National Labor Relations Board (NLRB)—so low that they cannot adequately fulfill their missions. The result is an environment of near impunity for rampant violators of labor and wage and hour laws, a situation brought to light by the recent wave of labor organizing across the country as workers make it clear that they are unwilling to continue accepting unsafe and unjust conditions on the job.

One clear way to understand the priorities of a government is to look at how it spends money. If it's true that “budgets are moral documents,”¹ then the U.S. Congress, for at least the past decade, has placed little value on worker rights and working conditions. A comparative analysis of federal budget data from 2012 to 2021 reveals that the top federal law enforcement priority of the United States is to detain, deport, and prosecute migrants, and to keep them from entering the country without authorization. Protecting workers in the U.S. labor market—by ensuring that their workplaces are safe and that they get paid every cent they earn—is barely an afterthought.

This situation leaves migrant workers especially vulnerable to employer lawbreaking. There are not enough federal agents to police employers, while a massive immigration enforcement dragnet threatens workers with deportation. Employers take advantage of the climate of fear this creates to prevent workers from reporting workplace abuses. Workers who find the courage to speak up can be retaliated against in ways that can set the deportation process in motion.

Despite the massive funding gap between these two enforcement mandates, there are actions that the U.S. Department of Homeland Security (DHS)—the federal agency in charge of immigration enforcement—could take to encourage workers to speak out without fear and so they can assist labor standards enforcement agencies. By using prosecutorial discretion to protect migrant workers involved in labor disputes and by issuing temporary grants of deferred action or parole, DHS can ensure that migrant workers are able to pursue claims against employers without the threat of retaliation and deportation. DHS also has the authority to provide workers with employment authorization so they can support themselves financially during the dispute process. Further, the use of prosecutorial discretion can be a force multiplier for understaffed labor enforcement agencies, thereby assisting them in their mission to hold lawbreaking employers accountable. This report discusses the funding gap between the enforcement of

immigration and labor standards—and what DHS and Congress should do about it.

The wide gap in government funding between immigration and labor standards enforcement has persisted for at least a decade

In 2013, the Migration Policy Institute made headlines with a report highlighting how appropriations for immigration enforcement agencies exceeded the combined funding for the five main U.S. federal law enforcement agencies by 24%.² Updating these figures for its 2019 report, the institute revealed how in 2018, after another six years of skyrocketing spending, immigration enforcement agencies received \$24 billion, or \$25.6 billion in 2021 dollars after adjusting for inflation.³ This amount is “34 percent more than [what was] allocated for *all* other principal federal criminal law enforcement agencies combined” [italics in original], including the Federal Bureau of Investigation; the Drug Enforcement Administration; the Secret Service; the U.S. Marshals Service; and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Both reports bring to light the fact that immigration enforcement has undoubtedly become the U.S. government’s top federal law enforcement priority.

Not much has changed since 2018. My analysis of DHS budget documents reveals that Congress appropriated another \$25 billion in fiscal year 2021 to enforce immigration laws, while Department of Justice and DHS budget documents show an appropriation of \$20.4 billion to the principal federal criminal law enforcement agencies.⁴

But where do labor standards and worker rights fit in?

My analysis of federal budget data also reveals that government spending on immigration enforcement in 2021 was nearly 12 times the spending on labor standards enforcement—despite the mandate of the labor agencies to protect the 144 million workers employed at nearly 11 million workplaces.⁵ Labor standards enforcement agencies across the federal government received only \$2.1 billion in 2021. (See **Figure A.**)

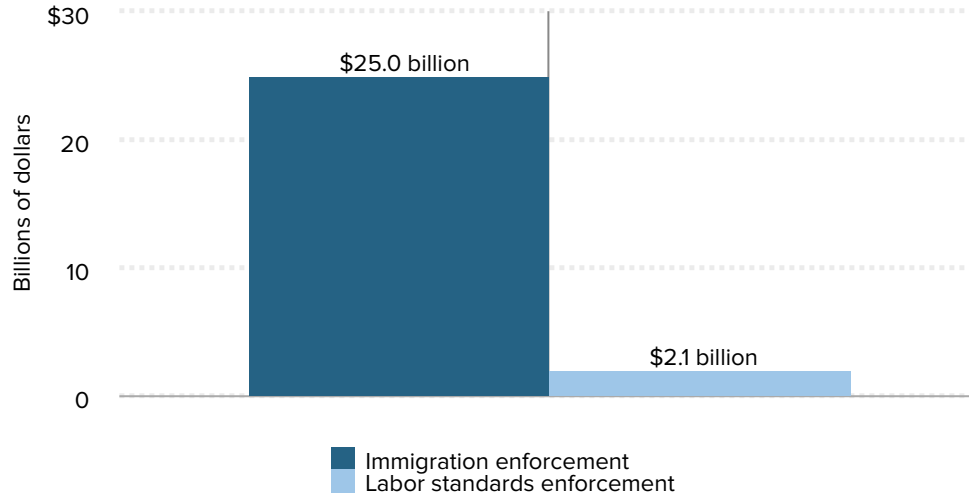
The story is largely the same over the past decade and across three presidential administrations. As **Figure B** shows, in 2012—a decade ago—Congress appropriated \$21.4 billion for immigration enforcement but only \$2.4 billion for labor standards enforcement (in constant 2021 dollars). In fact, 2012 was the peak year for labor standards enforcement funding for the 2012–2021 period. Shockingly, the budget for labor standards actually declined by \$300 million from 2012 to 2021. Meanwhile, immigration enforcement funding peaked in 2019 at \$26.9 billion. The average annual amount appropriated for immigration enforcement funding over the past decade was \$23.4 billion, while the average for labor standards enforcement was \$2.2 billion.

This estimate for labor standards enforcement appropriations uses an expansive definition

Figure A

Government funding for immigration enforcement was nearly 12 times as much as labor standards enforcement funding in 2021

U.S. government funds appropriated for immigration and labor standards enforcement, 2021



Notes: Values are adjusted to constant 2021 dollars and reflect totals for the U.S. government’s fiscal year (October 1 to September 30).

Sources: U.S. Department of Labor, *Fiscal Year 2023—Department of Labor, Budget in Brief* and *Archived Budgets*, fiscal years 2012–2022; National Mediation Board, *Congressional Justifications*, fiscal years 2014–2023; National Labor Relations Board, *Performance Budget Justification*, fiscal years 2012–2023; and U.S. Department of Homeland Security, *DHS Budget*, Congressional Budget Justification for Fiscal Years 2012–2023.

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that includes federal budget data for fiscal years 2012 to 2021 for the eight subagencies, administrations, and offices that DOL considers for “worker protection,” in addition to the NLRB and the National Mediation Board.

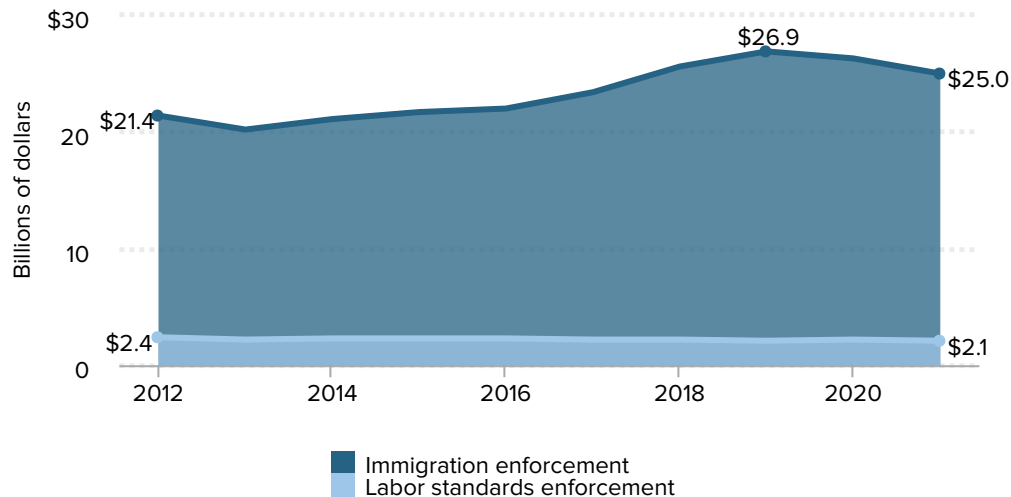
The wide staffing gap between immigration and labor standards enforcement agencies has persisted for at least a decade

Federal budget data show that labor enforcement agencies are staffed at only a fraction of the levels required to adequately fulfill their missions. In 2021, as **Figure C** shows, Congress gave the 10 labor standards enforcement agencies combined only enough funding to employ fewer than 9,400 personnel, while the immigration enforcement agencies—U.S. Customs and Border Protection (which includes the U.S. Border Patrol),

Figure B

Over the past decade, average annual funding for immigration enforcement has been over 10 times as much as labor standards enforcement funding

U.S. government funds appropriated for immigration and labor standards enforcement, 2012–2021



Notes: Values are adjusted to constant 2021 dollars and reflect totals for the U.S. government’s fiscal year (October 1 to September 30).

Sources: U.S. Department of Labor, *Fiscal Year 2023—Department of Labor, Budget in Brief* and *Archived Budgets*, fiscal years 2012–2022; National Mediation Board, *Congressional Justifications*, fiscal years 2014–2023; National Labor Relations Board, *Performance Budget Justification*, fiscal years 2012–2023; and U.S. Department of Homeland Security, *DHS Budget*, Congressional Budget Justification for Fiscal Years 2012–2023.

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U.S. Immigration and Customs Enforcement (ICE), and the Office of Biometric Identity Management—received enough funds to employ a total of almost 79,000 personnel, more than eight times as many personnel as the labor standards agencies.

Figure C also shows the staffing levels for immigration and labor standards enforcement over the past decade, 2012 to 2021. Labor standards enforcement agencies’ staffing levels peaked in 2012 at 12,288. Alarming, staffing at those agencies declined by nearly a quarter over the decade, hitting a low of just 9,337 in 2021.

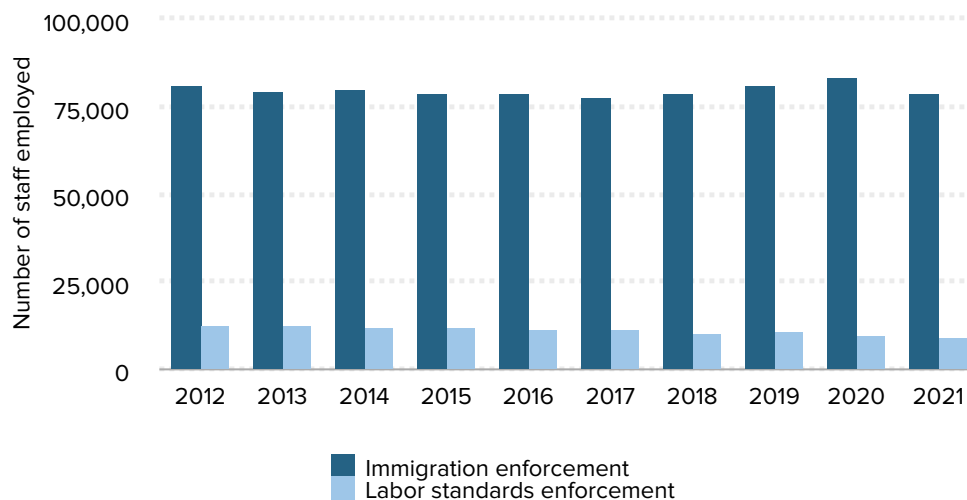
Immigration enforcement staffing for the 2012–2021 period peaked in 2020 at 83,689. Average staff levels over the 10-year period were 79,821 for immigration enforcement and 11,117 for labor standards enforcement; in other words, immigration enforcement agency staff numbers are, on average, 618% greater than those of labor standards enforcement agencies (seven times as many personnel).

Furthermore, the agents and investigators at labor agencies who are actually tasked with policing the labor market—a subset of the total personnel employed—have seen their workloads reach unrealistic levels as hiring fails to keep pace. In 2021, DOL’s Wage and

Figure C

In 2021, immigration enforcement agencies had eight times as many staff as labor standards agencies

Annual full-time equivalent staffing levels at immigration and labor standards enforcement agencies, 2012–2021



Notes: The number of full-time equivalent staff reflects totals for the U.S. government’s fiscal year (October 1 to September 30).

Sources: U.S. Department of Labor, *Fiscal Year 2023—Department of Labor, Budget in Brief* and *Archived Budgets*, fiscal years 2012–2022; National Mediation Board, *Congressional Justifications*, fiscal years 2014–2023; National Labor Relations Board, *Performance Budget Justification*, fiscal years 2012–2023; and U.S. Department of Homeland Security, *DHS Budget*, Congressional Budget Justification for Fiscal Years 2012–2023.

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Hour Division (WHD)—the main agency in charge of protecting wages and working conditions at U.S. workplaces—employed only 782 investigators to police a U.S. labor market of 144 million (see **Figure D**). WHD employed 1,232 investigators at its peak in 1978—more than four decades ago when the labor force they were responsible for protecting had only 85 million workers.

As EPI has shown, each WHD investigator is now responsible for more than twice the number of workers as 40 years ago: In 1979, there were 81,717 workers per WHD investigator, more than doubling to 189,878 workers per investigator by 2019.⁶

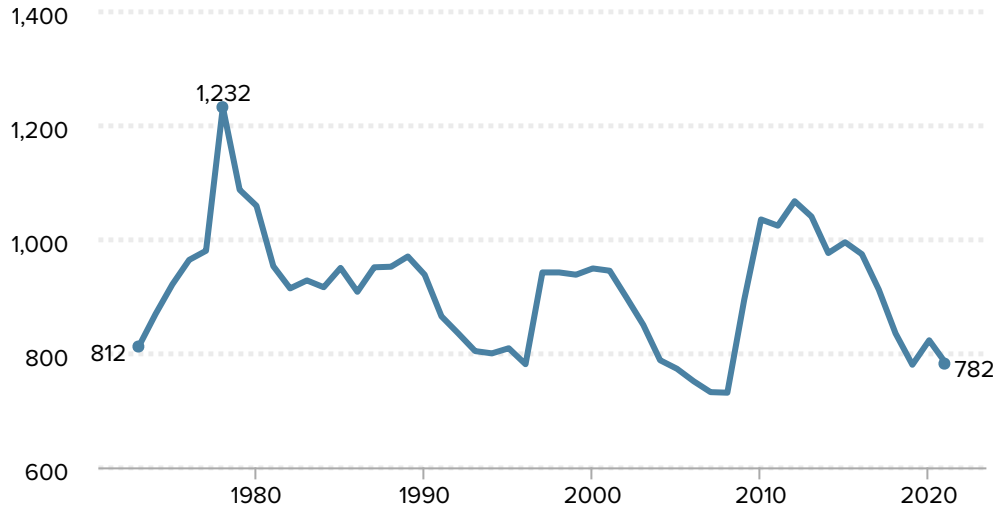
It’s a similar story at the Occupational Safety and Health Administration (OSHA), where there were just under 62,000 workers per OSHA compliance officer in 1979, but by 2019 the number had more than tripled to 198,500.⁷

These data help explain why workers may never see a Wage and Hour or OSHA inspector visit their worksite but may have a rational and justified fear of interacting with immigration enforcement.

Figure D

Number of federal wage and hour investigators is near its historic low

Number of Wage and Hour Division investigators, U.S. Department of Labor, 1973–2021



Note: Numbers represent Wage and Hour Division investigators on staff at the end of each year.

Sources: Author's analysis of Wage and Hour Division (WHD) data on number of investigators from unpublished Excel files provided by WHD staff members to the author. Source for 2020 and 2021 is Rebecca Rainey, "Wage-Hour Investigator Hiring Plans Signal DOL Enforcement Drive," *Bloomberg Law*, January 28, 2022.

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The wide funding gap between immigration and labor standards enforcement hurts all workers—including migrant workers

So why does any of this matter? Because it is increasingly more difficult to ensure that all workers—whether they were born in the United States or abroad—are treated fairly in the workplace. Budgets for labor standards enforcement agencies are shrinking, as shown above. Employer tactics such as forced arbitration prevent workers from suing in court when they are robbed by their employers.⁸ And a growing body of research shows that workers attempting to change jobs face many challenges.⁹ Making matters worse, without a strong mandate and funding from Congress to enforce labor standards, the executive branch can severely limit the work that labor agencies do on behalf of workers through executive actions, regulatory policy, and even political appointees—something the former Trump administration specialized in.¹⁰

Vastly underfunded labor agencies combined with enforcement-only immigration policies hypercharged by runaway budgets risk enabling retaliation against immigrant workers who stand up for their rights on the job. When immigrant workers can't stand up for their rights, it degrades labor standards for their American counterparts working alongside them.¹¹ Perhaps that is why employers rob their immigrant employees at much higher rates than those who are U.S. citizens.¹²

All workers face too much risk if they act to make their workplaces safer and fairer. But for nearly 8 million workers—roughly 5% of the U.S. labor force¹³—those risks include deportation and family separation because they lack immigration status.

Temporary migrant workers represent another significant and rapidly growing segment of the workforce. These are migrant workers employed through temporary visas (known as “nonimmigrant” visas under U.S. law).¹⁴ There are roughly 2 million temporary migrant workers employed in the United States, accounting for 1.2% of the total labor force.¹⁵ These workers have good reason to fear retaliation and deportation if they speak up about wage theft, workplace abuse, or working conditions such as substandard health and safety procedures on the job—not because they lack valid immigration status but because their visas are almost always tied to a single employer who controls both their livelihoods and their visa status.

No worker should ever have to risk deportation in order to file a claim with a labor agency, but that's the reality for 6% of the entire U.S. workforce in a grossly imbalanced enforcement context.

The Department of Homeland Security can help bridge the gap and protect workers

Since DOL investigations are driven by complaints brought by workers, it would make a massive difference if migrant workers were empowered to come forward and report employer lawbreaking and workplace violations without fear of retaliation that could result in losing their jobs and being deported. The Biden administration, to its credit, has acknowledged this and has taken some important steps to protect migrant workers who come forward to work with labor standards agencies.¹⁶

For example, the administration ended the ICE practice of mass raids at worksites to enforce immigration laws. The NLRB issued updated guidance and policies that help protect the labor rights of immigrant workers attempting to join or form unions.¹⁷ And DOL issued guidance in the form of a four-page “Frequently Asked Questions” document that explains how immigrant workers who come forward to report labor and workplace abuse can seek DOL’s support for immigration status protections that DHS can provide.¹⁸

Specifically, the guidance helps immigrant workers involved in labor disputes understand how to request a “Statement of DOL Interest,” which expresses DOL’s interest in resolving a particular labor dispute and asks that DHS take steps to prevent immigration enforcement agencies from interfering with that dispute. A crucial way for DHS to support workers in labor disputes, including safety and health and wage and hour investigations, is to use prosecutorial discretion to protect the workers involved by issuing temporary grants of deferred action or parole.

DHS already has the authority to do this and has begun using prosecutorial discretion in this way in important workplace cases around the country.¹⁹ However, workers remain understandably skeptical about following NLRB and DOL guidance given the decades of DHS enforcement actions against workers. Clarifying the process for how immigrant workers engaged in labor disputes can request status protections could help overcome workers’ very rational fears about coming forward to report lawbreaking and is something immigrant and worker advocates—as well as some lawmakers—have called for.²⁰ Most importantly, DHS should grant deferred action and parole to migrant workers in labor disputes with more frequency and regularity, across a broad range of disputes, and in response to a broad swath of labor and workplace violations.

Providing a path for workers engaged in labor disputes to remain in the United States through deferred action or parole would allow both undocumented workers (who lack immigration status) and temporary migrant workers with nonimmigrant visas (whose status is tied to their employers) to aid in the enforcement of labor standards without fear of retaliation based on their immigration status. Deferred action and parole from DHS may also include the issuance of an employment authorization document by DHS. The granting of such work authorization would let workers seek lawful employment elsewhere, allowing them to support themselves and their families while their claims are pursued.

Another benefit of this policy relates to the two potential options for workers who are victims of human trafficking or certain other crimes and are in need of immigration status protection—T and U visas.²¹ At present, there are large backlogs and lengthy processing times for such visas, leading to years-long wait times for their issuance.²² Prosecutorial discretion by DHS could benefit workers if it were granted much more quickly than T and U visas; and it could benefit workers in labor disputes who don't meet the narrow requirements for the T and U visas, which currently are not applicable to many labor-related crimes.

The ability of migrant workers to come forward and report employer abuse and lawbreaking without fear could act as a force multiplier for DOL's understaffed and underfunded Wage and Hour Division and Occupational Health and Safety Administration while enabling more migrant workers to exercise their labor rights under the National Labor Relations Act without fear of retaliation and deportation.

Congress should pass legislation to protect workers from the threat of retaliation and deportation and provide additional funding for labor standards enforcement

Congress has a key role to play here as well. Two potential actions are worth highlighting. First, Congress should prioritize the reintroduction and passage of the Protect Our Workers from Exploitation and Retaliation (POWER) Act—perhaps the single most important piece of legislation aimed at protecting workers of all immigration statuses from the threat of employer retaliation and deportation. The POWER Act was last introduced in 2019 by Rep. Judy Chu (D-Calif.) and Sen. Robert Menendez (D-N.J.) and is supported by various unions and migrant worker advocacy organizations.²³ It would expand access to U visas for migrant workers who report workplace violations (these visas are currently only available to victims of certain qualifying crimes who are cooperating in a related investigation or prosecution),²⁴ increase the number of available U visas, and extend eligibility to more labor-related crimes.

In addition, the POWER Act would strengthen the investigative powers of labor standards enforcement agencies. It would also permit the postponement of deportation of a migrant worker who files a bona fide workplace claim or who is a material witness to one, allowing the worker to remain in the country while the claim is pursued. Workers would also be eligible for employment authorization so they can work while their claims are being processed.²⁵

Finally, Congress can and should take action to narrow the funding disparity between immigration enforcement and labor standards enforcement agencies. A dramatic increase in appropriated funding, especially to WHD, OSHA, and the NLRB—at minimum enough to

allow a tripling of the number of WHD and OSHA inspectors and NLRB staff—would allow the agencies to conduct more investigations and keep pace with the number of workers they are in charge of protecting, and thus enhance their ability to hold many more lawbreaking employers accountable. This, in turn, would give workers more confidence that there are adequate staff available to review the complaints they bring before the agencies in a timely fashion, thereby encouraging more workers to come forward.

So far, Congress has appeared reluctant to adequately fund the protection of workers and worker rights but has been more than willing to provide a blank check to fund immigration enforcement. The data presented here on the disparity in funding between these two priorities should spur a debate among policymakers. Those who care about the wages and working conditions of the labor force must act quickly to narrow the gap by vastly increasing funding for the enforcement of labor standards. They should also consider decreasing funding for immigration enforcement given the detrimental impact that such actions can have on labor standards.²⁶

Notes

1. The origin of the phrase is unknown but it has been used regularly in the context of economic and fiscal policy debates, including by Dr. Martin Luther King, Jr. See, for example, Jon Wiener, “[Martin Luther King’s Final Year: An Interview with Tavis Smiley](#),” *The Nation*, January 18, 2016; Rev. Dr. William J. Barber II, “[Every budget is a moral document](#),” Twitter, @RevDrBarber, April 27, 2017, 2:37 p.m.; Scott Wong, “[Begich: Budget ‘a Moral Document’](#),” *Politico*, April 11, 2011; and Dylan Matthews, “[Budgets Are Moral Documents, and Trump’s Is a Moral Failure](#),” *Vox*, March 16, 2017.
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15. Daniel Costa, *Temporary Work Visa Programs and the Need for Reform: A Briefing on Program Frameworks, Policy Issues and Fixes, and the Impact of COVID-19*, Economic Policy Institute, February 3, 2021.
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18. U.S. Department of Labor, Office of the Solicitor, “US Department of Labor Posts Process for Seeking Its Support for Immigration-Related Prosecutorial Discretion During Labor Disputes” (news release), July 6, 2022.
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