
CORPORATE CRIMMIGRATION

Brandon L. Garrett*

Immigration laws are not just criminally enforced against individuals, but also corporations. For individuals, “crimmigration” is pervasive, as federal immigration prosecutions are a mass phenomenon. More than a third of the federal criminal docket—nearly 40,000 cases each year—consists of prosecutions of persons charged with violations of immigration rules. In contrast, prosecutors rarely charge corporations, which are required to verify citizenship status of employees. This Article sheds light on this unexplored area of corporate criminal law, including by presenting new empirical data. In the early 2000s, corporate immigration enforcement for the first time increased in prominence. During the Obama Administration, this trend accelerated, with a total of 101 corporate immigration prosecutions brought, and record penalties imposed. Under the Trump Administration so far, however, there have been just seven corporate immigration prosecutions, and the only large cases have been legacy matters from the prior Administration. This Article does not suggest that workplace immigration screening and enforcement, much less criminal enforcement, is desirable. Instead, this Article explores how corporate charging dynamics may exacerbate tensions inherent in criminalizing immigration in the workplace. This Article contrasts the mass prosecution of individuals, under strict zero-tolerance rules, with the leniency-oriented approach towards firms that carefully considers collateral consequences, to shed light on internally conflicted federal policy at the intersection of corporate and immigration law. Now that the federal criminal dockets have become dominated by immigration enforcement, the problem of “corporate crimmigration” deserves more urgent attention.

* L. Neil Williams Professor of Law, Duke University School of Law. Many thanks to Kerry Abrams, Sam Buell, Kate Evans, and Eisha Jain for conversations about this project and invaluable comments on earlier drafts. I thank Emma Roberts for excellent research assistance. I am grateful to Jon Ashley for his longtime collaboration in creating and maintaining the Duke & University of Virginia Corporate Prosecution Registry that maintains these data as a research repository.

TABLE OF CONTENTS

I.	INTRODUCTION	360
II.	FEDERAL IMMIGRATION PROSECUTIONS OF INDIVIDUAL AND CORPORATE DEFENDANTS	365
	A. <i>Federal Immigration Crime</i>	366
	B. <i>Federal Corporate Prosecutions</i>	370
	C. <i>ICE Workplace Enforcement Policies and the Rise of E-Verify</i>	372
III.	CORPORATE IMMIGRATION PROSECUTIONS.....	378
	A. <i>Trends in Corporate Immigration Enforcement</i>	378
	B. <i>The Rise in Corporate Immigration Prosecutions</i>	380
	C. <i>Recent Trends in Corporate Immigration Prosecution</i>	382
	D. <i>Civil Corporate Immigration Enforcement</i>	384
IV.	IMPLICATIONS FOR IMMIGRATION AND CRIMINAL LAW	384
V.	CONCLUSION	389
	APPENDIX: FEDERAL CORPORATE IMMIGRATION PROSECUTIONS, 2001–2019	391

I. INTRODUCTION

Immigration and criminal enforcement are increasingly interconnected. In the past, immigration violations were treated as civil matters, without any criminal component.¹ Today, in the United States, “crimmigration” is the new normal: more than a third of the federal docket now consists of prosecutions of noncitizens who violated immigration rules, largely for unlawful entry and reentry.² Immigration now constitutes the largest category in the federal criminal docket.³ In 2018, federal immigration arrests of noncitizens almost doubled, increasing by a massive 50,000 people, to 108,000 arrests.⁴ Immigration prosecutions increased 650% from 1998–2018, from about 13,000 to almost 100,000 federal immigration prosecutions each year.⁵ There may be at any time, upwards of 50,000 noncitizens in federal custody at any given time, which constitute about

1. Jennifer M. Chacón, *Managing Migration Through Crime*, 109 COLUM. L. REV. SIDEBAR 135, 137 (2009).

2. See, e.g., Ingrid V. Eagly, *Prosecuting Immigration*, 104 NW. U. L. REV. 1281, 1281–82, 1352 fig.4 (2010); Daniel Kanstroom, *Criminalizing the Undocumented: Ironic Boundaries of the Post-September 11th “Pale of Law,”* 29 N.C. J. INT’L L. & COM. REGUL. 639, 655 (2004); Hiroshi Motomura, *The Discretion That Matters: Federal Immigration Enforcement, State and Local Arrests, and the Civil-Criminal Line*, 58 UCLA L. REV. 1819, 1858 (2011). See generally, Chacón, *supra* note 1, at 135, 137–43.

3. Eagly, *supra* note 2, at 1281–82; U.S. SENT’G COMM’N, FISCAL YEAR 2018: OVERVIEW OF FEDERAL CRIMINAL CASES 5 (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/FY18_Overview_Federal_Criminal_Cases.pdf [<https://perma.cc/69WR-9TT5>].

4. MARK MOTIVANS, BUREAU OF JUST. STATS, U.S. DEP’T. OF JUST., IMMIGRATION, CITIZENSHIP, AND THE FEDERAL JUSTICE SYSTEM, 1998–2018 2, 4, tbl.1 (2019); U.S. SENT’G COMM’N, *supra* note 3, at 5, 7.

5. MOTIVANS, *supra* note 4, at tbl.16. The increase was driven by a surge in illegal reentry charges, in the five federal districts along the U.S. Mexico Border. *Id.* at 1–2.

43% of the federal prison population.⁶ The scale of criminal enforcement against individuals occurs on a mass scale, although the criminal penalties themselves are typically small.⁷

Corporate crimmigration, as I describe in this Article, or the federal enforcement of immigration crime against corporations, is a study in contrasts, as compared with criminal immigration enforcement against individuals.⁸ This Article is the first to explore the phenomenon empirically, by presenting original data concerning corporate immigration prosecution in the United States.⁹ As detailed in this Article, and in the Appendix, corporate immigration prosecutions, while long uncommon, steadily increased in number until recently, when they noticeably declined.¹⁰ During the Obama Administration, corporate immigration enforcement notably increased, building on an early focus on corporate enforcement in the George W. Bush Administration. Prosecutors brought a total of 101 corporate immigration prosecutions from 2008 through 2016, and cases imposed large financial penalties and requirements that corporations adopt compliance in hiring practices.¹¹ Under the Trump Administration, there have so far been just seven corporate immigration prosecutions, with the only large corporate case concluding as a legacy matter brought several years earlier by the prior Administration.¹²

Corporate crimmigration raises very different policy concerns than corporate criminal law more generally, although there are common themes. In the area

6. *ERO FY 2019 Achievements*, U.S. IMMIGR. & CUSTOMS ENF'T (Feb. 24, 2020), <https://www.ice.gov/features/ERO-2019> [<https://perma.cc/S9FN-UZ39>] (“ERO’s Average Daily Population in custody reached 50,165 in FY 2019, an increase of 19% compared to FY 2018. At times, ERO’s detention population exceeded 56,000.”); see also Emma Kaufman, *Segregation by Citizenship*, 132 HARV. L. REV. 1379, 1380–87 (2019) (describing the rise in segregated immigration prisons).

7. Ingrid V. Eagly, *The Movement to Decriminalize Border Crossing*, 61 B.C. L. REV. 1967, 1968, 1974–91 (2020) (describing the Trump Administration focus on border enforcement, from which three notable policies emerged: a zero-tolerance stance for illegal entry, enhanced punishment for those who reenter after deportation, and forced separation of children from parents being prosecuted).

8. Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 376 (2006) (“Immigration law today is clothed with so many attributes of criminal law that the line between them has grown indistinct. Scholars have labeled this the ‘criminalization of immigration law.’”). The vast majority of these prosecutions, as discussed further in Part I, are for illegal reentry, and not for worksite violations. See MOTIVANS, *supra* note 4, at 22 tbl.18.

9. Preliminary findings were shared with the Washington Post and reported in August 2019. Renae Merle, *As Workplace Raids Multiply, Trump Administration Charges Few Companies*, WASH. POST (Aug. 9, 2019, 4:45 PM), <https://www.washingtonpost.com/business/2019/08/09/workplace-raids-multiply-trump-administration-charges-few-companies/> [<https://perma.cc/58ZL-TNXW>] (“Prosecuting corporations, as opposed to individual workers or managers, for immigration-related offenses was also relatively rare during the Obama administration, but it has slowed further under the Trump administration, according to a database maintained by Duke University and the University of Virginia and data reviewed by The Washington Post.”).

10. Indeed, the same Bureau of Justice Statistics Report, describing the “Federal criminal justice response” to immigration, does not mention workplace violations or prosecutions against corporations in its data or lists of offenses, instead focusing on the far more often prosecuted reentry, illegal entry, visa, and alien smuggling offenses. See MOTIVANS, *supra* note 4, at 23.

11. See APPENDIX: FEDERAL CORPORATE IMMIGRATION PROSECUTIONS, 2001–2019 (listing these cases).

12. See *id.*; see also Merle, *supra* note 9 (“The Transactional Records Access Clearinghouse at Syracuse University examined federal data for a one-year period—April 2018 through March 2019—and found that no companies were prosecuted for knowingly hiring undocumented workers.”).

of financial or white-collar corporate crime, for many years, critics raised concerns that the justice system has allowed serious corporate crimes to go unpunished as prosecutors offered, after the Enron-era scandals, deferred or nonprosecution agreements to corporations.¹³ I have described the practical challenges when prosecuting “too big to jail” corporations in a variety of contexts, including the challenges when charging corporate employees and managers.¹⁴ While the concern with regulating the financial system is not a common thread, there is a shared concern regarding individual accountability as compared with corporate compliance with the law, and a common theme regarding relatively more privileged and less privileged actors in the economy. For large corporations, access to highly educated “specialty” workers through programs, such as the H-1B program, is legal and has been relatively secure, despite recent changes to immigration policies.¹⁵ In contrast, immigrant workers in less high-paying jobs, such as in agriculture, construction, or food processing, may face immigration enforcement, deportation, and criminal prosecution. Relatedly, in immigration law, the disconnect between corporate and individual enforcement is stark. Massive numbers of individuals are prosecuted, and detained prior to deportation, under non-discretionary “zero-tolerance” policies operating at the U.S.-Mexico border.¹⁶ The chances that an individual will be subject to immigration enforcement in a workplace setting outside of the border setting is low.¹⁷ Instead, it is a criminal arrest, even for routine traffic enforcement, that may trigger immigration screening; however, for that reason, even apart from employment screening, individuals may have strong reasons to avoid any contact with government.¹⁸ In contrast, corporations, employers, or managers are rarely charged with immigration violations, under policies that consider collateral consequences to them.¹⁹ Individuals that report abusive labor practices may be threatened with deportation by

13. Brandon L. Garrett, *Declining Corporate Prosecutions*, 57 AM. CRIM. L. REV. 109, 110, 143–44 (2020).

14. See BRANDON L. GARRETT, TOO BIG TO JAIL: HOW PROSECUTORS COMPROMISE WITH CORPORATIONS 253-54 (2014) (describing range of “too big to jail” concerns with how organizations are prosecuted); Jed S. Rakoff, *The Financial Crisis: Why Have No High-Level Executives Been Prosecuted?*, N.Y. REV. BOOKS (Jan. 9, 2014), <https://www.nybooks.com/articles/2014/01/09/financial-crisis-why-no-executive-prosecutions/> [https://perma.cc/9PZ3-WQM2].

15. See Caitlin Dickerson & Miriam Jordan, *New Immigration Limits Cause Anxiety in Families and Businesses*, N.Y. TIMES (Apr. 21, 2020), <https://www.nytimes.com/2020/04/21/us/trump-immigration-ban-covid.html> [https://perma.cc/ZBW4-UDSD]; see also *H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models> (Mar. 27, 2020) [https://perma.cc/9J5R-QGH4].

16. Press Release, U.S. Dep’t of Just., Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (April 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry> [https://perma.cc/DQG2-343J].

17. See Motomura, *supra* note 2, at 1830. *But see* Stephen Lee, *Private Immigration Screening in the Workplace*, 61 STAN. L. REV. 1103, 1128–29 (2009).

18. Eisha Jain, *The Interior Structure of Immigration Enforcement*, 167 U. PA. L. REV. 1463, 1467–68 (2019).

19. See *infra* Part IV.

those same employers.²⁰ Prosecutors may not reward whistleblowers with leniency, as they typically do as a matter of policy and practice in other areas of federal criminal practice.²¹

These are complex immigration and prosecution dynamics at the intersection of Department of Justice and Department of Homeland Security practices, and they have received little attention. The recent decline in corporate immigration enforcement has recently received some scattered media attention, as high-profile workplace raids, resulting in detention and prosecution of hundreds of noncitizen employees, have not resulted in charges for employers or firms.²² The Trump Organization has received scrutiny for employing undocumented workers.²³ Yet there is still little scrutiny of the dramatic disconnect between policy and practice of individual and corporate immigration enforcement by federal prosecutors.²⁴ Thus, a more basic goal of this Article is to describe the evolution in corporate immigration prosecution, which itself has largely escaped scholarly analysis, and which has received very little public attention generally, except to a limited extent, when the Department of Justice first began to focus somewhat more on corporate enforcement in the early 2000s.²⁵ As Juliet Stumpf, who can be credited with playing a central role in conceptualizing “cimmigration” not

20. Lee, *supra* note 17, at 1106–10.

21. *See infra* Part IV.

22. Richard Fausset, *After ICE Raids, a Reckoning in Mississippi's Chicken County*, N.Y. TIMES (Dec. 28, 2019), <https://www.nytimes.com/2019/12/28/us/mississippi-ice-raids-poultry-plants.html> [https://perma.cc/6TG5-9PSB] (noting that the Mississippi poultry company is currently challenging searches and raids of its properties in court, and that no executives have currently been charged).

23. Mike Baker, *Firings at Trump Property Cap Years of Purging Undocumented Workers*, N.Y. TIMES (Aug. 26, 2020), <https://www.nytimes.com/2019/12/31/us/trump-undocumented-workers-winery.html> [https://perma.cc/RGM7-YCEP] (“For years, the Trump Organization used undocumented workers to tend to its hotels, golf courses and other properties, even as Donald Trump railed against the threat of illegal immigration as both a candidate and president. This year, faced with a public reckoning after some of those workers came forward, the organization has been cracking down. Dozens have been fired. The company vowed to follow what was already a widespread industry practice of using E-Verify checks to confirm employment eligibility.”).

24. Regarding the challenges of prosecuting individuals in complex corporate matters, see SAMUEL BUELL, CAPITAL OFFENSES: BUSINESS CRIME AND PUNISHMENT IN AMERICA'S CORPORATE AGE 128–30 (2016) and Samuel W. Buell, *Is the White Collar Offender Privileged?*, 63 DUKE L.J. 823, 823, 847–48 (2014). Regarding the relative lack of focus in immigration scholarship on criminal, as opposed to civil enforcement, see Eagly, *supra* note 2, at 1283–84.

25. There are more recent discussions of the importance of immigration rules in the corporate compliance literature, highlighting the need to ensure that systems are in place to detect unauthorized employees. *See, e.g.*, Rajiv S. Khanna, *Corporate Immigration Policy: Why, What and How?*, PRAC. LAW., April 2016 at 44, 45 (“Not having a consistent and considered approach in dealing with immigration law exposes the employer and its management to criminal prosecution, civil litigation, corporate dissolution, loss of revenue streams, millions of dollars in fines, hundreds of hours in lost man hours spent in defending governmental investigations and actions, loss of hired talent and loss of good will”); *see also* Thomas C. Green & Ileana M. Ciobanu, *Deputizing—and Then Prosecuting—America's Businesses in the Fight Against Illegal Immigration*, 43 AM. CRIM. L. REV. 1203, 1204 (2006) (describing how, over a decade ago, federal prosecutions had “sought unprecedented penalties to resolve immigration investigations,” in early efforts to enforce immigration rules against organizational violators); Eric Rich, *Immigration Enforcement's Shift in the Workplace: Case of Md. Restaurateurs Reflects Use of Criminal Investigations, Rather Than Fines, Against Employers*, WASH. POST (Apr. 16, 2006), <https://www.washingtonpost.com/wp-dyn/content/article/2006/04/15/AR2006041501049.html> [https://perma.cc/K53B-FPW7] (regarding media coverage of workplace raids and enforcement at that time); *infra* Part III.C (describing more recent cases and coverage of them).

just as a phenomenon but as a field, has written, “[I]mmigration law and the criminal justice system are merely nominally separate.”²⁶

For corporate offenders, that crimmigration connection looks completely different, in the way that immigration law and criminal priorities intersect. Prior work has not examined trends in corporate immigration prosecution, alongside companion trends in individual immigration prosecutions. That corporations are even subject to criminal immigration laws has largely escaped scholarly notice. Most corporate criminal scholars have understandably focused on financial crimes, and most immigration scholars have understandably focused on the human costs of enforcement.²⁷ Yet, the trends in corporate immigration enforcement are not surprising from the perspective of corporate crime research and data. Corporate prosecutions are generally declining in the United States at the federal level, where the most significant such cases have long been brought.²⁸ Updated data from the Duke and University of Virginia Corporate Prosecution Registry, show how under the Trump Administration, corporate penalties have declined sharply, as have numbers of prosecutions of public companies and financial institutions.²⁹

This Article does not take any position on the question of whether it is desirable or sound to leverage corporations as immigration screeners to verify authorization of employees. Indeed, there are many reasons to think, for example, that the federal databases that employers use to comply with screening mandates are error prone, and that the approach creates a range of poor incentives.³⁰ A central concern is that criminal enforcement can magnify an abusive power dynamic that immigration screening creates between employers and workers. The

26. Stumpf, *supra* note 8, at 376; *see also* César Cuauhtémoc García Hernández, *Deconstructing Crimmigration*, 52 U.C. DAVIS L. REV. 197, 208 (2018).

27. I have previously briefly noted data on corporate immigration prosecutions in a book surveying the changing nature of corporate criminal prosecution. GARRETT, *supra* note 14, at 64 (noting ten deferred prosecution agreements with corporations for immigration violations); *id.* at 97, 210 (regarding prosecutions of both employees and the corporations); *id.* at 99 (describing the Postville raids and resulting corporate prosecution); *id.* at 264 (noting that while “[m]ore than a third of the federal docket now consists of prosecutions of noncitizens who violated immigration rules, including by entering the country without permission,” in contrast, “[f]ew employers are prosecuted for immigration crimes.”). I am not aware of other scholarship exploring this topic.

28. *See* U.S. SENT’G COMM’N, *supra* note 3, at 21.

29. *See* Garrett, *supra* note 13, at 110; *see also* Brandon L. Garrett & Jon Ashley, *Corporate Prosecution Registry*, DUKE U. SCH. L. & U. VA. SCH. L. [hereinafter Duke/UVA Registry], <http://lib.law.virginia.edu/Garrett/corporate-prosecution-registry/index.html> (last visited Jan. 18, 2021) [<https://perma.cc/7TZ6-TKRL>]. This registry aims to provide the most complete resource available on federal organizational prosecution, including declinations, acquittals, trial convictions, deferred and nonprosecution agreements, and plea agreements with corporations.

30. *See* Lee, *supra* note 17; Juliet P. Stumpf, *Getting to Work: Why Nobody Cares About E-Verify (and Why They Should)*, 2 U.C. IRVINE L. REV. 381, 385 (2012). For a more detailed discussion in the context of the E-Verify system, *see infra* Part II.C. *See also* Kati L. Griffith, Response Essay, *ICE Was Not Meant to Be Cold: The Case for Civil Rights Monitoring of Immigration Enforcement at the Workplace*, 53 ARIZ. L. REV. 1137, 1137 (2011); Shelly Chandra Patel, *E-Verify: An Exceptionalist System Embedded in the Immigration Reform Battle Between Federal and State Governments*, 30 B.C. THIRD WORLD L.J. 453, 471–72 (2010). *See generally* Lori A. Nessel, *Undocumented Immigrants in the Workplace: The Fallacy of Labor Protection and the Need for Reform*, 36 HARV. C.R.-C.L. L. REV. 345, 348 (2001); Michael J. Wishnie, *Emerging Issues for Undocumented Workers*, 6 U. PA. J. LAB. & EMP. L. 497, 499 (2004).

role played by corporate immigration prosecutions and nonprosecutions in these power dynamics should be examined. Further, there are solutions that can at least reduce perverse incentives and disparities, such as by incentivizing and providing leniency to whistleblowing employees that report labor and immigration violations by employers.

This Article begins descriptively, by examining which offenses in immigration law apply to criminalize individual and corporate behavior. Part II describes that legal background and then the changing trends in federal criminal immigration enforcement policy and practice. Part III turns to the presentation of detailed empirical data, from 2001–2019, concerning federal corporate immigration prosecutions. Next, Part IV examines the implications of corporate crimmigration for policy and practice. Under the current approach in which immigration and criminal enforcement are closely intertwined, and individual criminal immigration prosecutions have reached record levels, it is important to examine whether employers are being treated in a comparative hands-off manner, while whistleblowing employees lack protection for their cooperation in reporting violations. This Article concludes by asking why individual and corporate enforcement have diverged so markedly in the immigration area, what the long-term effects may be, as well as the implications for corporate accountability more generally. Now that the federal criminal dockets have become dominated by immigration enforcement, the problem of “corporate crimmigration” deserves renewed attention.

II. FEDERAL IMMIGRATION PROSECUTIONS OF INDIVIDUAL AND CORPORATE DEFENDANTS

This Part summarizes the relevant immigration provisions used in federal prosecutions of individual persons and those typically used in federal prosecutions of organizations, along with a brief summary of trends in such enforcement. The bulk of individual prosecutions are for unlawful reentry, while organizational prosecution cases focus on employment-related offenses.³¹ The focus here is on federal criminal prosecutions for immigration offenses; in addition, a large literature has described how federal immigration enforcement and deportation has focused on noncitizens who have been arrested or charged with state criminal offenses.³² Second, this Part summarizes how corporations are charged with federal offenses generally, including changes over the past two decades to the non-binding guidelines that the Department of Justice has adopted to inform decisions whether to prosecute corporations. Third, this Part describes how ICE has

31. See Kit Johnson, *A Cost-Benefit Analysis of the Federal Prosecution of Immigration Crimes*, 92 DENV. U.L. REV. 863, 865 (2015); Nessel, *supra* note 30, at 401.

32. In Fiscal Year (“FY”) 2019, “ICE’s Enforcement and Removal Operations (ERO) officers arrested approximately 143,000 aliens and removed more than 267,000.” U.S. IMMIGR. & CUSTOMS, *supra* note 6 (“More than 86% of those arrested by ICE had criminal convictions or pending charges.”). Many of these were driving related. See *id.* (“More than 74,000 convictions and charges for Driving Under the Influence.”).

changed its priorities regarding workplace enforcement, to focus less on workplace raids and more on compliance and regulation of employers, including by emphasizing the use of the E-Verify database and paper audits of employers.

A. *Federal Immigration Crime*

Today, the most commonly prosecuted federal immigration crime is illegal reentry into the United States.³³ There more than 10 million unauthorized migrants in the United States, according to estimates.³⁴ Many entered lawfully.³⁵ Under the Immigration and Nationality Act, for those who entered without lawful inspection, it is a federal misdemeanor to unlawfully enter the country.³⁶ It is also a civil violation that makes such a person removable.³⁷ It is a more serious federal offense to unlawfully enter following a prior removal order. Rather than a six-month maximum sentence for unlawful entry, for unlawful reentry, the sentence can be two years in prison, and if the prior removal was on the basis of more serious criminal convictions, then the maximum sentence can be as high as ten or twenty years.³⁸ Unlawful reentry is the most commonly prosecuted federal immigration crime, and 72% of noncitizens prosecuted each year are for unlawful reentry (first-time illegal entry is not commonly prosecuted).³⁹ Those prosecutions are concentrated in the five federal districts along the U.S. border with Mexico.⁴⁰

One goal of the illegal reentry offense is to deter unlawful crossing at borders; another rationale is to focus on recent migrants and not on persons with more established ties to the U.S.⁴¹ The approach towards border enforcement has changed over the past two decades towards making far greater use of criminal and not just civil tools to combat unlawful crossing, primarily at the U.S.-Mexico border.⁴² The Department of Homeland Security has made referral for criminal

33. MOTIVANS, *supra* note 4, at 2 (“The five crime types for which non-U.S. citizens were most likely to be prosecuted in U.S. district court in 2018 were illegal reentry (72% of prosecutions), drugs (13%), fraud (4.5%), alien smuggling (4%), and misuse of visas (2%).”).

34. See JEFFREY S. PASSEL & D’VERA COHN, PEW RSCH. CTR.: HISP. TRENDS, UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE TRENDS, 2010, at 1 (2011), <https://www.pewresearch.org/hispanic/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/> [<https://perma.cc/N6TM-ES27>].

35. *Id.*

36. 8 U.S.C. § 1325(a).

37. 8 U.S.C. § 1182(A)(6)(i) (deeming inadmissible an “alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General”).

38. 8 U.S.C. § 1326(a)–(b).

39. MOTIVANS *supra* note 4, at 2; see also John Schwartz, *Immigration Enforcement Fuels Rise in U.S. Cases*, N.Y. TIMES (Dec. 21, 2009), http://www.nytimes.com/2009/12/22/us/22crime.html?_r=0 [<https://perma.cc/GY3A-2AHG>].

40. MOTIVANS, *supra* note 4, at 2 (“Federal arrests in the five judicial districts on the U.S.-Mexico border increased from 76,171 in 2017 to 126,293 in 2018 . . .”).

41. David A. Martin, *Resolute Enforcement Is Not Just for Restrictionists: Building a Stable and Efficient Immigration Enforcement System*, 30 J.L. & POL’Y 411, 426 (2015).

42. Doug Keller, *Re-thinking Illegal Entry and Re-Entry*, 44 LOY. U. CHI. L.J. 65, 126–27 (2012); Kit Johnson, *A Cost-Benefit Analysis of the Federal Prosecution of Immigration Crimes*, 92 DENV. U. L. REV. 863, 877 (2015).

prosecution mandatory for these offenses since 2005, which in itself is a remarkable criminal referral policy, that few agencies adopt in any setting.⁴³ The Department of Justice announced new policies, under the Trump Administration, in 2017, prioritizing removal of any noncitizens arrested or charged with any criminal offense, with no exceptions for any classes of noncitizens.⁴⁴ Additional related policies announced in 2017 prioritizing the prosecution of immigration offenses, for all federal prosecutors, and in 2018, announcing a “Zero Tolerance” policy emphasizing the priority for federal prosecutors in border states specifically.⁴⁵ Under that policy, “to the extent practicable,” all cases referred by immigration authorities in the federal border districts were to be federally prosecuted.⁴⁶ Under the Trump Administration, those criminal referrals by immigration agents to prosecutors dramatically increased.⁴⁷

There has been a focus on quantity of individual immigration prosecutions over the past decade-and-a-half, including a perception that when federal prosecutors have focused on serious immigration violations, and “organizational rights,” but not low-level offenders, they have been taken to task.⁴⁸ In general, the average sentence for immigration offenses has been short, and it decreased in fiscal year 2018 from twelve to ten months, even as the numbers of such offenses increased, to over 20,000 individuals convicted.⁴⁹ Further, supervised release was ordered in more than half of immigration cases in fiscal year 2018,

43. *Securing the Border: Progress at the Federal Level: Hearing Before the S. Comm. on Homeland Sec. & Gov't Affs.*, 112th Cong. (2011) (statement of Janet Napolitano, Secretary, U.S. Dep't Homeland Sec.), <http://www.dhs.gov/news/2011/05/03/secretary-janet-napolitano-senate-committee-homeland-security-and-governmental> [https://perma.cc/PS9Q-TLM3] (describing goal of “Operation Streamline” as to “increase the consequences for illegally crossing the border by criminally prosecuting illegal border-crossers”).

44. U.S. DEP'T OF HOMELAND SEC., ENFORCEMENT OF THE IMMIGRATION LAWS TO SERVE THE NATIONAL INTEREST (2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf [https://perma.cc/QJ95-83F2] (“[R]egardless of the basis of removability, Department personnel should prioritize removable aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable criminal offense . . .”).

45. Press Release, U.S. Dep't of Just., Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry (April 6, 2018), <https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry> [https://perma.cc/DQG2-343J] (“On April 11, 2017, Attorney General Jeff Sessions announced a renewed commitment to criminal immigration enforcement. As part of that announcement, the Attorney General issued a memorandum to all federal prosecutors and directed them to prioritize the prosecution of certain criminal immigration offenses. Today’s zero-tolerance policy further directs each U.S. Attorney’s Office along the Southwest Border (i.e., Southern District of California, District of Arizona, District of New Mexico, Western District of Texas, and the Southern District of Texas) to adopt a policy to prosecute all Department of Homeland Security referrals of section 1325(a) violations, to the extent practicable.”).

46. *Id.* For a detailed description of these policy decisions, see Eagly, *supra* note 7, at 1983–91.

47. MOTIVANS, *supra* note 4, at 2 (“There were 21 federal criminal immigration arrests per 100 apprehensions by the U.S. border patrol in the southwest border patrol sectors in 2018, up from 12 per 100 in 2017 . . .”); Eagly, *supra* note 7, at 1990–91 (“President Trump inherited a federal criminal system that already prosecuted huge numbers of immigration cases.”).

48. Johnson, *supra* note 42, at 871–72 (describing early-2000’s focus of the U.S. Attorney for Southern California). Regarding the increase in immigration detention facilities, see Kaufman, *supra* note 6, at 1401–08.

49. U.S. SENT’G COMM’N, *supra* note 3, at 9. Ingrid Eagly provides a wonderful overview of trends in criminal immigration enforcement and similarly describes how since 2000, average and median sentences for illegal reentry have steadily declined. Eagly, *supra* note 7, at 1987 n.102 (“The average sentence also declined from thirty-six months in 2000 to only ten months in 2018.”). But the numbers of illegal reentry cases have almost

reflecting the fact that deportation would follow the sentence.⁵⁰ A separate set of offenses relate to harboring, hiring, and transporting noncitizens, under 8 U.S.C. § 1324.⁵¹ As the Second Circuit has held, harboring can extend to the knowing employment of unauthorized noncitizens.⁵²

Under the Immigration Reform and Control Act of 1986 (“IRCA”), employers, in particular, are obligated to verify, using an I-9 form, that all employees hired are not unauthorized aliens, based on an examination of certain types of documents.⁵³ For the first time, employers were prohibited from hiring employees not authorized to work and requiring them to screen for immigration status.⁵⁴ Those I-9 forms must be retained by employers.⁵⁵ Further, § 1324 makes knowing employment of an “unauthorized alien” unlawful; the statute does not require employers to take more than reasonable efforts to assess the accuracy or validity of the documents that the employee provides.⁵⁶ A range of civil penalties apply to violations of the Act.⁵⁷

The employment provisions of § 1324(a) also include a range of criminal offenses. They make it a misdemeanor to engage in a “pattern or practice” of knowingly hiring illegal aliens.⁵⁸ The Act also makes it a felony to employ, during a one-year period, at least ten noncitizens with actual knowledge that they

tripled, from 6,415 in 2000 to 18,241 cases in 2018. *Id.* at 1988 tbl.1. Eagly notes that the decline in sentences may reflect both the advisory sentencing guidelines after *United States v. Booker* and increased awareness, as well as acknowledgment by the U.S. Sentencing Commission, that the guidelines recommendations in immigration cases may be unduly harsh. *Id.* at 1989.

50. U.S. SENT’G COMM’N, *supra* note 3, at 10.

51. 8 U.S.C. § 1324 prohibits, regarding a person who is an alien, and with knowledge or reckless disregard for the person’s lack of authorization to enter, (1) bringing to such a person the United States; (2) transporting or moving such a person within the United States; (3) harboring or concealing within the United States; (4) encouraging or inducing such a person to enter or reside in the United States (or engaging in conspiracy to do); and (5) hiring at least ten such persons for employment. *See* Eisha Jain, *Immigration Enforcement and Harboring Doctrine*, 24 GEO. IMMIGR. L.J. 147, 147 (2010) (examining the effect of the harboring doctrine on U.S. immigration enforcement).

52. *United States v. Kim*, 193 F.3d 567, 573–74 (2d Cir. 1999).

53. 8 U.S.C. § 1324a(b) (codifying Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 101(b), 100 Stat. 3359, 3365–68); *see* 8 U.S.C. § 1324a(b)(1)(A) (“The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining [certain specified categories of documents].”)

54. *See* 8 U.S.C. § 1324a(b)(1)(A).

55. 8 U.S.C. § 1324a(b)(3), (b)(4) (“Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.”)

56. 8 U.S.C. § 1324a(a)(1), (a)(2); *Steiben v. Immigr. Nat. Serv.*, 932 F.2d 1225, 1227 (8th Cir. 1991) (“In an effort to deter illegal immigration, Congress designed . . . [§ 1324a] to control the unlawful employment of aliens in the United States by subjecting persons or entities who hire unauthorized aliens to civil and criminal penalties.”); *see also* H.R. REP. NO. 99-682, at 61–62 (1986) (stating: “[i]t is not expected that employers ascertain the legitimacy of documents presented during the verification process,” and “[t]he ‘reasonable man’ standard is to be used in implementing this provision and the Committee wishes to emphasize that documents that reasonably appear to be genuine should be accepted by employers without requiring further investigation of those documents.”).

57. *See, e.g.*, 8 U.S.C. § 1324a(f); 8 C.F.R. § 274a.10(b)(1)(ii); 8 U.S.C. § 1324c(d)(3)(A).

58. *See* 8 U.S.C. § 1324a(f)(1); 8 C.F.R. § 274a.10(a).

are noncitizens ineligible to work, with a maximum sentence of five years.⁵⁹ The Act provides for a felony sentence of up to ten years, if the person was part of an organization that transported groups of ten or more persons at a time across the border in a manner that endangered lives, or for certain violations done for “commercial gain or private financial advantage. . . .”⁶⁰ Section 1327 makes it a crime to knowingly aid or assist an inadmissible noncitizen who has been convicted of an aggravated felony to enter the United States.⁶¹

A third set of immigration offenses, of high salience in workplace settings, relate to identity theft. It is a federal crime to possess or use false immigration documents or social security numbers.⁶² The U.S. Sentencing Guidelines address immigration crimes specifically, with recent revisions to the smuggling, transportation, and harboring guidelines.⁶³

But, as the Sentencing Commission reports, the vast bulk of immigration charges were for unlawful reentry, or unlawfully remaining in the U.S. without authority (82.4% of all cases), with much of the remainder (12.8%) being smuggling offenses.⁶⁴ The employment offenses, which might more commonly involve corporations, are not commonly charged.⁶⁵ Workplace raids appear to have increased in recent years, after a decline during the Obama Administration.⁶⁶ Even a very large workplace raid, such as a raid that resulted in 280 detentions near Dallas, Texas, is extremely small as compared with the tens of thousands detained at any given time who are not arrested in any workplace setting.⁶⁷ Thus, in fiscal year 2018, the Department of Homeland Security reported a record total of 158,581 administrative arrests, of which about 110,000 occurred in prisons or jails, while about 40,000 occurred “at large” in the community.⁶⁸ The vast majority of those persons were arrested by immigration officers having already been

59. 8 U.S.C. § 1324(a)(3)(A).

60. 8 U.S.C. § 1324(a)(1)(B)(i).

61. 8 U.S.C. § 1327.

62. *See, e.g.*, 18 U.S.C. § 1546(a) (criminalizing possession or use of a false immigration document); 42 U.S.C. § 408(a)(7) (criminalizing false representation of a Social Security number).

63. OFF. OF GEN. COUNS., U.S. SENT’G COMM’N, PRIMER ON IMMIGRATION GUIDELINES 1–4 (2019), https://www.ussc.gov/sites/default/files/pdf/training/primers/2019_Primer_Immigration.pdf [<https://perma.cc/LR5F-Q2FN>].

64. U.S. SENT’G COMM’N, *supra* note 3, at 12.

65. *See id.* at 21.

66. Miriam Jordan, *ICE Arrests Hundreds in Mississippi Raids Targeting Immigrant Workers*, N.Y. TIMES (Aug. 7, 2019), <https://www.nytimes.com/2019/08/07/us/ice-raids-mississippi.html> [<https://perma.cc/FVS9-UGQZ>].

67. Phil Helsel, *ICE Arrests More Than 280 at Texas Business, Biggest Workplace Immigration Raid in a Decade*, NBC NEWS (Apr. 3, 2019, 8:30 PM), <https://www.nbcnews.com/news/us-news/ice-arrests-more-280-texas-business-biggest-workplace-immigration-raid-n990766> [<https://perma.cc/93NT-E2BV>]; *see also* Jordan, *supra* note 66 (discussing examples of particularly large-scale workplace immigration raids); Natalie Kitroeff, *Workplace Raids Signal Shifting Tactics in Immigration Fight*, N.Y. TIMES (Jan. 15, 2018), <https://www.nytimes.com/2018/01/15/business/economy/immigration-raids.html> [<https://perma.cc/MFY6-E4NC>] (addressing recent upticks in workplace immigration raids but acknowledging they are not a common occurrence).

68. U.S. IMMIGR. & CUSTOMS ENF’T, FISCAL YEAR 2018 ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT, 1, 2 fig.1 (2019), <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf> [<https://perma.cc/W78M-HSS8>].

criminally arrested and detained by local law enforcement.⁶⁹ In the report describing these record numbers of immigration arrests, DHS described, how the “results clearly demonstrate that the increased enforcement productivity in FY2017 has maintained an upward trend, and that ICE’s efforts to restore integrity to our nation’s immigration system and enhance the safety and security of the United States have continued to yield positive results.”⁷⁰ That report nowhere discussed workplace arrests or enforcement against corporations. None of the Bureau of Justice Statistics reports regarding immigration criminal enforcement, cited in this section, discuss immigration charges filed against corporations.⁷¹ Similarly, in fiscal year 2019, the Department of Justice (“DOJ”) announced record figures for individual immigration prosecutions.⁷² “These record-breaking numbers are a testament to the dedication of our U.S. Attorneys’ Offices throughout the nation, especially our Southwest border offices,” said Deputy Attorney General Jeffrey A. Rosen at the time.⁷³ That efforts directed at a “crisis at the border,” may then explain the lack of focus on interior and corporate enforcement.⁷⁴

As discussed in the next section, the more recent data on corporate immigration enforcement, similarly suggests corporate offenses are a declining enforcement priority. Thus, one explanation for the lack of focus on corporate immigration violations is the lack of focus on the employment setting more generally, in contrast to the focus on border crossing, for which the Department of Justice has adopted “zero tolerance” policies and dedicated resources, and the interior focus on arrest of individuals screened and identified by local law enforcement in jails.⁷⁵ But, when workplace raids do occur, and they have apparently increased recently, one also observes less focus on corporate employers.⁷⁶ That disconnect raises still additional questions about the relationship between immigration law, criminal law, and corporate crime.

B. *Federal Corporate Prosecutions*

In general, large-scale federal corporate prosecutions, for any criminal offense, are a fairly recent phenomenon, dating back just over two decades. In this Section, I provide a thumbnail overview of the change to corporate prosecution practice in this section; a substantial literature has detailed the changes to policy

69. *Id.* at 6–7 figs.3, 5.

70. *Id.* at 14–15.

71. *See, e.g., id.* at 1–2; Motivans, *supra* note 4, at 20, tbl.16 (2019). The increase was driven by a surge in illegal reentry charges, in the five federal districts along the U.S. Mexico Border. *Id.* at 1–2.

72. Press Release, Off. Pub. Aff., U.S. DEP’T OF JUST., Department of Justice Prosecuted a Record-Breaking Number of Immigration-Related Cases in Fiscal Year 2019 (Oct. 17, 2019), <https://www.justice.gov/opa/pr/departments-justice-prosecuted-record-breaking-number-immigration-related-cases-fiscal-year> [<https://perma.cc/UJ53-2PCW>].

73. *Id.*

74. *Id.*

75. U.S. IMMIGR. & CUSTOMS ENF’T, *supra* note 68, at 4; Garrett, *supra* note 13, at 110; Press Release, *supra* note 45 (announcing a zero-tolerance policy for criminal illegal entry).

76. *See* Jordan, *supra* note 66 (discussing increased immigration enforcement at business place but noting those arrested were employees, not employers); Helsel, *supra* note 67.

and practice that have transformed federal corporate prosecutions over the past two decades.⁷⁷ While prior to the 1990s, large corporate prosecutions were relatively unusual, when the Organizational Sentencing Guidelines were adopted in 1992, federal prosecutors had far clearer rules for how to criminally sentence an organization.⁷⁸ The practice of charging corporations had become an increasingly important and common practice by the end of the 1990s, as reflected in then-Deputy Attorney General Eric Holder's memo setting out for the first time a set of Department of Justice principles for the practice of charging corporate defendants.⁷⁹

In the early 2000's, a new approach gradually transformed the practice of corporate prosecutions, as the DOJ emphasized large-scale settlements using deferred and nonprosecution agreements.⁸⁰ Such deferred and nonprosecution agreements became the mechanism of choice for prosecuting large public corporations during that time period.⁸¹ By 2015, federal prosecutors were charging large numbers of financial institutions, which had rarely been prosecuted in the past.⁸² Prosecutors began to use criminal statutes, such as the Bank Secrecy Act and the Foreign Corrupt Practices Act, that had been neglected in prior years, in organization cases.⁸³

The Department of Justice developed written policies concerning corporate prosecutions during this time period.⁸⁴ The DOJ continued to revise an increasingly detailed set of nonbinding principles for charging organizations, including in response to concerns that policies resulted in overly lenient settlements for corporations.⁸⁵ These policies were incorporated into the U.S. Attorney's Manual.⁸⁶ The Obama Administration policies emphasized investigation of individual corporate offenders, and sought convictions against banks, rather than always seeking out-of-court settlements.⁸⁷

77. See generally Garrett, *supra* note 14 (discussing the development of corporate criminal responsibility in U.S. law).

78. *Id.* at 154–55.

79. *Id.* at 55 (providing an overview of the changing approach towards corporate prosecution during the 1990s).

80. *Id.* (providing an overview of the changing approach towards corporate prosecution during the 2000s and trends in enforcement during that time); Brandon L. Garrett, *Structural Reform Prosecution*, 93 VA. L. REV. 853, 889 (2007) (describing rise in use of compliance and rehabilitative approaches towards corporate prosecutions); see also Christopher A. Wray & Robert K. Hur, *Corporate Criminal Prosecution in a Post-Enron World: The Thompson Memo in Theory and Practice*, 43 AM. CRIM. L. REV. 1095, 1097 (2006).

81. Garrett, *supra* note 80, at 886.

82. Brandon L. Garrett, *The Rise of Bank Prosecutions*, 126 YALE L.J.F. 33, 34 (2016) (detailing changing approach towards prosecution of financial institutions).

83. GARRETT, *supra* note 14, at 64.

84. *Id.* at 55.

85. *Id.* at 55–56.

86. *Id.* at 55.

87. Garrett, *supra* note 82, at 34–35; see Memorandum from Sally Yates, Deputy Attorney General, U.S. Department of Justice, to Heads of Department Components & U.S. Attorneys, at 1 (Sept. 9, 2015), <http://www.justice.gov/dag/file/769036/download> [<https://perma.cc/CW6J-VHD7>]; see also Brandon L. Garrett, *The Metamorphosis of Corporate Criminal Prosecutions*, 101 VA. L. REV. ONLINE 60, 61 (2016); Elizabeth E. Joh & Thomas W. Joo, *The Corporation as Snitch: The New DOJ Guidelines on Prosecuting White Collar Crime*, 101 VA. L. REV. ONLINE 51, 52 (2015).

Prior work has analyzed patterns in corporate criminal prosecutions during this time period, as well as the accompanying array of changes in DOJ corporate prosecution guidelines and practice.⁸⁸ In recent years, a set of DOJ corporate prosecution policy changes, some beginning under the Obama Administration, but far more so under the Trump Administration, have softened corporate penalties and enforcement, and as developed in recent work examining subsequent trends, the result has been a decline in corporate prosecutions and penalties.⁸⁹ The decline in corporate immigration prosecutions, then, can be seen as a companion to the general decline in corporate prosecutions, in numbers as well as in the size of penalties.

C. *ICE Workplace Enforcement Policies and the Rise of E-Verify*

The change towards a system in which the workplace became a site of immigration screening was gradual, and it unfolded decades after the IRCA first required that employers verify immigration status in I-9 forms.⁹⁰ As I will describe, by the late 1990s, early databases were developed with which employers could seek to verify immigration status, rather than just depending on the paper documentation that an employee provided.⁹¹ It was not until the early 2000s, though, that workplace enforcement became a greater priority.⁹² Those enforcement actions brought some of the first large-scale criminal actions against corporate employers.⁹³ Those efforts increased, though, under the Obama Administration, with the creation of the E-Verify database, permitting employers to more readily screen for work authorization than they could by just visually examining identification to fill out an I-9.⁹⁴ The new database increased the obligations of companies and brought with it a new focus on compliance, more auditing by immigration authorities, growing concerns about the accuracy and negative consequences of the new system, as well as growing corporate prosecutions in the immigration area.⁹⁵ As Stephen Lee has explored, the process of deputizing employers as immigration screeners resulted in “our nation’s employers” becoming “a significant and significantly misunderstood group of immigration decision makers.”⁹⁶

88. GARRETT, *supra* note 14, at 253–54.

89. GARRETT, *supra* note 13, at 109; see U.S. DEP’T OF JUST., JUST. MANUAL § 9-28.210 (2018); see also Danielle Ivory, Ben Protess & Robert Gebeloff, *Four Takeaways From the Trump-Era Plunge in Corporate Penalties*, N.Y. TIMES (Nov. 5, 2018), <https://www.nytimes.com/2018/11/05/us/trump-corporate-penalties-sec-justice.html> [<https://perma.cc/DF68-NYZ5>]; Rick Claypool, ‘Law and Order’ Trump Is Soft on Corporate Crime and Wrongdoing, PR WATCH (July 30, 2018, 10:35 AM), <https://www.prwatch.org/news/2018/07/13374/law-order-trump-soft-corporate-crime-wrongdoing> [<https://perma.cc/YC2J-X2FW>].

90. Lee, *supra* note 17, at 1105–07.

91. *Id.* at 1108 n.13.

92. *Id.* at 1129.

93. *Id.* at 1141.

94. Stumpf, *supra* note 30, at 383 n.9.

95. *Id.* at 384–85.

96. Lee, *supra* note 17, at 1105. For additional criticism, see, for example, Maurice A. Roberts & Stephen Yale-Loehr, *Employers as Junior Immigration Inspectors: The Impact of the 1986 Immigration Reform and Control Act*, 21 INT’L LAW. 1013, 1014 (1987); Juliet Stumpf & Bruce Friedman, *Advancing Civil Rights Through*

As part of this focus on compliance, in 1996, as part of the Immigration Reform and Immigrant Responsibility Act (IRIRA), Congress mandated the creation of an employment verification database.⁹⁷ In 1997, Immigration and Customs Enforcement (ICE) released the first version of what would become E-Verify, a “Basic Pilot,” to allow employers to better conduct due diligence on employee identity information.⁹⁸ A federal database was made available, to allow a company to check a person’s photo and social security number as against the Social Security Administration (SSA) and Department of Homeland Security (DHS) databases.⁹⁹

Today, the E-Verify system will inform the employer whether a person is confirmed as “Employment Authorized,” or a “tentative nonconfirmation,” or “TNC,” after which an employer must review the finding with the employee; at that stage, the employee has eight days to contact the SSA and DHS, during which time the employer cannot take action; if finalized, a “Final Nonconfirmation” is entered, only after which the employer is required to terminate employment.¹⁰⁰ This system checks social security numbers, as noted, but it cannot ensure that the numbers themselves are legitimate; thus, a person could use a social security number that belongs to another.

One of the first companies to volunteer to use this Basic Pilot early version of this system was the large poultry company, Tyson Foods, which uncovered violations and was prosecuted, after cooperating with a federal investigation.¹⁰¹ Tyson Foods, along with three managers, was later acquitted in a criminal prosecution.¹⁰²

Workplace enforcement became a greater focus starting in the George W. Bush Administration.¹⁰³ In 2003, federal agents conducted workplace raids at over sixty Wal-Mart stores, and concluded that unauthorized employees were working at 1000 stores; the case resulted in a then-record \$11 million civil payment, with an additional \$4 million payment by contractors working with Wal-Mart.¹⁰⁴ At the time, the spokesperson for ICE explained, “we’re going for a

Immigration Law: One Step Forward, Two Steps Back?, 6 N.Y.U. J. LEGIS. & PUB. POL’Y 131, 131 (2002); Michael J. Wishnie, *Prohibiting the Employment of Unauthorized Immigrants: The Experiment Fails*, 2007 U. CHI. LEGAL F. 193, 193 (2007).

97. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, div. C, § 401(a) (1996); see also Chamber of Com. of the United States v. Edmondson, 594 F.3d 742, 752 (10th Cir. 2010) (describing Basic Pilot program).

98. Green & Ciobanu, *supra* note 25, at 1216.

99. *Id.* at 1216–17.

100. See Stumpf, *supra* note 30, at 392–93 (describing E-Verify process); see also U.S. CITIZENSHIP & IMMIGR. SERVS., E-VERIFY USER MANUAL 111 (2018), <https://www.e-verify.gov/e-verify-user-manual> [<https://perma.cc/4UYF-LFBX>].

101. Green & Ciobanu, *supra* note 25, at 1216–17.

102. See June D. Bell, *Defense Wins of 2003: A “Less Is More” Strategy Clicks with Jury in Tyson Case*, NAT’L L.J. (Mar. 26, 2004).

103. I note that in addition to employer accountability for hiring noncitizens not authorized to work, the Department of Justice also enforces Immigration and Nationality Act (“INA”), 8 U.S.C. § 1324b, and 28 C.F.R. Part 44, which prohibit discrimination on account of citizenship status in hiring, firing, recruitment, or referral for a fee.

104. Green & Ciobanu, *supra* note 25, at 1214–15.

larger breadth of investigations and bigger civil settlements and criminal fines.”¹⁰⁵ Even so, ICE also emphasized its goal to promote compliance at companies: “This case breaks new ground not only because this is a record dollar amount for a civil immigration settlement, but because this settlement requires Wal-Mart to create an internal program to ensure future compliance with immigration laws by Wal-Mart contractors and by Wal-Mart itself.”¹⁰⁶ Thus, “ICE is committed to not only bringing charges against companies that violate our nation’s immigration laws, but also working with them to ensure that they have programs in place to prevent future violations.”¹⁰⁷

In April 2009, under Secretary Janet Napolitano, DHS Guidelines issued to ICE field offices instructed agents “to take aim at employers and supervisors for prosecution ‘through the use of carefully planned criminal investigations.’”¹⁰⁸ At the time, individual enforcement had been the priority; for example, in 2008, while 6,000 people had been arrested in workplace raids, only 135 were employers or managers.¹⁰⁹ Still additional corporate criminal cases were brought during this time.¹¹⁰ These Guidelines, titled a “Worksite Enforcement Strategy,” emphasized that the “prospect for employment” is “one of the leading causes of illegal immigration.”¹¹¹ The Guidelines explained that: “Enforcement efforts focused on employers better target the root causes of illegal immigration.”¹¹² They stated that: “ICE must prioritize the criminal prosecution of actual employers who knowingly hire illegal workers because such employers are not sufficiently punished or deterred by the arrest of their illegal work force.”¹¹³ In particular, the Guidelines stated that an “effective strategy” must (1) penalize employers who “knowingly hire illegal workers,” (2) deter employers “tempted” to do so, and (3) “encourage all employers to take advantage of well-crafted compliance tools.”¹¹⁴ This approach resembles the approach which, as described in Section II.B., has taken hold in corporate prosecution efforts more generally, and in a host of regulatory contexts. Violating corporations were to be punished, but efforts also focused on deterring would-be violators and incentivizing compliance,

105. *Id.* at 1215.

106. *Id.*

107. *Id.* at 1216.

108. For an overview, see Ginger Thompson, *Immigration Agents to Turn Focus to Employers*, N.Y. TIMES (Apr. 30, 2009), <https://www.nytimes.com/2009/04/30/us/politics/30immig.html> [<https://perma.cc/PY2B-SBAF>]

109. *Id.*

110. See, e.g., News Release, U.S. ATT’Y’S OFFICE, E. DIST. OF TEX., *Justice Department and Immigration & Customs Enforcement Reach \$4.5 Million Agreement with Pilgrim’s Pride* (Dec. 30, 2009) (discussing agreement Pilgrim’s Pride Corporation to pay \$4.5 million and adopt more stringent immigration compliance practices in exchange for investigation conclusion); see also Brandon L. Garrett, *The Corporate Criminal as Scapegoat*, 101 VA. L. REV. 1789, 1853 (2015) (discussing criminal prosecution of individuals and corporations).

111. Memorandum from Marcy M. Forman, Director, Office of Investigations, to Assistant Director, Deputy Assistant Directors & Special Agents in Charge, Worksite Enforcement Strategy, U.S. Immigration and Customs Enforcement (Apr. 30, 2009), https://www.ice.gov/doclib/foia/dro_policy_memos/worksite_enforcement_strategy4_30_2009.pdf [<https://perma.cc/7P9D-3YBL>].

112. *Id.* at 1.

113. *Id.*

114. *Id.*

using E-Verify, so that corporations can themselves prevent violations through their own procedures and due diligence.

Some of that work would occur through administrative and civil tools. Immigration violations are civil, and conversely, large numbers of individual deportations occur through substantial cooperation between local law enforcement and immigration authorities.¹¹⁵ Further blurring the civil and criminal lines, the FBI enters immigration information into its criminal databases.¹¹⁶ There is not the same cooperative relationship and effort to target employers.¹¹⁷ But, civil enforcement by immigration officers is routine.¹¹⁸ For example, ICE offices were asked to conduct Form I-9 audits, to assess the identify of workers at companies and check for irregularities.¹¹⁹ If ICE determines that an employer has violated the law and should be fined, it issues a Notice of Intent to Fine (NIF).¹²⁰ NIFs may result in final orders for monetary penalties, settlements, or case dismissals.¹²¹ Employers who have engaged in a pattern or practice of knowingly hiring unauthorized immigrants can also be criminally prosecuted.¹²² Civil fines were to be used where criminal prosecutions are not appropriate, as well as debarment proceedings against companies that hired illegal workers, preventing them from work on federal contracts.¹²³

The Guidelines also reshaped how enforcement efforts were to proceed, with a greater focus on corporations than in the past. Crucially, agents were instructed to “obtain indictments, criminal arrest or search warrants, or a commitment from a U.S. attorney’s office to prosecute the targeted employer, before arresting employees for civil immigration violations at a work site.”¹²⁴ They required that at least fourteen days before conducting a raid, the relevant field office notify ICE headquarters with information including a proposed strategy for prosecuting the employer.¹²⁵

The E-Verify system helped to make this new focus on corporate compliance in immigration possible. As Juliet Stumpf puts it, “E-Verify represents a significant step beyond IRCA in entrenching immigration enforcement in the workplace.”¹²⁶ In July 2009, all federal employers and contractors were required

115. See Stumpf, *supra* note 8, at 388–89; 8 U.S.C. § 1357(g)(1) (authorizing Attorney General to enter agreements with state law enforcement to perform functions of immigration officers).

116. Stumpf, *supra* note 8, at 389; Michael J. Wishnie, *State and Local Police Enforcement of Immigration Laws*, 6 U. PA. J. CONST. L. 1084, 1086 (2004).

117. See Thompson, *supra* note 108.

118. See Memorandum, *supra* note 111, at 1.

119. *Id.* at 2.

120. *Id.* at 3.

121. See *Form I-9 Inspection Overview*, U.S. IMMIGR. & CUSTOMS ENF’T (Aug. 19, 2019), <https://www.ice.gov/factsheets/i9-inspection> [<https://perma.cc/V528-GUN4>].

122. See Memorandum, *supra* note 111, at 2.

123. *Id.* at 2–3.

124. *Id.* at 2.

125. Thompson, *supra* note 108.

126. Stumpf, *supra* note 30, at 394.

to participate in E-Verify, a database created in the late 1990s that permits employers to verify identify of potential or current employees.¹²⁷ The commitment was reiterated in 2013: “ICE will focus its resources within the worksite enforcement program on the criminal prosecution of employers who knowingly hire illegal workers in order to target the root cause of illegal immigration.”¹²⁸ The focus was not on large workplace raids, but rather on promoting compliance through prosecutions, I-9 inspections, civil fines, and debarment, as well as educational efforts.¹²⁹ In 2012, then-Homeland Security Secretary Janet Napolitano described how since the new policies took effect in 2009, “ICE has audited more than 8,079 employers suspected of knowingly hiring workers unauthorized to work in the United States, debarred 726 companies and individuals, and imposed more than \$87.9 million in financial sanctions.”¹³⁰

The E-Verify system expanded the ability for companies to themselves conduct screening of employees, growing out of the earlier Basic Pilot database, by permitting rapid checks of employee social security numbers, where mandated by federal law for federal agencies and contractors, and by a growing number of states that have required at least some employers to use the system.¹³¹ At its inception, it provided a way for corporations to assure compliance, where earlier, they could not necessarily be expected to detect whether employee identification documents were valid or not.¹³² Shortly after E-Verify was launched, then-DHS Secretary Janet Napolitano added, that “Employer enrollment in E-Verify, our on-line employee verification system managed by USCIS, has more

127. See E-VERIFY, <https://www.e-verify.gov> (last visited Jan. 18, 2021) [<https://perma.cc/P3GJ-7BMN>] (“[A] web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States”); see also Press Release, Office of the Press Secretary, Secretary Napolitano Strengthens Employment Verification with Administration’s Commitment to E-Verify (July 8, 2009), <https://www.dhs.gov/news/2009/07/08/administration-commits-e-verify-strengthens-employment-verification> [<https://perma.cc/72WC-FL7R>] (“Department of Homeland Security (DHS) Secretary Janet Napolitano today strengthened employment eligibility verification by announcing the Administration’s support for a regulation that will award federal contracts only to employers who use E-Verify to check employee work authorization.”); THE WHITE HOUSE, BUILDING A 21ST CENTURY IMMIGRATION SYSTEM at 21–22 (2011), https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/immigration_blueprint.pdf [<https://perma.cc/ZHZ7-9FC2>] (regarding the new approach making E-Verify mandatory).

128. Amy Sherman, *Obama Holds Record for Cracking Down on Employers Who Hire Undocumented Workers*, POLITIFACT, (July 3, 2013), <https://www.politifact.com/factchecks/2013/jul/03/debbie-wasserman-schultz/obama-holds-record-cracking-down-employers-who-hir/> [<https://perma.cc/EJA9-MVLN>].

129. See *id.*

130. *Written Testimony of U.S. Department of Homeland Security Secretary Janet Napolitano for a House Committee on the Judiciary hearing titled “Oversight of the Department of Homeland Security”* DEP’T OF HOMELAND SEC. (July 17, 2012), <https://www.dhs.gov/news/2012/07/17/written-testimony-dhs-secretary-janet-napolitano-house-committee-judiciary-hearing> [<https://perma.cc/6FES-6CGJ>].

131. *E-Verify States Map*, LAWLOGIX, <https://www.lawlogix.com/e-verify-map/> (last visited Jan. 18, 2021) [<https://perma.cc/HT3Y-WYVS>] (showing state E-Verify requirements as of 2019 by map).

132. For early work describing the costs and benefits of the new E-Verify system, see Danielle M. Kidd, Note, *E-Verify: Promoting Accountability and Transparency in Federal Procurement through Electronic Employment Verification*, 40 PUB. CONT. L.J. 829, 830 (2011); Carl Wohlleben, Note, *E-Verify, A Piece of the Puzzle Not a Brick in the Wall: Why All U.S. Employers Should Be Made to Use E-Verify, Just Not Yet*, 36 RUTGERS COMPUT. & TECH. L.J. 137, 137–38 (2009).

than doubled since January 2009, with more than 385,000 participating companies representing more than 1.1 million hiring sites.”¹³³ Secretary Napolitano added that they had “continued to promote and strengthen E-Verify, developing a robust customer service and outreach staff to increase public awareness of E-Verify’s benefits and inform employers and employees of their rights and responsibilities.”¹³⁴ Secretary Napolitano noted, “More than 17 million queries were processed in E-Verify in Fiscal Year 2011, allowing businesses to verify the eligibility of their employees to work in the United States.”¹³⁵ Further, they also launched the E-Verify Self Check program, a “voluntary, free, fast, and secure online service that allows individuals in the United States to confirm the accuracy of government records related to their employment eligibility status before seeking employment.”¹³⁶

At the time, President Barack Obama emphasized:

It means cracking down more forcefully on businesses that knowingly hire undocumented workers...most businesses want to do the right thing ... So we need to implement a national system that allows businesses to quickly and accurately verify someone’s employment status. And if they still knowingly hire undocumented workers, then we need to ramp up the penalties.¹³⁷

Scholarship examining the use of E-Verify has been less sanguine, describing errors when it is used,¹³⁸ whether it permits state regulation of immigration,¹³⁹ or harms labor protections for undocumented workers,¹⁴⁰ and whether it imposes costs on the population as a whole through a combination of “error, misuse, discriminatory effect, or a decrease in individual autonomy.”¹⁴¹

Thus, with the creation of E-Verify, the Administration conveyed that enforcement against violating employers would increase as employers could be expected to adopt a higher degree of due diligence. The system focused far more

133. *Written Testimony of U.S. Department of Homeland Security Secretary Janet Napolitano*, *supra* note 130.

134. *Id.*

135. *Id.*

136. *Id.*

137. See the White House President Barack Obama, *Strengthening Enforcement*, OBAMA WHITE HOUSE ARCHIVES, <https://obamawhitehouse.archives.gov/issues/immigration/strengthening-enforcement> (last visited Jan. 18, 2021) [<https://perma.cc/674M-RJFZ>]; Off. of the Press Sec’y, Fact Sheet: Fixing Our Broken Immigration Systems so Everyone Plays by the Rules (Jan. 29, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules> [<https://perma.cc/UT7U-XMHC>].

138. See Amy Peck, *Latest Report on E-Verify: The Good, The Bad and the Unresolved*, LAWLOGIX (Jan. 20, 2011), <https://www.lawlogix.com/latest-report-on-e-verify-the-good-the-bad-and-the-unresolved/> [<https://perma.cc/3ZUL-QFD5>] (describing errors as “still a way of life” for E-Verify users).

139. See Jaime Walter, Comment, *Congressional Preemption of Work-Authorization Verification Laws: A Narrower Approach to Defining the Scope of Preemption*, 45 U.S.F.L. REV. 289, 307 (2010).

140. See, e.g., Rachel Feller, *Preempting State E-Verify Regulations: A Case Study of Arizona’s Improper Legislation in the Field of “Immigration-Related Employment Practices,”* 84 WASH. L. REV. 289, 304 (2009); Lora L. Ries, *B-Verify: Transforming E-Verify into a Biometric Employment Verification System*, 3 ALB. GOV’T L. REV. 271, 285–86 (2010).

141. See Stumpf, *supra* note 30, at 385.

on private workplace immigration screening.¹⁴² While companies might expect that E-Verify would lead to fewer immigration raids, they may have also been subjected to more raids, based on E-Verify information, whether accurate or not.¹⁴³ Whether it created a sound system or not,¹⁴⁴ in response to the rise of E-Verify, corporate employers played a growing role as immigration screeners. As described in the next Part, corporate prosecutions for immigration violations initially increased under those new policies, centering on the E-Verify system.

III. CORPORATE IMMIGRATION PROSECUTIONS

This Part describes new data regarding corporate prosecutions generally, and federal corporate immigration prosecutions specifically. These data are gathered from the Duke and UVA Corporate Prosecution Registry, which is the most comprehensive resource available regarding federal prosecutions of organizations, with a dataset that begins in 2001.¹⁴⁵ As described below, while corporate immigration enforcement increased under the Obama Administration ICE workplace policies beginning in 2009, in the past few years under the Trump Administration, such enforcement has notably declined.¹⁴⁶ Nor is there evidence, as I describe, that administrative and civil enforcement has compensated for the lack of corporate criminal enforcement.¹⁴⁷

A. Trends in Corporate Immigration Enforcement

These data collected concerning corporate prosecutions are reflected in the Appendix, which details all federal corporate prosecutions located from 2001–2019, and which are available along with docket entries and the text of agreements at the Duke and UVA Corporate Prosecution Registry. Summarizing these data, Figure 1 below displays numbers of corporate immigration prosecutions from 2001 to 2019. One can readily observe that beginning in 2005, corporate immigration prosecutions increased, as priorities at ICE and the Department of Justice changed. Following that time period, as described in Section II.C., the E-Verify system accompanied new Guidelines and a new approach towards compliance and enforcement for corporations, cementing the focus that began in the George W. Bush Administration on corporate enforcement. Following the Obama Administration, while trends varied, these corporate immigration cases

142. See Jeffrey Manns, *Private Monitoring of Gatekeepers: The Case of Immigration Enforcement*, 2006 U. ILL. L. REV. 887, 940–41 (2006).

143. See Raquel Aldana, *Of Katz and “Aliens”: Privacy Expectations and the Immigration Raids*, 41 U.C. DAVIS L. REV. 1081, 1091, 1098–100 (2008).

144. Regarding E-Verify error rates, see Stumpf, *supra* note 30, at 399 (“E-Verify underverifies. Database inadequacies and user error create erroneous failures to confirm a small percentage of employees who are work authorized. In 2009, 2.6% of employees screened generated a tentative nonconfirmation response. Of the total number of tentative nonconfirmations, between 22% and 95% were erroneous.”).

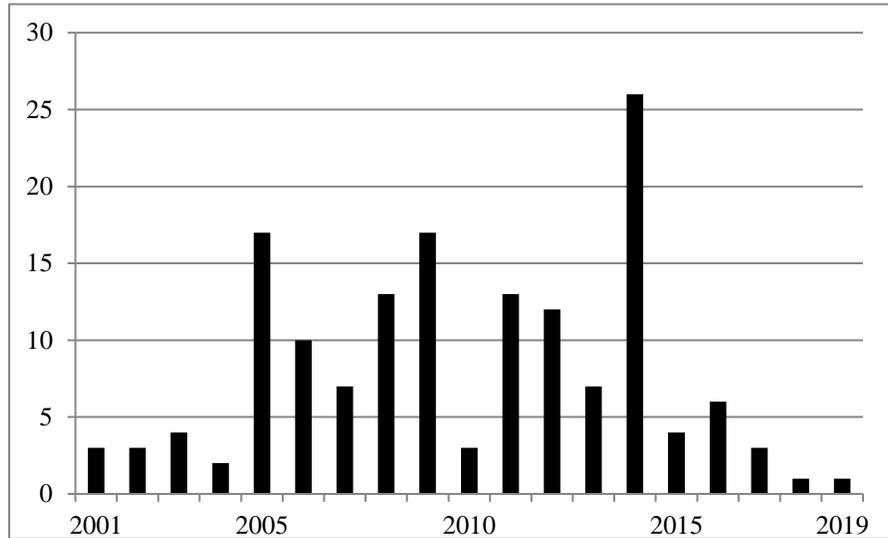
145. See Duke/UVA Registry, *supra* note 29. The Registry also includes pre-2001 deferred and nonprosecution agreements with organizations; the more complete collection that includes plea agreements, declinations, and trial judgments, begins in 2001.

146. See discussion *infra* Section III.A.

147. See discussion *infra* Section III.D.

continued to be brought in larger numbers through 2014, which was a record year in terms of numbers of cases brought. One then sees a drop-off, below in Figure 1, regarding numbers of cases brought per year. These data reflect the year in which a case was resolved, and thus, a case settled in a prosecution agreement or judgment in a given year may reflect an investigation initiated several years prior.

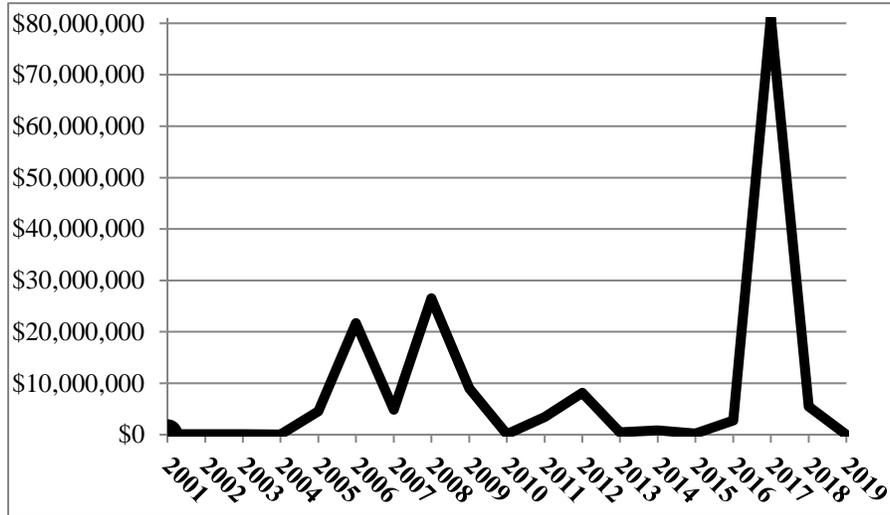
FIG. 1. ANNUAL NUMBER CORPORATE IMMIGRATION PROSECUTIONS, 2001-19



The numbers of cases do not reflect the seriousness or size of the cases or the conduct involved. The penalties imposed in a case provide one measure of the severity of the conduct. The trend in penalties is slightly different than the trend concerning numbers of corporate immigration prosecutions.

As Figure 2 shows below, total penalties spiked later, in 2017–2018, with several large cases brought in each of those years. This reflects the impact of a handful of cases with very large fines, as set out in the Appendix. As described in the next Section, although there were two large cases in 2017–2018, both were legacy cases from the prior Administration, that had been in development for many years. These trends cannot address whether in the investigation pipeline there are similar cases which may be settled in future years. But the drop-off suggests that there is, at minimum, a years-long slowdown in the resolution of large corporate immigration prosecutions under the new Administration.

FIG. 2. CORPORATE IMMIGRATION PENALTIES, 2001-19



In reviewing the types of companies prosecuted for immigration prosecutions, one can readily observe common themes. Most are smaller companies, and the industries are typically agriculture, contracting and construction, food processing, and smaller manufacturers. This is consistent with data on which industries are most likely to employ unauthorized immigrant workers; the industries are often lower paying and with relatively more dangerous working conditions.¹⁴⁸

B. *The Rise in Corporate Immigration Prosecutions*

Immigration enforcement brought during the Obama Administration as against corporate employers reflected the policy changes just described. In 2006, for example, federal agents conducted raids at forty shipping pallet factories operated by IFCO Systems.¹⁴⁹ Agents detained more than a thousand noncitizens and estimated there were thousands more—more than half of IFCO employees had false Social Security numbers.¹⁵⁰ Managers were charged with immigration violations.¹⁵¹ IFCO paid almost \$21 million in fines, including back wages and civil penalties, and agreed to take compliance measures, including joining the E-Verify system allowing instant checks on employee social security numbers.¹⁵²

148. JEFFREY S. PASSEL AND D'VERA COHN, PEW RSCH. CTR., OCCUPATIONS OF UNAUTHORIZED IMMIGRANT WORKERS (Nov. 3, 2016), <https://www.pewresearch.org/hispanic/2016/11/03/occupations-of-unauthorized-immigrant-workers/> [<https://perma.cc/9HGN-EP6D>].

149. GARRETT, *supra* note 14, at 264.

150. *Id.*

151. *Id.*

152. *Id.*

In another case, WesternGeco paid \$19.6 million in fines for submitting fraudulent visa applications for workers on Gulf of Mexico oil vessels.¹⁵³ It is common for recent corporate settlements to require that the company continue to use the E-Verify system; of course, for many of them, where the company was already using E-Verify, the provision suggests that it was not effectively prevent violations.¹⁵⁴ Other agreements require a company to participate in E-Verify for the first time.¹⁵⁵

These cases can raise real practical challenges. For example, in May 2008, one of the largest immigration raids in history swept a kosher meatpacking plant in Postville, Iowa.¹⁵⁶ More than 300 employees were arrested, and within days more than 250 pleaded guilty to immigration crimes.¹⁵⁷ In expedited hearings in groups of five, they pleaded guilty to lesser offenses of misuse of Social Security cards, rather than the aggravated identity theft charges for which they were arrested.¹⁵⁸ The arrests and prosecutions were a change in federal practice; in the

153. Press Release, U.S. Dep't of Just. S.D. Tex. (Jun. 16, 2006), <https://2001-2009.state.gov/m/ ds/rls/67985.htm> [<https://perma.cc/376S-5L4X>].

154. See, e.g., ABC Professional Trees Services, Inc., Nonprosecution Agreement at 2 (May 14, 2012), <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/ABC.pdf> [<https://perma.cc/VDE9-QWQF>] (“It is further understood that ABC Professional Tree Services: (a) shall continue to use E-Verify . . .”); Advanced Containment Systems, Inc., Nonprosecution Agreement at 2 (Dec. 5, 2011), <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/advanced-containment-systems.pdf> [<https://perma.cc/4GS-6-3YYT>] (“It is further understood that ACSI and its subsidiaries: (a) shall continue to use E-Verify . . .”); Atrium Companies, Inc., Nonprosecution Agreement at 2 (Jan. 6, 2012), <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/atrium.pdf> [<https://perma.cc/6NJJ-X622>] (“It is further understood that Atrium Companies and its subsidiaries: (a) shall continue to use E-Verify . . .”).

155. Plea Agreement at 4, United States v. Behrmann Meat Processing, Inc., No. 12-30156-DRH (S.D. Ill. Jun. 29, 2012), <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/Behrmann-Meat.pdf> [<https://perma.cc/7KJ6-VW8X>] (“The Defendants agree to participate in an ‘e-verify’ program . . .”); Plea Agreement at 6, United States v. EuroFresh, Inc., No. 11-Mj-4007-6FE (Dist. Ariz. Aug. 26, 2011), <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/EurofreshInc.pdf> [<https://perma.cc/5Q4M-P3JE>] (“Additional compliance measures shall include . . . [d]ocumentation of E-verify and other checks done for each signed Form I-9[.]”); Settlement Agreement Regarding IFCO Systems, N.A., Inc. 11 (Dec. 19, 2008) (“Use of the Department of Homeland Security’s ‘E-Verify’ program for all hiring[.]”); Plea Agreement at 7, United States v. Triangle Grading and Paving, Inc., No. 1:14CR264-1 (M.D. N.C. July 8, 2014), <https://corporate-prosecution-registry.s3.amazonaws.com/media/agreement/triangle-grading.pdf> [<https://perma.cc/5KXB-RMXP>] (“The defendant . . . agrees to take the following compliance measures . . . [u]se E-Verify continuously and comprehensively . . . [p]rovide annual E-Verify and I-9 training to human resources personnel conducted by an independent third party subject matter expert . . . [i]mplement an employee hotline to report suspected instances of improper conduct related to I-9 and E-Verify compliance.”).

156. GARRETT, *supra* note 14, at 99.

157. *Id.*

158. Sarah B. Horton, *From “Deportability” to “Denounce-Ability:” New Forms of Labor Subordination in an Era of Governing Immigration Through Crime*, 39 POLAR: POL. AND LEGAL ANTHROPOLOGY REV. 312, 312 (2016) (“In expedited hearings, migrants, bound by handcuffs at the wrists and with chains extending from their torsos to their ankles, pled guilty to Social Security fraud in groups of five . . .”).

past, deportations might have resulted from such a raid, but not added-on criminal charging.¹⁵⁹ The prosecutions were the beginning of a trend towards far greater interior criminal enforcement of immigration offenses.¹⁶⁰

The raids led to action against the corporation and management, too, which also represented a new trend. A local Postville official complained, “They don’t go after employers. They don’t put CEOs in jail.”¹⁶¹ Yet, in that case, the Department of Justice did bring charges against higher-ups, including the CEO, and the corporation itself, Agriprocessors, Inc.¹⁶² Unlike the cases against immigrant workers, which were fast-tracked and resolved using lenient pleas within days, resulting in deportations, this corporate case plodded along, underscoring the complexity of bringing such prosecutions.¹⁶³ The CEO went on trial in late 2009 and was convicted, but not of immigration-related charges, rather of bank fraud charges related to efforts to sell the company; President Trump commuted the sentence in 2017.¹⁶⁴ The government eventually dismissed all of the charges against Agriprocessors, Inc. after the company went bankrupt.¹⁶⁵ The company could not pay a fine before these dismissals occurred, because it was “an empty shell.”¹⁶⁶

C. *Recent Trends in Corporate Immigration Prosecution*

Not only have the numbers of corporate immigration cases declined since 2016, but so have total penalties.¹⁶⁷ The decline in penalties is not as steep, however, because two of the largest penalties were recent: the Waste Management of Texas penalty of \$5.5 million, imposed in 2018, and the Asplundh Tree Services

159. *Id.* (“The aggressive raid in Postville marked a departure from customary ICE procedure during worksite raids, which was to deport detained migrants without prosecuting them for immigration-related conduct.”).

160. *Id.* at 313 (“As the border has migrated inward, spaces of everyday life—including workplaces, homes, and neighborhoods—have become subjected to intensified policing on an unprecedented scale.”).

161. GARRETT, *supra* note 14, at 99.

162. Press Release, FBI, *Former CEO of Agriprocessors Sentenced to 27 Years in Federal Prison* (Jun. 22, 2010), <https://archives.fbi.gov/archives/omaha/press-releases/2010/om062210.htm> [https://perma.cc/APP7-YNR4].

163. GARRETT, *supra* note 14, at 99.

164. JTA, *Trump Commutes Sentence of Agriprocessors’ CEO Sholom Rubashkin*, JEWISH WEEK: FOOD & WINE, (Dec. 21, 2017), <https://jwfoodandwine.com/article/2017/12/21/trump-commutes-sentence-agriprocessors-ceo-sholom-rubashkin> [https://perma.cc/64SQ-JMVJ].

165. GARRETT, *supra* note 14, at 99.

166. *Id.*

167. *Id.*; see also *supra* Figure 2.

penalty of \$80 million (as well as an additional \$15 million civil penalty), imposed in 2016.¹⁶⁸ Both, however, were cases that had been in progress from the prior administration.¹⁶⁹

In the Asplundh case, three managers, including a vice president, had pleaded guilty to immigration offenses.¹⁷⁰ The combined civil and criminal penalty in the case was the largest ever in an immigration matter.¹⁷¹ The settlements concluded a six-year investigation.¹⁷² The company, in addition to paying the fine, described taking “immediate corrective action,” including having hired new compliance staff, adopted a new facial recognition system, and described its efforts to end the practices, from 2010–2014, that resulted in the prosecution.¹⁷³

The Waste Management case had begun with searches in 2012 and indictments of three managers in 2014, for a “scheme to employ undocumented aliens as helpers on waste trucks picking up garbage in and around Houston.”¹⁷⁴ This was part of a larger pattern at the company, which, “hired manual laborers with little or no regard for their legal status for almost 10 years.”¹⁷⁵ Nevertheless, the company was offered leniency; the U.S. Attorney explained: “In considering whether to enter into such agreements, we must take into account the collateral consequences that a criminal prosecution would have on the company’s contracts with many municipalities across the country and the thousands of employees for the conduct of three managers at one operating unit in Houston.”¹⁷⁶ Thus, collateral consequences were a deciding factor in offering leniency to the company, which forfeited \$5.5 million of its gains from the scheme, but which did not pay a criminal fine, and which did not receive a criminal conviction or an indictment, but rather a nonprosecution agreement.¹⁷⁷

168. Press Release, Dep’t of Just., Waste Management to Forfeit \$5.5 Million for Hiring Illegal Aliens (Aug. 29, 2018), <https://www.justice.gov/usao-sdtx/pr/waste-management-forfeit-55-million-hiring-illegal-aliens> [<https://perma.cc/XY9A-L8QD>]; Press Release, Dep’t of Just., Asplundh Tree Experts, Co. Pleads Guilty to Unlawful Employment Of Aliens (Sept. 28, 2017), <https://www.justice.gov/usao-edpa/pr/asplundh-tree-experts-co-pleads-guilty-unlawful-employment-aliens> [<https://perma.cc/ZGG5-S8DN>] (“Today marks the end of a lengthy investigation by ICE Homeland Security Investigations into hiring violations committed by the highest levels of Asplundh’s organization.”).

169. Press Release, Dep’t of Just., Waste Management to Forfeit \$5.5 Million for Hiring Illegal Aliens, *supra* note 168; Press Release, Dep’t of Just., Asplundh Tree Experts, Co. Pleads Guilty to Unlawful Employment of Aliens, *supra* note 168 (noting that the six-year investigation started in 2011).

170. Michael Rubinkam, *Tree Company Asplundh to Pay Record Fine for Immigration Practices*, ASSOCIATED PRESS (Sept. 28, 2017), <https://apnews.com/685bfb24850f40909ab66688a862d148/Tree-company-to-pay-record-fine-for-immigration-practices> [<https://perma.cc/BM5C-D4SM>].

171. Press Release, Dep’t of Just., Asplundh Tree Experts, Co. Pleads Guilty to Unlawful Employment of Aliens, *supra* note 168 (“The \$95,000,000.00 recovery, including \$80,000,000.00 criminal forfeiture money judgment and \$15,000,000.00 in civil payment, represents the largest payment ever levied in an immigration case.”).

172. Alicia A. Caldwell, *Pennsylvania Company to Pay Record Fine for Illegally Hiring Immigrants*, WALL ST. J. (Sept. 29, 2017, 3:31 PM), <https://www.wsj.com/articles/pennsylvania-company-to-pay-record-fine-for-illegally-hiring-immigrants-1506713490> [<https://perma.cc/BYZ8-NGLY>].

173. *Id.*

174. Press Release, U.S. Dep’t of Just. S.D. Tex., Waste Management to Forfeit \$5.5 Million for Hiring Illegal Aliens (Aug. 29, 2018), *supra* note 168.

175. *Id.*

176. *Id.*

177. *Id.*

D. *Civil Corporate Immigration Enforcement*

These trends regarding criminal enforcement do not include separate civil and administrative enforcement against corporations, however, and it would be possible for criminal enforcement to lag, but for parallel civil and administrative enforcement to increase. ICE reports that while workplace raids have increased dramatically, convictions of managers had remained constant.¹⁷⁸ ICE also reports, however, that I-9 audits, inspections which are directed at employers, have increased under the Trump Administration.¹⁷⁹

Civil settlements and penalties imposed on corporations, however, have apparently followed a similar trendline as criminal immigration penalties. Civil immigration penalties declined in 2018, with civil penalties at \$10.2 million, slightly higher than the year before, but fines, forfeitures and restitution down to \$10.2 million from \$96.7 million (a high figure due to the large fine in the *Asplundh* case, noted above, also a legacy case from the Obama Administration).¹⁸⁰ These figures highlight that far larger civil penalties are paid each year than criminal in the immigration setting. There continue to be large civil settlements, without a criminal filing.¹⁸¹ These data also suggest, however, that civil penalties may have also declined following the rise during the George W. Bush and then the Obama Administrations.¹⁸²

IV. IMPLICATIONS FOR IMMIGRATION AND CRIMINAL LAW

One set of implications of these findings shed light on corporate crimmigration as a phenomenon and the trends in corporate immigration prosecutions. Thus, these data suggest that corporate immigration prosecutions have followed a similar path in recent years as in other areas in which the Department of Justice has widened the gap between more lenient corporate enforcement and larger-scale individual enforcement. Such a strategy should be particularly visible in

178. Roy Maurer, *Immigration Worksite Enforcement Surged in 2018*, SHRM (Dec. 20, 2018), <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/ice-immigration-worksite-enforcement-surged-2018.aspx> [<https://perma.cc/R79U-FJPO>] (“Criminal indictments and convictions remained steady. In FY 2018, 72 managers were indicted, compared to 71 the year before, and 49 managers were convicted versus 55 in FY 2017. But those numbers are expected to rise due to many ongoing investigations still in development, according to ICE.”).

179. *Id.*

180. *Id.* (“ICE opened 6,848 worksite investigations in FY 2018, which ended Sept. 30, compared to 1,691 in the previous 12 months, and it initiated 5,981 I-9 audits, compared to 1,360 in FY 2017. Over 2,300 people were arrested at work in FY 2018—more than seven times the amount in the previous year.”).

181. See, for example, the settlement with the Seaboard corporation, involving a \$1,006,000 civil fine, *Oklahoma Based Agri-Business Agrees to \$1 Million Civil Settlement*, U.S. IMMIGR. & CUSTOMS ENF’T (Nov. 7, 2018), <https://www.ice.gov/news/releases/oklahoma-based-agri-business-agrees-1-million-civil-settlement> [<https://perma.cc/89KR-W2RV>], or the settlement with Mu Sigma, in which there was a \$1,600,000 civil settlement accompanied by a smaller \$900,000 criminal fine, *Indian Management Consulting Firm Agrees to \$2.5 Million Global Settlement in North Texas for Visa Fraud, Inducing Aliens to Enter US*, U.S. IMMIGR. & CUSTOMS ENF’T (Sept. 19, 2019), <https://www.ice.gov/news/releases/indian-management-consulting-firm-agrees-25-million-global-settlement-north-texas> [<https://perma.cc/6AK2-EULE>].

182. See Appendix.

the immigration context, given the massive numbers of individuals being prosecuted for immigration crimes, and the relatively insignificant numbers of corporations now being prosecuted for related crimes. Part III focused on the descriptive: setting out an empirical account of these data on corporate immigration prosecutions. This Part turns towards the implications of these findings for policy and practice, as well as reflecting on the role that corporate immigration crime should play in our understanding of immigration and labor law.

One lens from which to view these findings focuses more squarely on immigration law. Immigration enforcement in workplace settings is far less common than enforcement through local arrests and jail screening.¹⁸³ Immigration enforcement had only recently become more of a priority in the corporate setting, as workplace raids became more common and the E-Verify system was adopted, before apparently slipping in its use.¹⁸⁴ The new screening system imposes burdens on individuals, and it imposes compliance burdens on corporations.¹⁸⁵ Whether the system accomplishes its goals in immigration law, is an important question and it has been developed in literature on E-Verify.¹⁸⁶ A second lens is labor law. Whether the screening system burdens workers' rights and discourages reporting of unlawful labor and immigration practices is an important question.

A third lens focuses on corporate criminal law. Corporate crime has not been a field that has been connected to immigration law, even as criminal law and immigration are now understood to be deeply connected. One way to view this pattern is a focus by prosecutors on lower-level individual cases, minor cases, but neglecting the more serious violators, and indeed, not relying on lower-level violators to secure cases against more serious violators. Indeed, the focus on individual immigration prosecutions may come at the expense of holding corporations accountable for immigration violations. Perhaps the disconnect should not be a surprise; comments by Department of Justice spokesperson comments suggest that immigration is a top priority under the Trump Administration, while corporate enforcement is not.¹⁸⁷

One rationale for prosecuting corporate immigration violations is a demand-side focus on discouraging migrants overseas. The April 2009 Worksite Enforcement Strategy emphasized that immigration enforcement must focus on the demand-side: employers willing to hire illegal employees, for economic gain.¹⁸⁸ Thus, that new ICE approach emphasized that an "effective strategy" must: (1) penalize employers who "knowingly hire illegal workers," (2) deter

183. See *supra* Section II.A, *supra* (discussing workplace enforcement); U.S. IMMIGR. & CUSTOMS ENF'T, *supra* note 68 (discussing enforcement through local arrests).

184. See *supra* Section II.C (discussing the use of E-Verify in workplace enforcement); see also Maurer, *supra* note 178.

185. See *supra* Section II.C.

186. See *supra* notes 138–41 and accompanying text.

187. Garrett, *supra* note 13, at 113–14, 137 ("[S]mall offender cases, though, may have crowded out efforts to tackle serious corporate offenders in complex individual and corporate cases.").

188. Memorandum, *supra* note 111, at 1.

employers “tempted” to do so, and (3) “encourage all employers to take advantage of well-crafted compliance tools.”¹⁸⁹ In doing so, ICE focuses on corporate compliance. Such an approach fits well with corporate enforcement approaches more generally, in which the goal is not just to punish individuals, but to hold organizations accountable, to promote compliance, and using civil investigations and fines where possible.¹⁹⁰ Yet, the evidence gathered here suggests that the corporate accountability side has been neglected in recent years, and instead the focus is on punishing individuals. Doing so suggests that the demand-side approach is no longer a priority.

Another way in which corporate immigration enforcement resembles other areas of corporate enforcement is that collateral consequences matter.¹⁹¹ Collateral consequences are a key consideration for corporations charged with immigration offenses.¹⁹² Collateral consequences may be a consideration for individuals, in the context in which state criminal charges may or may not lead to immigration or other important consequences.¹⁹³ By contrast, under the federal system since 2005, an automatic criminal referral policy was instituted for immigration offenses.¹⁹⁴ Any additional collateral consequences of the added criminal charge are intended, and required, on a blanket basis against all individuals.¹⁹⁵ Thus, ICE notes: “ICE removed more than 5,700 aliens identified as family unit members, which represents a 110% increase in removal of family unit members compared to FY 2018.”¹⁹⁶ Workplace raids, of course, also lead to separation of families, when noncitizens are detained.¹⁹⁷

The argument here is not that workplace raids should be a priority as compared to border enforcement; no claim is being made regarding where or how immigration enforcement should be prioritized. Nor is the goal to suggest that criminal prosecution for immigration offenses is necessary and should be increased; relying less on criminal tools may be very much warranted.

Instead, I argue that the disconnect between corporate and individual prosecution has real civil rights and labor consequences. As noted, the workplaces and companies that have been prosecuted are not white-collar offices with highly

189. *Id.* at 1.

190. *See supra* Section II.B (discussing the changes to corporate prosecution in the last two decades).

191. *See supra* notes 174–77 and accompanying text.

192. *Id.*

193. *See generally About: The National Inventory of the Collateral Consequences of Conviction*, COUNCIL OF ST. GOV'TS, <https://niccc.nationalreentryresourcecenter.org/> [<https://perma.cc/3B5T-HMWX>]; Margaret Colgate Love, *Collateral Consequences After Padilla v. Kentucky: From Punishment to Regulation*, 31 ST. LOUIS U. PUB. L. REV. 87, 126–27 (2011); Eisha Jain, *Prosecuting Collateral Consequences*, 104 GEO. L.J. 1197 (2016); Jenny Roberts, *Ignorance is Effectively Bliss: Collateral Consequences of Criminal Convictions, Silence and Misinformation in the Guilty Plea Process*, 95 IOWA L. REV. 119, 124 (2009).

194. *Securing the Border*, *supra* note 43.

195. *See id.*

196. U.S. IMMIGR. & CUSTOMS ENF'T, *supra* note 6.

197. Angela Fritz & Luis Velarde, *ICE Arrested Hundreds of People in Raids. Now 'Devastated' Children Are Without Their Parents*, WASH. POST (Aug. 8, 2019), <https://www.washingtonpost.com/immigration/2019/08/08/ice-arrested-hundreds-people-raids-now-devastated-children-are-without-their-parents/> [<https://perma.cc/K2YU-BQQH>].

paid workers who have significant negotiating power.¹⁹⁸ As Stephen Lee has observed, “unencumbered by the fear of being punished, employers can threaten to report workers for removal, whereas workers do not possess any similar ability to blow the whistle on employers.”¹⁹⁹ Or as Michael Wishnie has noted, “a law-breaking employer may invoke the formidable powers of the government’s law enforcement apparatus to terrorize its workers and suppress worker dissent under threat of deportation.”²⁰⁰ Indeed, federal courts have noted as much, when employees have brought discrimination suits; the Ninth Circuit noted, for example, that by immigration screening, employers could “raise implicitly the threat of deportation and criminal prosecution every time a worker, documented or undocumented, reports illegal practices.”²⁰¹

The criminalization of immigration law has heightened those concerns; workers can fear both deportation and criminal prosecution, while the employer may increasingly go unpenalized criminally. Indeed, the IRCA not only created federal obligations to screen for immigration status, but it also preempted any state law consequences, civil or criminal, for employers.²⁰² The Postville raids also provide a further example of this problem, where although the employer was eventually prosecuted, abusive employment practices persisted for years because employees were told that “they were going to call immigration if we complained.”²⁰³ Thus, as Stephen Lee has argued, it might be far more protective of employee rights for labor agencies to be involved in policing these workplaces, rather than immigration screening being the primary vehicle for regulation.²⁰⁴

At the very least, clear policies could be put into place to reward with leniency or as whistleblowers, employees who report illegal employment practices.²⁰⁵ While it is beyond the scope of this Article, and excellent research and policy has analyzed the tension between immigration enforcement and worker’s rights, the goal here is to describe how the competing interests in immigration

198. See *supra* Section III.A.

199. Lee, *supra* note 17, at 1106.

200. Wishnie, *supra* note 96, at 216.

201. *Rivera v. Nibco, Inc.*, 364 F.3d 1057, 1065 (9th Cir. 2004). For extensive citation to cases in which employers reported employees to immigration authorities only when they attempted to recover unpaid wages, see Lee, *supra* note 30, at 1121 n.61.

202. 8 U.S.C. § 1324a(h)(2) (“The provisions of [IRCA] preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.”).

203. Julia Preston, *After Iowa Raid, Immigrants Fuel Labor Inquiries*, N.Y. TIMES (July 27, 2008), <https://www.nytimes.com/2008/07/27/us/27immig.html> [<https://perma.cc/D494-B5UQ>].

204. Stephen Lee, *Monitoring Immigration Enforcement*, 53 ARIZ. L. REV. 1089, 1092–93 (2011) (“First, why has the Department of Labor, our nation’s top labor enforcement agency, struggled to protect unauthorized workers against exploitive practices despite the scope and seriousness of the problem? And second why has ICE, our nation’s top immigration enforcement agency, resisted taking into account the labor consequences of their actions?”).

205. For example, victims of trafficking can receive temporary visas to permit them to cooperate in prosecutions. These are temporary visas, created under the Victims of Trafficking and Violence Protection Act, which provide to the victims of certain crimes in exchange for help prosecuting the perpetrator. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1534 (codified as amended at 8 U.S.C. § 1101). Further, informants are generally rewarded as cooperating witnesses in a wide variety of federal criminal matters, including corporate cases. See, e.g., GARRETT, *supra* note 14, at 247.

and labor policy are not improved by the addition of federal prosecutors.²⁰⁶ Instead, criminal prosecutions have heightened the imbalance of power between employer and employee, corporation and individual.

An additional goal here is to describe an imbalance in resources and priorities. The trends can be summarized by noting how resources have been powerfully directed for prosecutions of individual for immigration offenses, whether at the border or in interior enforcement, but not towards corporate offenses, even where corporate offenders may violate the law on a greater scale. Thus, the Southern District of Texas recently received thirty-five new Assistant U.S. Attorney positions to increase prosecutions of “improper entry, illegal reentry and alien smuggling cases,” all involving individual immigration prosecutions, and not corporate immigration cases.²⁰⁷ Such policies do not exist in other federal criminal areas, but again, these policies seem to apply to noncitizens and not to employees and supervisors at employers that violate immigration laws.

That said, it is also possible that priorities will change over time, or that new corporate immigration cases in progress will eventually shift these observed corporate criminal enforcement patterns. In response to the Washington Post story reporting preliminary data from this study, the Administration stated that, “Oftentimes, those audits and inspections are the beginning of a lengthy process that could potentially lead to criminal charges, if sufficient evidence of criminal activity is discovered.”²⁰⁸ For now, those cases have not appeared in the pipeline, as cases from the prior Administration have been resolved.²⁰⁹ It appears that both civil and criminal enforcement have declined.²¹⁰ Further, it would be consistent with the Administration’s approach in corporate prosecutions generally if audits and inspections did not tend to result in corporate referrals or prosecutions for corporations.²¹¹

There is nothing resembling a zero-tolerance policy for corporate immigration violators, in immigration cases, or in any other of federal criminal law. Detailed leniency policies, set out in the U.S. Attorney’s Manual and revised over two decades, now apply to corporations.²¹² No such considerations apply to any group of individuals, and certainly not in the area of immigration enforcement, where one might instead expect that real value could arise from rewarding with leniency and protection, the employees who report illegal employment practices. Thus, one goal in examining corporate immigration prosecutions is to illustrate

206. See Lee *supra* note 204, at 1093 n.14 (“Similar questions concerning mission orientation, enforcement discretion, and unauthorized migration could be posed of the U.S. Attorneys’ Offices.”); *id.* at 1133 n.174 (“It is worth noting that a second and related monitoring challenge grows out of the increase in federal prosecutions of immigration crimes.”); see also Rebecca Smith, Ana Ana Avendaño, Julia Martínez Ortega, *Iced Out: How Immigration Enforcement Has Interfered With Workers’ Rights*, AFL-CIO, 15–28 (2009).

207. Press Release, Department of Justice, AG Sessions Selects SDTX to Receive Additional Resources to Combat the Southwest Border Crisis (May 4, 2018), <https://www.justice.gov/usao-sdtx/pr/ag-sessions-selects-sdtx-receive-additional-resources-combat-southwest-border-crisis> [<https://perma.cc/9Q5H-XDNV>].

208. Merle, *supra* note 9.

209. See Appendix.

210. See Appendix.

211. See *supra* note 89 and accompanying text.

212. See *supra* notes 80–87 and accompanying text.

the glaring mismatch and collision of systems, priorities and federal agencies, in the use of policies adapted for the largest corporations, in a context in which the largest populations of individuals are subjected to federal criminal enforcement by U.S. Attorney's Offices and the Department of Justice, as well as civil immigration consequences, by ICE and the Department of Homeland Security. No matter what one's preferred view of either immigration, labor policy, or corporate enforcement, the goals of none of those systems seems well accomplished by these conflicted approaches.

V. CONCLUSION

While immigration law and criminal law have become intertwined, and a field of "crimmigration" law now explores that intersection, corporate crime has not been connected to immigration law in workplaces. Corporate crimmigration should matter, as policy shifts and enforcement patterns have altered the relationship between corporations, employers, managers, and workers. At the same time as the tensions between labor and immigration policies have sharpened, the federal policy and practice of prosecuting individuals for immigration crimes (largely regarding illegal entry and reentry at the border) could not be more different than the policies concerning interior enforcement, and within that category of enforcement (which largely relies on state and local criminal arrests to identify individuals), the practices concerning prosecutions of corporations are quite distinct. The story of corporate immigration prosecution is a recent story, accompanying the rise of E-Verify and employer verification requirements, but the changes described have also occurred during a time of deep change in both immigration policy and corporate prosecution policy.

The goal of this Article is to provide a different look at what has changed, by focusing on the prosecution of corporations for the most serious, criminal, immigration violations. Doing so sheds light on the complex and changing priorities in both our immigration and criminal enforcement systems. During the same time period, in the past two decades, immigration law has become deeply connected to criminal enforcement. As Juliet Stumpf observed, as "criminal sanctions for immigration-related conduct and criminal grounds for removal from the United States continue to expand, aliens become synonymous with criminals."²¹³ Yet, while immigration enforcement has become far more punitive and prosecution-focused, at the border and also in the interior, the same has not been true for employers, even when they do commit criminal immigration violations. Just as corporations cannot be jailed, they cannot be deported or expelled. But they can be subject to fines and other penalties. For a time, the Department of Justice did focus on corporate enforcement, particularly on the heels of the launch of the E-Verify system, when compliance combined with the protection of worker rights seemed to at least be a goal, if not the practice. More recently, that trend reversed, as documented in this Article. As cases and penalties decline

213. Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 419 (2006).

for corporations for employer-side immigration violations, the prosecutions for individuals reached record levels, and workplace raids persist.

Taking as a starting place that criminal enforcement of immigration laws is currently pursued, this Article describes the complex set of policies and practices that have resulted. The goals of immigration enforcement, its effects on human and labor rights, and immigration enforcement harnessed to criminal enforcement, including the prosecution of corporations, each remain in conflict. To the extent that the Department of Justice is involved in immigration prosecutions, the Department should aim to correct the imbalance as between corporations and individuals. It is a basic precept of white-collar enforcement that individuals who cooperate and bring criminal lawbreaking to light should be rewarded, including through leniency, and not higher-ups or corporations who themselves violated the law. If workplace enforcement is to be a priority, a criminal law perspective also suggests that focusing on large-scale and serious violators should be the focus of enforcement resources, not en masse and “zero tolerance” prosecutions in minor cases.

The gap between individual and corporation enforcement also highlights the selective concern with collateral consequences in federal criminal practice. It is ironic that corporations benefit from great solicitude regarding the potential collateral consequences of a conviction, while individuals, who directly suffer such consequences, as defendants or family members of those charged, do not benefit from any such systemic policy consideration, even if they serve as the whistleblowers for unlawful labor or immigration practices. Indeed, the larger effort to regulate workplace screening raises concerns with collateral consequences on employees. Most industries in which immigration-related prosecutions have been brought do not involve white-collar employees or highly paid occupations. The use of criminal enforcement in policing those industries raises further questions regarding the goals of the immigration strategy, for which criminal prosecutions are intended to provide an added deterrent and punishment, in relatively less-privileged workplaces. The dynamic of corporate immigration prosecutions provides another example of the way in which federal prosecutors conduct large scale enforcement against individuals, but largely decline to pursue corporate targets. The problem of “corporate crimmigration” should be critically examined and addressed, particularly where the goals of immigration, criminal law, and corporate criminal law diverge and collide as never before.

APPENDIX: FEDERAL CORPORATE IMMIGRATION PROSECUTIONS,
2001–2019

Company	Disposition	Jurisdiction	Total Penalty	Date
GSHC Corp.	plea	California - Northern District	84,000	1/17/01
Construction Personnel, Inc.	plea	Tennessee - Eastern District	0	9/19/01
Oriental Buffet, Inc.	plea	Pennsylvania - Western District	10,000	12/18/01
Global Staffing Services, Inc.	plea	Georgia - Northern District	57,000	7/30/02
Janitorial Maintenance, Inc.	plea	Georgia - Northern District	24,000	7/30/02
Clark's Quality Roofing, Inc.	plea	Colorado	40,000	10/11/02
East Bernstadt Cooperage, Inc.	plea	Kentucky - Eastern District	40,000	3/28/03
CMS of Queensbury, Inc.	plea	Pennsylvania - Middle District	10,000	6/4/03
Trussway Ltd.	plea	Kentucky - Western District	0	6/5/03
E. L. Thompson Associates, LLC	plea	Tennessee - Western District	27,000	12/22/03
Forest Hill, Inc.	plea	Arkansas - Western District	10,000	3/15/04
Bavarian Inn, Inc.	plea	Arkansas - Western District	3,000	10/13/04
3D Poultry Loading, Inc.	plea	Arkansas - Western District	24,000	1/25/05
IMC Associates, Inc.	plea	Pennsylvania - Middle District	4,000,000	4/25/05
Allied Floor Care Service, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
Champion Floor Care Associates, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
Cleanmax Associates, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
Comet Floor Case Associates, Inc.	plea	Pennsylvania - Middle District	0	4/25/05

Express Corporate Services, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
Florida Floor Care, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
Ironman Maintenance Associates, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
Mercury Floor Care Associates, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
National Cleaning Management, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
Precision Cleaning, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
World Clean Associates, Inc.	plea	Pennsylvania - Middle District	0	4/25/05
Boeing Tile and Marble, Inc.	plea	Florida - Middle District	0	7/1/05
DJR Cleaning Enterprises, Inc.	plea	Pennsylvania - Middle District	500,000	10/17/05
Julie's Cafe	plea	Wisconsin - Eastern District	20,000	10/17/05
China Star, Inc.	plea	New Mexico	55,000	11/14/05
White Dairy Ice Cream Co., Inc.	plea	Arkansas - Western District	1,000	1/9/06
PJ Services, LLC	plea	Kansas	150,000	3/22/06
Allison Creek Sheep Co.	plea	Idaho	26,000	5/18/06
Carlson Livestock Co.	plea	Idaho	26,000	5/18/06
WesternGeco, LLC (subsidiary of Schlumberger Seismic, Inc.)	DP	Texas - Southern District	19,600,000	6/1/06
Asha Ventures, LLC	plea	Kentucky - Eastern District	75,000	10/24/06
Narayan, LLC	plea	Kentucky - Eastern District	75,000	10/24/06
Bob Eisel Powder Coatings, Inc.	plea	Kansas	175,000	11/21/06
Jax China Kings, Inc.	plea	Florida - Middle District	500	11/30/06
Stucco Design, Inc.	plea	North Dakota	1,581,072	12/6/06
Garcia Labor Co.	plea	Ohio - Southern District	0	3/2/07
Garcia Labor Co. of Ohio, Inc.	plea	Ohio - Southern District	0	3/2/07

Yu Hua Co. LLC	plea	Arkansas - Western District	45,000	3/6/07
Fenceworks, Inc.	plea	California - Southern District	4,700,000	4/3/07
Plastrglas, Inc.	plea	Nebraska	96,000	4/3/07
HV Connect, Inc.	plea	Ohio - North- ern District	0	11/13/07
Alexandria Employment Agency	plea	Ohio - North- ern District	0	12/10/07
Jackson Country Club	DP	Mississippi - Southern District	214,500	2/6/08
Lochirco Fruit and Produce, Inc.	plea	Missouri - Eastern District	99,000	2/7/08
Hedges Land- scape Specialists	plea	Kentucky - Western District	48,000	3/19/08
Tenryoan, Inc.	plea	Hawaii	10,000	4/30/08
Peabody Corp.	plea	Virginia - East- ern District	250,000	5/5/08
Car Care	plea	Pennsylvania - Eastern District	100,000	6/25/08
Spectrum Interiors, Inc.	plea	Kentucky - Eastern District	0	7/22/08
Mack Associates, Inc.	plea	Nevada	1,000,000	8/8/08
ZHU & Partners, LLC	plea	Maryland	50,000	9/26/08
Republic Services, Inc.	NP	Texas - South- ern District	3,000,000	10/1/08
N&F Logistic, Inc.	plea	Louisiana - Eastern District	759,071	10/2/08
Tarrasco Steel Company, Inc.	plea	Mississippi - Northern District	310,512	10/20/08
IFCO Systems	NP	New York - Northern District	20,697,317	12/19/08
Michael Bianco, Inc.	plea	Massachusetts	1,970,000	1/28/09
Alrek Business Solutions, Inc.	plea	Florida - Northern District	36,000	2/13/09
Dakota Beef, LLC	plea	South Dakota	45,000	2/26/09
Janco Composites, Inc.	plea	Indiana - Northern District	210,000	4/23/09

Acambaro Mexican Restaurant, Inc.	plea	Arkansas - Western District	250,000	4/30/09
Garcia's Distributor, Inc.	plea	Arkansas - Western District	20,000	4/30/09
Garibaldi Mexican Restaurant, Inc.	plea	Arkansas - Western District	25,000	4/30/09
Asiana Pewaukee, Inc.	plea	Wisconsin - Eastern District	32,000	5/18/09
T & J Restaurants, LLC	plea	Missouri - Eastern District	150,000	5/29/09
Shipley Properties	dismissal	Texas - Southern District	0	8/7/09
Shipley Do-Nut Flour and Supply Co., Inc.	plea	Texas - Southern District	250,000	8/12/09
Colmenares Rodriguez, Inc.	plea	Nebraska	0	10/15/09
Columbia Farms, Inc.	DP	South Carolina	1,500,000	11/3/09
Mt. Fuji Restaurants, Inc.	plea	Mississippi - Southern District	0	12/1/09
CCGWA LLC	plea	North Dakota	40,000	12/15/09
Flowood Partners, LLC	plea	Mississippi - Southern District	0	12/17/09
Pilgrim's Pride, Inc.	NP	Texas - Eastern District	4,500,000	12/30/09
Wedekemper's Construction, Inc.	plea	Illinois - Southern District	2,500	4/29/10
Wedekemper's, Inc.	plea	Illinois - Southern District	2,500	4/29/10
Hi Tech Trucking, Inc.	plea	Virginia - Eastern District	100,000	11/24/10
FC Young & Co.	plea	Pennsylvania - Eastern District	69,000	2/4/11
Disabatino Landscaping and Tree Service, Inc.	plea	Pennsylvania - Eastern District	51,000	2/28/11
Village Green Landscaping	plea	Pennsylvania - Eastern District	24,000	2/28/11
Howard Industries, Inc.	plea	Mississippi - Southern District	2,500,000	3/4/11
BMR Development, LLC	plea	Pennsylvania - Eastern District	51,000	3/7/11

Down to Earth Landscaping	plea	Pennsylvania - Eastern District	129,000	3/7/11
Radley Run Country Club, Inc.	plea	Pennsylvania - Eastern District	27,000	3/7/11
Birker, Inc.	plea	Iowa - Northern District	32,000	4/25/11
All Around Landscaping, Inc.	plea	Arkansas - Western District	40,000	7/7/11
Arizona Trailer Manufacturing, Inc.	plea	Arizona	15,000	7/13/11
Eurofresh, Inc.	plea	Arizona	0	8/30/11
YCL Corp.	plea	Texas - Western District	5,000	10/27/11
Aquila Farms, LLC	plea	Michigan - Eastern District	500,000	11/18/11
Advanced Containment Systems, Inc.	NP	Texas - Southern District	2,000,000	1/1/12
Atrium Companies, Inc.	NP	Texas - Southern District	2,000,000	1/1/12
Ayala's Family Bakery, Inc.	plea	Arkansas - Western District	157,165	3/28/12
Herbco Int'l, Inc.	plea	Washington - Western District	1,000,000	5/1/12
ABC Professional Tree Services, Inc.	NP	Texas - Southern District	2,000,000	5/18/12
Love Irrigation, Inc.	DP	Mississippi - Southern District	515,110	5/22/12
Behrmann Meat Processing, Inc.	plea	Illinois - Southern District	55,000	7/2/12
Behrmann Yorkshire Farms	plea	Illinois - Southern District	55,000	7/2/12
Brake Landscaping & Lawncare, Inc.	plea	Missouri - Eastern District	0	9/13/12
Vector Fabrication, Inc.	plea	California - Northern District	75,000	10/12/12
Diversified Concrete, LLC	plea	Louisiana - Eastern District	18,449	10/31/12
McCalla Corp.	plea	Kansas	300,000	12/4/12
Fei Teng, Inc.	plea	Virginia - Eastern District	0	2/25/13

Wazana Brothers International, Inc.	plea	California - Central District	55,000	3/13/13
Concrete Management Corp.	plea	Colorado	176,500	4/25/13
TN Job Service, Inc.	dismissal	Ohio - Northern District	0	4/30/13
A-1 Homes, LLC	plea	Mississippi - Northern District	0	12/27/13
Vacco Marine, Inc.	plea	Louisiana - Eastern District	125,000	12/30/13
Willco of Houma, Inc.	plea	Louisiana - Eastern District	125,000	12/30/13
Premier Paving, Inc.	plea	Colorado	0	2/3/14
NH Environmental Group, Inc.	plea	Indiana	170,000	3/21/14
C.M. Jones, Inc.	plea	Pennsylvania - Eastern District	25,000	4/10/14
Triangle Grading and Paving, Inc.	plea	North Carolina- Middle District	0	11/3/14
INEK Technologies, LLC	plea	Kansas	582,601	11/19/14
3rd & Bell, LLC	plea	Arizona	50	11/21/14
Danny's San Tan, LLC	plea	Arizona	50	11/21/14
National Car Care Development Co.	plea	Arizona	0	11/21/14
Paradise Village Car Care Center, Inc.	plea	Arizona	50	11/21/14
Twentieth & Highland, LLC	plea	Arizona	50	11/21/14
Danny's Family Companies, LLC	plea	Arizona	50	11/21/14
Danny's Family Carousel, Inc.	plea	Arizona	50	11/21/14
83rd & Union Hills, LLC	plea	Arizona	50	11/24/14
84th & Bell, LLC	plea	Arizona	50	11/24/14
Danny's Crossroads, LLC	plea	Arizona	50	11/24/14
Danny's Happy Valley, Inc.	plea	Arizona	50	11/24/14
Danny's Management Services, LLC	plea	Arizona	50	11/24/14

Danny's Raintree & Northsight, LLC	plea	Arizona	50	11/24/14
Danny's Scottsdale & TB	plea	Arizona	50	11/24/14
Danny's Tatum, LLC	plea	Arizona	50	11/24/14
Danny's Tempe, LLC	plea	Arizona	50	11/24/14
Danny's Family, LP	plea	Arizona	50	11/24/14
Danny's Family Companies II, LLC	plea	Arizona	50	11/24/14
CORTEC Precision Sheet Metal, Inc.	plea	Texas - Western District	48,000	12/10/14
Osaka Thai Corp.	plea	Louisiana - Eastern District	0	12/10/14
Shinto Restaurant, Inc.	plea	Louisiana - Eastern District	0	12/10/14
Glenview Dairy, LLC	plea	New York - Western District	60,000	5/6/15
Valley View Building Services, LLC	plea	Arizona	0	6/19/15
Ros's Cabinets II, Inc.	plea	Michigan - Eastern District	50,000	6/25/15
Programmer Resources International, Inc.	plea	Missouri - Eastern District	100,000	8/13/15
HW Group, LLC	plea	South Carolina	1,000,000	3/28/16
Kearney Hospitality, INC.	plea	Nebraska	150,000	5/11/16
L.A. Jumbo China Buffet, Inc.	plea	Louisiana - Eastern District	0	5/19/16
DJ Drywall, Inc.	plea	Washington - Western District	75,000	6/2/16
Servi-Tek, Inc.	plea	California - Southern District	20,000	7/1/16
Mary's Gone Crackers, Inc.	NP	California - Eastern District	1,500,000	7/15/16
La Espiga De Oro	plea	Texas - Southern District	1,000,000	8/11/17
Asplundh Tree Experts, Co.	plea	Pennsylvania - Western District	95,000,000	9/28/17

Clarke's Landscaping & Lawncare, Inc.	plea	Pennsylvania - Eastern District	151,200	10/13/17
Waste Management of Texas	NP	Texas - Southern District	5,500,000	8/29/18
Wright State University	NP	Ohio - Southern District	1,000,000	11/16/18
Lin's China Buffet of Meridian, Inc.	plea	Mississippi - Southern District	0	4/26/19