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Growing the Resistance: A Call to Action for Transactional Lawyers in the Era of Trump

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I. INTRODUCTION

New Yorkers woke to a dreary, drizzly day on November 9, 2016. The weather matched the mood of many of the city's inhabitants. Tears streamed down my face as I sat in the subway waiting for my stop. One by one, as my colleagues in the Community Development Project at the Urban Justice Center came into the office that morning, we shared expressions of shock, anger, fear, and sadness. We feared for what Trump's election meant for our clients, for ourselves and our families, for our country, and for our world. In the days and weeks that followed, we coalesced around a resolve to continue our work in support of grassroots and community-based groups that organized for power within the city's low-income immigrant communities and communities of color. Our model of partnership with these groups, wherein they take the lead in determining the priorities and goals for our work, would be especially critical in the times ahead.¹ We knew we needed to keep doing what we had been doing. For me, that meant advising non-profit organizations and working with low-wage immigrant workers, many undocumented, to create safe, dignified jobs free from workplace abuses.

As fear and panic washed over immigrant communities following Trump's election, immigrants' rights advocates undertook several efforts to provide support to individuals and to challenge the administration's actions. Immigration attorneys mobilized at airports to file habeas petitions on behalf of travelers detained under a new executive order that banned entry into the country by people from several predominantly Muslim countries.² Litigators brought lawsuits challenging the ban itself.³ Immigration attorneys screened immigrants to determine what type, if any, of relief was available to them, and they quickly disseminated information about one's rights and how to protect one's self in the event of a U.S. Immigration and Customs Enforcement (ICE) arrest.

Many transactional attorneys,⁴ however, felt helpless and at a loss for how to use their legal skills to join these efforts of "resistance" to Trump and his administration.⁵ Yet, transactional

¹ See Community Development Project, *Our Approach*, URBAN JUSTICE CENTER, <https://cdp.urbanjustice.org/cdp-ourvision>; see also E. Tammy Kim, *Lawyers as Resource Allies in Workers' Struggles for Social Change*, 13 N.Y. CITY L. REV. 214, 215 (2009) (describing the Community Development Project's model as "tak[ing] client partnerships seriously while preserving the lawyer's role, respecting organizing, and being careful not to overreach").

² See Proclamation No. 13780 82 Fed. Reg. 13209 (Jan. 27, 2017); see also Jonah Engel Bromwich, *Lawyers Mobilize at Nation's Airports After Trump's Order*, N.Y. TIMES, Jan. 29, 2017, <https://www.nytimes.com/2017/01/29/us/lawyers-trump-muslim-ban-immigration.html>.

³ See, e.g., *Darweesh v. Trump*, 17 Civ. 480, 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017) (challenging the Jan. 27, 2017 executive order); see also, *Groups Challenge Trump Immigration Ban After Refugees Detained at Airports*, ACLU (Jan. 28, 2017), <https://www.aclu.org/news/groups-challenge-trump-immigration-ban-after-refugees-detained-airports>; Lewis Kamb, *11 States Will Challenge Trump's New Immigration Executive Order in Court*, TRIB. NEWS SERV., Jun. 22, 2018, <http://www.governing.com/topics/public-justice-safety/tns-states-lawsuit-trump-immigrant-children.html>.

⁴ I use the term "transactional attorneys" broadly to mean attorneys primarily engaged in non-litigation matters, particularly those who provide general corporate counsel to nonprofit organizations, for-profit businesses, social ventures, etc.

⁵ See LA Kauffman, *The Resistance to Trump Is Blossoming—and Building a Movement to Last*, GUARDIAN, Nov. 9, 2017, <https://www.theguardian.com/commentisfree/2017/nov/09/resistance-trump-blossoming-movement-la-kauffmann> (discussing the ground-level opposition to the Trump presidency).

attorneys with previous experience representing immigrant groups and businesses were well positioned to counsel on matters pertinent to undocumented immigrants.

Myself and other transactional attorneys fielded calls from nonprofit organizations and their attorneys on options for workers that may lose work authorization status under the Deferred Action for Childhood Arrivals Act (DACA). We collaborated with immigration attorneys to present on what to do in the event of immigration raids at work sites and nonprofit organizations. Other transactional attorneys led workshops for noncitizen immigrants on protecting financial assets in case of deportation. By expanding our knowledge beyond traditional corporate areas into ones that touched on issues affecting undocumented immigrants, we provided unique services to undocumented immigrant workers and bolstered the movement of resistance against the Trump administration's anti-immigrant actions.

This essay is a call to action for transactional lawyers looking to support vulnerable immigrants through non-litigation means. By providing a snapshot of an especially precarious time in history for immigrants in the U.S.—the period immediately after the 2016 presidential election—the essay illustrates future areas of opportunity for transactional attorneys.

Part two describes the undocumented immigrant workforce in the U.S. and recounts the impact of Trump's election on immigrant communities. Part three discusses various *sanctuary* movements led by advocates to create safe spaces for undocumented immigrants. It focuses on the Sanctuary Workplace campaign, an initiative centered on worker cooperatives as safe workspaces for immigrant workers. Part four highlights what I term *sanctuary lawyering*—the efforts of transactional lawyers to protect undocumented workers by combining their transactional lawyering knowledge and skills with areas of law germane to undocumented immigrants.⁶ Part five details critical issues that emerged for organizers and attorneys in effectuating the Sanctuary Workplace Campaign. The essay concludes by urging transactional lawyers to draw from the lawyering and advocacy examples to grow the resistance.

II. THE IMMEDIATE AFTERMATH OF THE ELECTION: FEAR AND PANIC IN IMMIGRANT COMMUNITIES

Contrary to Trump's narrative that undocumented immigrants damage the nation's budget and overall economy, the undocumented population is a hard-working group that contributes positively to the economy. This section begins with a profile of the undocumented workforce in the U.S. and its effect on the U.S. economy. It then describes the fear and panic the 2016 presidential election elicited in immigrant communities.

⁶ My forthcoming piece on sanctuary lawyering will analyze the ethics and lawyering of providing business counsel to undocumented immigrants.

A. THE UNDOCUMENTED IMMIGRANT WORKFORCE IN THE U.S. AND ITS EFFECT ON THE U.S. ECONOMY

The Pew Research Center estimates that there were eleven million undocumented immigrants⁷ in the U.S. in 2015, representing a quarter of the total immigrant population.⁸ Half come from Mexico, though that number has steadily declined since 2007.⁹ Other regions include Asia, Central America and sub-Saharan Africa.¹⁰ Two-thirds of adult undocumented immigrants have lived in the U.S. at least ten years, with the greatest numbers living in the New York and Los Angeles metropolitan areas.¹¹

The approximately eight million undocumented immigrants in the civilian labor force made up five of the total number of people in the U.S. working or unemployed and looking for work, as of 2014.¹² A higher percentage of undocumented immigrant men (ninety-one percent) between the ages of eighteen and sixty-four were working or looking for work as compared to U.S.-born men (seventy-nine percent) and lawful immigrant men (eighty-four percent) of similar age.¹³ A lower percentage of undocumented immigrant women (sixty-one percent) were working or looking for work relative to U.S. born women (seventy-two percent) and lawful immigrants (sixty-seven percent), possibly because they were far more likely than other groups to have children under the age of eighteen at home.¹⁴ The leisure/hospitality industry (restaurants, hotels, etc.) and construction rank first and second, respectively, as the top industries by number of workers where undocumented immigrants work.¹⁵ Around 1.3 million undocumented immigrants work in the restaurant industry, equating to eleven percent of all U.S. restaurant and bar employees.¹⁶ Undocumented immigrants are often in lower-paid roles that do not involve customer interaction such as busboys and dishwashers.¹⁷ Nearly one-quarter of all maids and housekeeping cleaners are

⁷ I use the term undocumented immigrants to mean immigrants who lack work authorization status to work as employees in the U.S.

⁸ See Jens Manuel Krogstad, et al., *5 Facts About Illegal Immigration in the U.S.*, PEW RESEARCH CTR. (April 27, 2017), <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>.

⁹ Jeffrey S. Passel & D'Vera Cohn, *Overall Number of U.S. Unauthorized Immigrants Holds Steady Since 2009*, PEW RESEARCH CTR. (Sept. 20, 2016), <http://www.pewhispanic.org/2016/09/20/overall-number-of-u-s-unauthorized-immigrants-holds-steady-since-2009/>; see also Gustavo López & Kristen Bialik, *Key findings about U.S. immigrants*, PEW RESEARCH CTR. (May 3, 2017), <http://www.pewresearch.org/fact-tank/2017/05/03/key-findings-about-u-s-immigrants/>.

¹⁰ Lopez & Bialik, *supra* note 9.

¹¹ As of 2014. See Krogstad *supra* note 8; see also, Passel & Cohn, *supra* note 9.

¹² Jeffrey S. Passel & D'Vera Cohn, *Size of U.S. Unauthorized Immigrant Workforce Stable After the Great Recession*, PEW RESEARCH CTR. (November 3, 2016), <http://www.pewhispanic.org/2016/11/03/size-of-u-s-unauthorized-immigrant-workforce-stable-after-the-great-recession/>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *id.* at Appendix D: Detailed tables, Major Industry Groups, by Nativity and Status.

¹⁶ Caitlin Dewey, *What Happened When These Restaurants Lost Their Immigrant Workers for Real*, WASH. POST, Feb. 17, 2017, https://www.washingtonpost.com/news/wonk/wp/2017/02/17/restaurants-imagined-a-day-without-immigrants-in-one-city-last-year-it-actually-happened/?utm_term=.b59fe41d6585.

¹⁷ *Id.*

undocumented workers.¹⁸ Similarly, twenty-two percent of workers in private households are undocumented immigrants.¹⁹ This includes domestic workers such as nannies, a sector growing at a rate five times faster than other industries.²⁰

Immigrants also make substantial contributions to the economy through taxes. At least fifty percent of undocumented immigrant households file income tax returns, and many who do not file still have taxes deducted from their paychecks.²¹ Undocumented immigrants pay eight percent of their incomes in state and local taxes every year, collectively amounting to \$11.74 billion each year.²² The Social Security Administration reported in 2013 that undocumented immigrants worked and contributed as much as thirteen billion dollars in payroll taxes (including employers' contributions) to the Social Security trust fund in 2010.²³ Undocumented immigrants in turn received only one billion dollars in benefits, resulting in a net positive effect on Social Security financial status generally—roughly twelve billion dollars added to its cash flow.²⁴

The Deferred Action for Childhood Arrivals (DACA) program, created in 2012 under President Obama through executive memorandum, changed the outlook for a number of undocumented workers who previously did not have work authorization.²⁵ It exercised prosecutorial discretion to prevent low-priority individuals from being placed into removal proceedings or removed from the U.S.²⁶ DACA also provided a means for certain young undocumented immigrants (referred to as Dreamers²⁷) to receive work permits and be protected from deportation for a period of two years, subject to renewal.²⁸ The average DACA recipient is

¹⁸ Passel & Cohn, *supra* note 12, at Appendix D.

¹⁹ *Id.*

²⁰ Ai-jen Poo, *Civil Society in the Age of Incivility*, STANFORD SOC. INNOVATION REV. (Jul. 24, 2018), https://ssir.org/articles/entry/civil_society_in_the_age_of_incivility.

²¹ *Id.* at 3.

²² Lisa Christensen Gee, et al., *Report: Undocumented Immigrants' State & Local Tax Contributions*, INST. ON TAXATION & ECON. POLICY (March 2017), <https://itep.org/wp-content/uploads/ITEP-2017-Undocumented-Immigrants-State-and-Local-Contributions.pdf> (noting that comprehensive immigration reform could increase tax contributions by up to \$2.1 billion, and that the top 1% of taxpayers pay an average nationwide effective tax rate of 5.4%).

²³ See Stephen Goss, et al., *Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds*, 151 ACTUARIAL NOTE 3 (Apr. 2013); see also Linda Qiu, *How much do undocumented immigrants pay in taxes?*, POLITIFACT (Oct. 2, 2016).

²⁴ *Id.*

²⁵ Memorandum from Janet Napolitano, Sec'y of Homeland Sec., "Memorandum: Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," (Jun. 15, 2012), (available at <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>).

²⁶ *Id.*

²⁷ The DACA program was a response to the failure of Congress to pass the Development, Relief, and Education for Alien Minors Act of 2011 (DREAM Act), a bipartisan immigration reform effort. The term "Dreamers" refers to those who would have qualified under the Dream Act, the same qualification criteria set forth in the DACA program. See Press Release, The White House Office of the Press Sec'y, Remarks by the President on Immigration (Jun. 15, 2012) (available at <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration>).

²⁸ Krogstad, *supra* note 8; see also *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP & IMMIGR. SERV., <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca> (last visited Nov. 8, 2018).

twenty-two years old, employed, and makes seventeen dollars an hour.²⁹ Approximately 800,000 people received work permits through the program. Three-fourths of major companies employ DACA recipients.³⁰ Nonprofit organizations of varying sizes also have Dreamers on staff.

B. IMPACT OF TRUMP'S ELECTION ON UNDOCUMENTED IMMIGRANTS

Trump's election elicited fear and panic amongst communities of undocumented immigrants.³¹ Their fears stemmed from the possibility that Trump's campaign rhetoric of removing all undocumented immigrants from the U.S. would start to become reality once he took office.³² Indeed, the number of ICE arrests, which had been on the decline prior to Trump's election, hit a three-year high in fiscal year that ended eight months after inauguration.³³ Trump's January 25, 2018 executive order vastly expanded the authority of ICE to detain and deport most immigrants in the U.S. who lack authorization, regardless of any criminal record, marking a change from the Obama administration's almost-exclusive focus on criminals, national security threats and deportations within 100 miles of the U.S.-Mexico border.³⁴ The government arrested and deported individuals who had lived in the U.S. for decades, posed no danger, and had regularly attended check-in with immigration officials.³⁵ In the NYC area, arrests of immigrants with no criminal convictions increased 225 percent in the eight months following Trump's inauguration.³⁶

²⁹ Ike Brannon & Logan Albright, *The Economic and Fiscal Impact of Repealing DACA*, CATO INS. (Jan. 18, 2017), <https://www.cato.org/blog/economic-fiscal-impact-repealing-daca>.

³⁰ See Bill Ong Hing, *Beyond DACA—Defying Employer Sanctions Through Civil Disobedience*, 10 U.C. DAVIS L. REV. (forthcoming 2018).

³¹ See Andrew R. Calderon, et al, *City of Fear*, N.Y. MAG. (July 23 2018), <http://nymag.com/daily/intelligencer/2018/07/undocumented-new-yorkers-living-in-fear-ice-deportation.html>.

³² See Team Fix, *The CNN-Telemundo Republican Debate Transcript, Annotated*, WASH. POST (Feb. 25, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/02/25/the-cnntelemundo-republican-debate-transcript-annotated/?utm_term=.f45b94341a5f (quoting Trump during a Republican debate, “[w]e have at least 11 million people in this country that came in illegally. They will go out. They will come back—some will come back, the best, through a process...and it may not be a very quick process.”).

³³ *Id.*

³⁴ See Proclamation No. 13780 82 Fed. Reg. 13209 (Jan. 27, 2017); see also Kristen Bialik, *ICE Arrests Went Up in 2017, with Biggest Increases in Florida, Northern Texas, Oklahoma*, PEW RESEARCH CTR (Feb. 8, 2018), <http://www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/>; see also Tal Kopan, *How Trump Changed the Rules to Arrest More Non-criminal Immigrants*, CNN, (Mar. 2, 2018), <https://www.cnn.com/2018/03/02/politics/ice-immigration-deportations/index.html>.

³⁵ Kopan, *supra* note 34; see Joel Rose, *Once Routine, ICE Check-Ins Now Fill Immigrants in U.S. Illegally with Anxiety*, NPR (Apr. 18, 2017), <https://www.npr.org/2017/04/18/524365639/once-routine-ice-check-ins-now-fill-immigrants-in-u-s-illegally-with-anxiety> (Many immigrants who are in the country illegally are required to “check-in” with ICE. They have been allowed to stay in the U.S. because prior administrations considered them a low priority for deportation.).

³⁶ Calderon, *supra* note 31, at 28.

The increase in immigration arrests in public buildings and sensitive locations impacted immigrants' ability to live and work.³⁷ In some instances, families were advised to stay in their homes and not go outside unless absolutely necessary.³⁸ Deyanira Del Rio of the New Economy Project, a NYC-based economic justice nonprofit, described Trump's election as having a chilling effect on the organization's financial health initiative. Borrowing from a model used in the public health field, the initiative included training and dispatching eight immigrant women from the community to be financial health promoters, or *promotoras*. The *promotoras* were peer educators who would speak one-on-one with people and provide information about financial rights and opportunities with respect to banking.³⁹ The program received funding prior to the election and launched just after November 2016. As rumors and reports of raids infiltrated the community, the program's organizers gathered the *promotoras*, advising them to avoid street outreach and offering them the opportunity to withdraw from the initiative if they wanted.⁴⁰ Deciding that the dissemination of information was now more important than ever, all eight women stayed in the program.⁴¹ The initiative resulted in outreach to more than 500 community members and a doubling in the number of accounts opened at the local credit union.⁴² However, some people who had previously expressed interest told the *promotoras* that they would "wait to see if they could stay in the country" before opening accounts.⁴³

Many undocumented immigrants refrained from taking measures that had previously seemed secure but now potentially carried a higher risk of exposure, such as obtaining an Individual Taxpayer Identification Number (ITIN) and paying taxes. The Internal Revenue Service (IRS) issues ITINs so that people, including foreign nationals and others who are not eligible for a social security number, can pay taxes regardless of immigration status.⁴⁴ The IRS reports that in 2016, ITIN filers paid nearly \$24 billion in federal taxes.⁴⁵ Prior to the 2016 election, immigrants' rights advocates conveyed to undocumented immigrants a number of reasons why they should obtain ITINs and pay taxes. These reasons included demonstrating compliance with federal tax laws; showing "good moral character," a factor in adjusting one's status; having a record to document work history and physical presence in the U.S. should there be future immigration

³⁷ NEW YORK LAWYERS FOR THE PUB. INTEREST, GUIDANCE TO NONPROFITS REGARDING IMMIGRATION ENFORCEMENT, <http://www.nylpi.org/wp-content/uploads/2017/07/FINAL-2017-Nonprofits-Guidance-Regarding-Immigration-Enforcement.pdf>

³⁸ See NEW ECONOMY PROJECT, COLLABORATION FOR NEIGHBORHOOD FINANCIAL HEALTH, PILOT INTERVENTION & OUTCOMES (on file with author).

³⁹ *Mobile Bank Comes to LSA*, LSA FAMILY HEALTH SERV. (Mar. 17, 2017), at <http://littlesistersfamily.org/mobile-bank-comes-lsa/>.

⁴⁰ See NEW ECONOMY PROJECT, COLLABORATION FOR NEIGHBORHOOD FINANCIAL HEALTH, PILOT INTERVENTION & OUTCOMES 3 (on file with author).

⁴¹ *Id.*

⁴² See *id.* at 2.

⁴³ *Id.* at 4.

⁴⁴ *The Facts about the Individual Tax Identification Number (ITIN)*, AM. IMMIGRATION COUNCIL, <https://www.americanimmigrationcouncil.org/research/facts-about-individual-tax-identification-number-itin> (last visited Nov. 8, 2018).

⁴⁵ Richard Gonzales, *Tax Filings Seen Dipping Amid Trump Crackdown on Illegal Immigration*, NPR (Apr. 17, 2017), <https://www.npr.org/2017/04/17/523634144/tax-filings-seen-dipping-amid-trump-crackdown-on-illegal-immigration>.

reform; claiming child tax credits; and potential benefits in the event an immigrant worker receives settlement payments as a result of employment-related disputes.⁴⁶

After the election, immigration attorneys and immigrants' rights advocates continued to encourage undocumented immigrants to obtain ITINs and pay taxes. They pointed to "strong privacy protections," namely Section 6103 of the Internal Revenue Code, that ensures immigrants reporting their income are not at risk of the IRS sharing their information.⁴⁷ Section 6103 prohibits the IRS from disclosing tax return information to other parties, including the Department of Homeland Security. Exceptions to the law include disclosing information to other federal agencies for non-tax criminal investigations upon court order.⁴⁸ Yet, many immigrants felt hesitant to send their current address and information to the government, a necessity for obtaining an ITIN.⁴⁹ Tax service providers noted as much as a 20% decline in the number of people who filed with ITINs in 2017 for 2016 taxes.⁵⁰

Municipal identification cards, heralded as an opportunity for undocumented immigrants to engage with city agencies, became a possible liability after Trump took office. New York City's IDNYC, created by a progressive mayor and city legislators, is a program that grants government identification for uses such as opening bank accounts, signing leases, and obtaining library cards.⁵¹ Many feared that the Trump administration could use the data of vulnerable residents "as a deportation directory."⁵² In fact, the 2018 July 4th holiday, a husband and wife, both undocumented immigrants who have been New York residents for over 20 years, were detained in upstate New York while attempting to visit their son-in-law, an Army sergeant at a military base after using their NYCID card.⁵³ Subsequently, immigrants' rights groups and the mayor himself raised concerns that the ID cards were providing undocumented immigrants with a false sense of protection from ICE.⁵⁴ The New York incident was not the first arrest possibly connected to the use of a municipal ID. Two days after a municipal ID program went into effect in New Haven, Connecticut, in July 2007 (under the George W. Bush administration), ICE arrested 32 immigrants

⁴⁶ *Individual Taxpayer Identification Number (ITIN): A Powerful Tool for Immigrant Taxpayers*, NAT'L IMMIGRATION LAW CTR (Jan. 2017), <https://www.nilc.org/issues/taxes/itinfaq/>.

⁴⁷ See 26 U.S.C. § 6103 (2012); *Individual Taxpayer Identification Number (ITIN): A Powerful Tool for Immigrant Taxpayers*, NAT'L IMMIGRATION LAW CTR (Jan. 2017), <https://www.nilc.org/issues/taxes/itinfaq/>.

⁴⁸ See 26 U.S.C. § 6103(i)(1) (2012).

⁴⁹ Gonzales, *supra* note 45.

⁵⁰ *Id.*

⁵¹ Frank G. Runyeon, *ID Politics: Would Malliotakis Hand Over Immigrants' Data to the White House?*, CITY & STATE N.Y. (Oct. 27, 2017), <https://www.cityandstateny.com/articles/politics/new-york-city/would-nicole-malliotakis-give-immigrants-idnyc-data-to-the-white-house.html#.WjLVt1Spki6>.

⁵² *Id.*

⁵³ See Zoe Greenberg, *The IDs Were Meant to Protect Immigrants. Are They a Liability?*, N.Y. TIMES (July 10, 2018), <https://www.nytimes.com/2018/07/10/nyregion/idnyc-fort-drum-silva-barrios.html> (recounting that military police called U.S. Border Patrol who arrived and arrested the couple, transported for them processing at a border patrol station and then took them to a federal detention center to await their hearing before an immigration judge).

⁵⁴ See *id.*

who lacked valid status.⁵⁵ Similar to the current sentiment under Trump, residents in New Haven expressed greater fear of applying for the card, with the risks outweighing the benefits.⁵⁶

For the 800,000 Dreamers, Trump's election meant turmoil. Trump announced an end to DACA on September 5, 2017, saying that the administration would grant no new applications and would let the existing permits expire.⁵⁷ A number of lawsuits followed, putting a temporary halt on the program's termination.⁵⁸ Nearly 683,000 Dreamers remained actively enrolled as of January 2018.⁵⁹ A phase-out could mean that close to 1,000 people could lose their protected status each day for the two years the phase-out begins.⁶⁰ The question of Dreamers' future status thus has implications not only for the Dreamers themselves but for businesses and organizations who employ them. The Dreamers also feared that the government could now track them down and deport them based on information they gave while registering for DACA, information that included past residential addresses, travel history, bank statements, and fingerprints.⁶¹

While the 2016 election meant overall uncertainty for undocumented immigrants—they could decide not to use ITINs or municipal IDs or refrain from opening bank accounts—they still needed to support themselves and their families, making the workplace a critical site for immigration enforcement and resistance to that enforcement.

III. FROM SANCTUARY CITIES TO SANCTUARY WORKPLACES: CREATING SAFE SPACES FOR UNDOCUMENTED IMMIGRANTS

Immigrants' rights organizers and other advocates responded to Trump's election in several ways that sought to protect immigrants. This section briefly discusses the origin of the "sanctuary" framework for referring to public and private safe spaces for undocumented immigrants.⁶² Organizers have adopted this framework in campaigns focused on immigrants in the workplace.

⁵⁵ Rose Cuison Villazor, *What Is a Sanctuary?*, 61 S.M.U. L. REV. 133, 152 (2008); see Nina Bernstein, *Promise of ID Cards Is Followed by Peril of Arrest for Illegal Immigrants*, N.Y. TIMES (July 13, 2007), <https://www.nytimes.com/2007/07/23/nyregion/23raid.html>.

⁵⁶ *Id.*

⁵⁷ See Memorandum of Elaine C. Duke, Acting Sec'y Dep't of Homeland Sec., Rescission of Deferred Action for Childhood Arrivals (Sep. 5, 2017) (available at <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>); see also Tal Kopan, *Trump Ends DACA but Gives Congress Window to Save It*, CNN (Sep. 5, 2017), <https://www.cnn.com/2017/09/05/politics/daca-trump-congress/index.html>.

⁵⁸ See *DACA Litigation Timeline*, NAT'L IMMIGRATION L. CTR. (Nov. 9, 2018), <https://www.nilc.org/issues/daca/daca-litigation-timeline/>.

⁵⁹ APPROXIMATE ACTIVE DACA RECIPIENTS: AS OF JANUARY 31, 2018, USCIS, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_Expiration_Data_Jan_31_2018.pdf.

⁶⁰ Ryan Struyk & Tal Kopan, *983 Would Lose Protection Per Day: What a DACA Phase-out Would Look Like*, CNN (Sept. 9, 2017), <https://www.cnn.com/2017/09/09/politics/daca-phase-out-numbers/index.html>.

⁶¹ See Ted Hesson, *Dreamers Fear Deportations from DACA Data*, POLITICO (Sept. 5, 2017) (noting that the Department of Homeland Security said it would not give enforcement agencies the personal data but made clear that deportation agencies could someday gain access to the detailed files).

⁶² See Villazor, *supra* note 55, at 135.

A. CENTRAL AMERICAN SANCTUARY MOVEMENT

In the 1980s, a sanctuary movement emerged as churches and private individuals began to provide assistance to immigrants from Central America, primarily from El Salvador and Guatemala, whose claims for asylum from violence and killings were routinely rejected.⁶³ The movement criticized the U.S. government for being responsible in part for the plight of the immigrants because it supported the governments that were perpetrating the violence against civilians.⁶⁴ Churches and private organizations formed a network to support and integrate members of the undocumented community, offering shelter, food, and clothing.⁶⁵ Those involved with the sanctuary movement recognized that they risked violating immigration laws, but they believed that establishing a safe haven constituted moral and ethical obligations that they could not ignore.⁶⁶ At its height, approximately 20,000 to 30,000 church members and more than 100 churches and synagogues participated in the movement.⁶⁷

B. SANCTUARY CITIES

Since the Central American Sanctuary Movement, cities and counties have adopted policies that limit their jurisdictions' cooperation with federal immigration enforcement actions, earning themselves various labels, including that of "sanctuary cities."⁶⁸ After the 2016 election, the number of jurisdictions with such policies has grown.⁶⁹ The policies differ in each jurisdiction, though chiefly fall into five types that include:

(1) barring investigation of civil and criminal immigration violations by local law enforcement, (2) limiting compliance with immigration detainers and immigration warrants, (3) refusing [ICE] access to local jails, (4) limiting local law enforcement's disclosure of sensitive information, and (5) precluding local participation in joint operations with federal immigration enforcement.⁷⁰

Jurisdictions enacting these laws do so for various reasons, such as preserving local sovereignty, enhancing community trust in law enforcement, and embracing a diverse and inclusive vision of community.⁷¹ Trump has attempted to withhold federal monies to cities that do not cooperate with

⁶³ *Id.* at 139–40, n. 38 (citing that only 2.5% of applications from El Salvador and 2.6% of applications from Honduras were approved from June 1983 to September 1986).

⁶⁴ *See id.* at 140.

⁶⁵ *See id.* at 141.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Christopher Lasch, et al., *Understanding "Sanctuary Cities,"* 59 B.C. L. REV. 1703, 1709–10 (noting that the term "sanctuary" is deeply contested and lacks a commonly accepted meaning); *see* Annie Lai & Christopher Lasch, *Crimmigration Resistance and the Case of Sanctuary City Defunding,* 57 SANTA CLARA L. REV. 539, 546–48 (2017).

⁶⁹ *See* Lasch et al., *supra* note 68, at 1707.

⁷⁰ *Id.*

⁷¹ *Id.* at 1709.

federal immigration authorities, which has led these jurisdictions to file lawsuits to challenge these actions.⁷²

C. THE SANCTUARY RESTAURANTS CAMPAIGN

Workers' rights organizers applied the term "sanctuary" to campaigns centered on restaurant workers.⁷³ After Trump's election, the Restaurant Opportunities Centers (ROC) United, a national advocacy group for restaurant workers, began hearing from restaurants and restaurant workers concerned about Trump's immigration rhetoric.⁷⁴ ROC United then partnered with Presente.org, a Latino rights group, on an initiative called "Sanctuary Restaurants."⁷⁵ Restaurants declaring to be sanctuary restaurants adopt a set of credos⁷⁶ and place placards on their storefronts that indicate their dedication to being anti-discriminatory, safe spaces for immigrants and LGBTQ workers.⁷⁷ ROC United also set up a quick response legal hotline for workers experiencing exploitation, discrimination, or threats at work.⁷⁸

D. THE SANCTUARY WORKPLACE CAMPAIGN

Borrowing from the premise of the Sanctuary Restaurants campaign, worker-cooperative advocates at the Democracy at Work Institute (DAWI) started a Sanctuary Workplace campaign as a "call to action to extend protection and safety to all communities facing harassment and persecution in the workplace, including all people of color, immigrants, Muslims, and people with disabilities."⁷⁹ DAWI, a nonprofit organization, describes itself as a "movement-based think-and-do tank" that supports worker cooperatives growing "to a scale that effects meaningful change in the economy."⁸⁰ Their mission is to "expand the worker cooperative model to reach communities most directly affected by social and economic inequality, specifically people of color, recent immigrants, and low-wage workforces."⁸¹

⁷² *See id.* at 1713, 1717.

⁷³ *See Dewey, supra* note 16.

⁷⁴ *Id.*

⁷⁵ *See id.*

⁷⁶ SANCTUARY RESTAURANTS, <http://sanctuaryrestaurants.org> (last visited Sept. 26, 2018) ("Sanctuary Restaurants: We believe that diversity makes us stronger; there is a place at the table of [*sic*] everyone; we are committed to creating affirming and safe environments in our restaurants for all; we proudly comply with all laws; we proudly welcome the public into our affirming spaces by prominently displaying the "SANCTUARY RESTAURANTS: A Place at the Table for Everyone" sign or decal; we pledge to support each other and to workers, customers, and restaurant owners by joining this peer network; We stand with diverse communities to help protect their liberties, dignities and freedoms").

⁷⁷ Janet Babin, *Sanctuary Restaurant Movement to Protect Workers, Immigrants*, WNYC (Feb. 17, 2017), <https://www.wnyc.org/story/sanctuary-restaurant-movement-protect-workers-immigrants/>.

⁷⁸ Octavio Blanco, *Sanctuary Restaurants vow to protect undocumented workers*, CNN MONEY (Feb. 21, 2017), <http://money.cnn.com/2017/02/20/news/economy/sanctuary-restaurants/index.html>.

⁷⁹ *Sanctuary Workplace Webinar*, U.S. FED'N OF WORKER COOP. (July, 26, 2017), <https://usworker.coop/events/event/sanctuary-workplace-webinar/>.

⁸⁰ *See* DEMOCRACY AT WORK INST., *Mission & Vision*, <https://institute.coop/about-dawi/mission-vision> (last visited Sept. 26, 2018).

⁸¹ *See id.*

Worker cooperatives, businesses owned by the workers themselves, have taken root as a means of job opportunity for immigrant workers, including for those without work authorization status.⁸² As co-owners of the business with equal control, the worker-owners do not have an employment relationship vis-à-vis the cooperative, and thus do not require work authorization.⁸³ DAWI has been supportive of worker cooperatives made up of low-wage immigrant workers, many of whom include undocumented immigrants. They see immigrant-led worker cooperatives as being a successful tactic to building power and wealth and developing leaders within immigrant communities.⁸⁴ The Sanctuary Workplace Campaign is, at its core, an endeavor to highlight worker cooperatives as a means to support vulnerable immigrant workers.

The campaign included numerous strategies. DAWI created a website where it advertised webinars and shared resources on the following topics: traditional know-your-rights presentations, strategies for talking to the media, setting up limited liability cooperatives, and battling “isms” (sexism, ageism, homophobia, etc.) in the workplace.⁸⁵ DAWI shared the resources with worker cooperatives, cooperative developers, and those who were thinking of how to protect their workplaces.⁸⁶

IV. SANCTUARY LAWYERING: TRANSACTIONAL LAWYERS’ EFFORTS TO PROTECT UNDOCUMENTED WORKERS

With a goal similar to the sanctuary undertakings described above, transactional attorneys engaged in *sanctuary lawyering* seek to protect undocumented workers. This section describes how they engaged in laws typically outside the scope of transactional work, but relevant to assisting undocumented immigrants. By combining their knowledge and skills in counseling nonprofit and business clients with immigration, trusts and estates, and employment law, transactional attorneys provided valuable advice to individuals and entities concerned about the safety of undocumented immigrants. They also affected policy changes that benefited their immigrant business clients. The transactional attorneys learned by self-study, by collaboration with immigration and other attorneys and advocates with expertise outside of typical transactional topics, and by forming networks amongst themselves to share learnings and best practices.

⁸² See DEMOCRACY AT WORK INST., *Support for Immigrant Cooperatives*, <https://institute.coop/support-immigrant-cooperatives> (last visited Sept. 26, 2018) (noting that immigrant worker-owners are the largest and fastest-growing segment of worker-owners in the U.S.); see also Gowri J. Krishna, *Worker Cooperative Creation as Progressive Lawyering? Moving Beyond the One-Person, One-Vote Floor*, 33 BERKELEY J. EMP. & LAB. LAW 65 (2012) (describing worker cooperatives made up of immigrant workers); see also Frank G. Runyeon, *Immigrants Fuel the Rise of Worker Cooperatives*, NYNMEDIA (Nov. 7, 2016), <https://nynmedia.com/news/immigrants-fuel-the-rise-of-worker-cooperatives>.

⁸³ See COMMUNITY ENTERPRISE PROJECT OF THE HARVARD TRANSACTIONAL LAW CLINICS & THE IMMIGRANT WORKER CENTER COLLABORATIVE, *A LEGAL OVERVIEW OF BUSINESS OWNERSHIP FOR IMMIGRANT ENTREPRENEURS IN MASSACHUSETTS* (2015), <http://clinics.law.harvard.edu/tlc/files/2015/09/TLC-Immigrant-Entrepreneurs-Overview.pdf> (discussing that federal immigration law does not expressly prohibit undocumented immigrants from working for a business they own).

⁸⁴ See *Sanctuary Workplace Webinar*, *supra* note 79.

⁸⁵ See Interview with Vanessa Bransburg, Managing Director, Democracy at Work Institute (June 12, 2018) (on file with author).

⁸⁶ *Id.*

A. IMMIGRATION ENFORCEMENT

1. GUIDANCE TO NONPROFIT ORGANIZATIONS ON ICE RAIDS

Transactional attorneys provided counsel to nonprofit organizations that wanted to know what to do in the event ICE raided their offices.⁸⁷ The organizations had members, staff and/or clients who were undocumented and whose identities they sought to protect. After receiving calls from nonprofit organizations concerned over the chilling effect that the administration was having on their undocumented clients or prospective clients using their services, the New York Lawyers for the Public Interest partnered with constitutional and civil rights attorneys at two large law firms to create a guide titled, “Guidance to Nonprofits Regarding Immigration Enforcement.”⁸⁸ The preamble notes, “[w]e have entered a startling era of uncertainty in the long battle for civil rights and social justice.”⁸⁹ The guide addressed questions such as the following: “How likely is it that immigration agents might come to a nonprofit service provider?”; “Can a nonprofit deny immigration agents entry into its facility?”; “What should staff members do if ICE questions them?”; “What if a subpoena is issued to nonprofit legal services providers?”⁹⁰

In putting the guide together, the attorneys grappled with the shifting landscape of immigration law and enforcement, questioning how long the material would be relevant.⁹¹ However, the guide, written with a goal of being practical, was a helpful resource to nonprofit organizations as well as lawyers for nonprofits.

2. KNOW-YOUR-RIGHTS PRESENTATIONS COMBINED WITH BUSINESS COUNSEL

In the Community Development Project, the typical course of representation of worker cooperatives consists of counseling on entity options and numerous aspects of governance.⁹² After the election, the threat of raids and deportation were a high concern to many cooperative members. The Community Development Project reached out to some of our cooperative clients and arranged to dedicate a meeting to a know-your-rights (KYR) training for immigrants.⁹³ In collaboration with an immigrants’ rights colleague, they were able to adapt her typical KYR training to include information relevant to cooperatives with undocumented owners.⁹⁴ An example of a worker cooperative client is a housecleaning coop that serves private homes and commercial offices.

The presentation addressed what to do in the case of an ICE raid in five different settings—in one’s own home, in one’s client’s home, in a client’s office, in the lobby of a commercial space, and on the street.⁹⁵ An immigration colleague co-presented along with a transactional attorney.

⁸⁷ *Id.*

⁸⁸ See NEW YORK LAWYERS FOR THE PUB. INTEREST, *supra* note 37; see also, Interview with Marnie Berk, Director of Pro Bono Programs, New York Lawyers for the Public Interest (Aug. 14, 2018) (on file with author).

⁸⁹ NEW YORK LAWYERS FOR THE PUB. INTEREST, *supra* note 37.

⁹⁰ *Id.*

⁹¹ See Interview with Marnie Berk, *supra* note 88.

⁹² See Community Development Project, “Derechos de Inmigrantes: Conocer Derechos Es Luchar Por Dignidad,” presented by Shanti Tharayil and Rodrigo Bacus (on file with author).

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ *Id.*

Having an immigration expert on site was critical to fielding immigration-specific questions that arose during the presentation. While most of the cooperative members had not previously attended a KYR training on the topic, they reported being grateful for the information and looked forward to sharing it with family and friends.

B. TRUSTS AND ESTATES LAW

DAWI and the Lawyers Committee for Civil Rights of the San Francisco Bay Area created materials on Asset Protection for Immigrant Entrepreneurs.⁹⁶ They hosted a webinar that discussed ways for immigrant and noncitizen business owners to protect their assets, particularly in the event that a business owner would have to leave the U.S.⁹⁷ Topics included: what to do about bank accounts and accessing cash; the handling of any cars, residential leases, or homes; transferring business ownership or considering written agreements detailing what a business partner should do if a co-owner is absent for an extended period of time; designating powers of attorney; and writing a revocable trust.⁹⁸ The training also addressed the benefits to immigrant entrepreneurs of creating a legal entity to separate and protect their personal assets from business assets.⁹⁹

While resources existed on child custody in the face of deportation, attorneys recognized a lack of materials focused on immigrant business owners protecting their assets. In putting together the webinar, they drew from a general guide on asset protection for immigrant families¹⁰⁰ and a guide on completing estate plans for lower-income clients,¹⁰¹ adapting the content to fit the context of noncitizen immigrant entrepreneurs.

C. IMMIGRATION AND EMPLOYMENT LAWS

1. COUNSELING IMMIGRANT WORKERS ON BUSINESS OWNERSHIP OPTIONS

We continued our work representing immigrant workers with forming their own businesses. Over the past decade, the CDP has built up a knowledge of business options for undocumented immigrant entrepreneurs by consulting with immigration and employment lawyers along with tax

⁹⁶ See Anh-Thu Nguyen, Sushil Jacob & Tobias Damm-Luhr, *Asset Protection for Immigrant Entrepreneurs*, DEMOCRACY AT WORK INST. LAWYERS COMM. FOR CIVIL RIGHTS, https://institute.coop/sites/default/files/resources/ENGLISH_%20assetprotection_forentrepreneurs.pdf (last visited Nov. 8, 2018).

⁹⁷ See *id.*

⁹⁸ See *Asset Protection for Noncitizen Business Owners—Checklist for Key Financial Items*, LAWYERS' COMM. FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA, <https://institute.coop/sites/default/files/resources/Checklist%20-%20Asset%20Protection%20for%20Noncitizen%20Business%20Owners%20%281%29.pdf> (last visited Nov. 8, 2018).

⁹⁹ See Nguyen, Jacob, & Damm-Luhr, *supra* note 96.

¹⁰⁰ See *Protecting Assets & Child Custody in the Face of Deportation: A Guide for Practitioners Assisting Immigrant Families*, APPLESEED NETWORK (2012), <http://www-appleseednetwork-org.exactdn.com/wp-content/uploads/2015/10/Protecting-Assets-And-child-Custody-In-The-Face-Of-Deportation-A-Guide-for-Practitioners-Assisting-Immigrant-Families-2012.pdf>.

¹⁰¹ See *Complete Plans for Small and Mid-Size Estates*, CONTINUING EDUC. OF THE BAR, CAL., <https://ceb.com/complete-plans-for-small-and-mid-size-estates> (last visited on Sept. 26, 2018).

experts and learning the relevant laws. This is an area of practice that has grown over the last ten years, with lawyers across the country, mostly from nonprofit legal services organizations and law school community economic development clinics, connecting and putting forth information and materials helpful to other attorneys seeking to counsel immigrant-owned businesses.

After the election, law school transactional clinics found opportunities to collaborate with immigration clinics on information sessions on entity options for immigrant businesses. The University of Michigan Law School's Community and Economic Development Clinic reached out to its nonprofit clients with ties to immigrant communities to see if their constituencies would be interested in a presentation on business entity options for immigrant workers. Students in the clinic partnered with students in the Michigan State University College of Law's Immigration Law Clinic and conducted sessions for African immigrants at a Detroit mosque and for a group of Latinx immigrants.

2. ADVICE TO NONPROFITS WITH DREAMERS ON STAFF

Community Development Project attorneys also counseled organizations with Dreamers on staff about what their options were should the program expire, and the Dreamers lose their work authorization status.¹⁰² As transactional attorneys with expertise in forming immigrant-owned worker cooperatives, our knowledge of how immigration, tax, employment, and corporate laws intersect was critical in this context. The options we presented ranged from laying out the consequences of not complying with employer sanctions laws or laws requiring employers to check for and hire only people with work authorization status¹⁰³ to supporting Dreamers in creating their own businesses, including worker cooperatives.

3. WORKER COOPERATIVES FOR IMMIGRANTS FAQ SHEET

To provide information about worker cooperatives and the mechanisms for immigrant worker-ownership, DAWI collaborated with lawyers from the Community Development Project and the Sustainable Economies Law Center to put together a document on frequently asked questions (FAQ) about worker cooperatives for immigrants.¹⁰⁴ The FAQ focused on business structures and questions pertaining to ownership without work authorization status.¹⁰⁵ It also addressed what governance and management look like in an LLC cooperative.¹⁰⁶

4. TEMPLATE DOCUMENTS

DAWI reached out to worker cooperative attorneys with experience setting up immigrant cooperatives and asked for template legal documents that they could use and include in a package

¹⁰² See Community Development Project, *supra* note 92.

¹⁰³ See IMMIGRATION REFORM AND CONTROL ACT OF 1986 PUB. L. NO. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.); *see also* IMMIGRATION AND NATIONALITY ACT SEC. 274A, 8 U.S.C. § 1324a.

¹⁰⁴ See Limited Liability Company (LLC) Worker Cooperatives for Immigrants, Frequently Asked Questions (on file with author).

¹⁰⁵ See *id.*

¹⁰⁶ See *id.*

of materials that anyone could use to more easily start a worker cooperative. This template packet included the FAQ sheet described above and governance documents.

D. POLICY CHANGE

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area convened focus groups with their transactional legal colleagues to identify obstacles that business owners faced and to think through possible policy solutions.¹⁰⁷ One problem that surfaced was the requirement to provide a social security number (SSN) on business license applications. In practice, local offices had been telling those with ITINs to write in the ITIN where the application stated SSN. Because the form required the applicant to sign off on the information under penalty of perjury, lawyers counseling the entrepreneurs were uncomfortable advising the applicants to use an ITIN in place of an SSN.¹⁰⁸

The attorneys crafted and pushed for a California state bill to require cities and counties to amend their business license applications to allow applicants to use alternative identification numbers to social security numbers, essentially providing opportunities for undocumented people to formalize their businesses.¹⁰⁹ Section one of the bill states “[t]he Legislature finds and declares . . . it is in the best interests of the state to provide otherwise eligible persons, regardless of their citizenship or immigration status, with the opportunity to obtain a local business license.”¹¹⁰ The same section also recognized the important contributions of immigrants to the economic well-being of the state, namely the revenue generation and contribution to local and state taxes.¹¹¹ It went further to assert that certain categories of immigrants, including those with DACA status, are at risk of losing federal protection, “leaving them and their families vulnerable.”¹¹²

E. IMMIGRANT COOPERATIVE LAWYERS' NETWORK

Drawing on its relationships with attorneys across the country who had experience working with immigrant worker cooperatives, DAWI helped bring the attorneys together to think through elements of the campaign. The lawyers formed a listserv to exchange and review each other's LLC operating agreements. The listserv culminated in a meeting at the 2017 Eastern Conference of Workplace Democracy in New York City to talk through the most sensitive points in working with undocumented workers and the best practices for doing so.¹¹³ The convening deepened the lawyers' respective practices.

¹⁰⁷ See Interview with Sushil Jacob, Senior Attorney, Lawyers' Committee for Civil Rights (Aug. 15, 2018) (on file with author).

¹⁰⁸ See *id.*

¹⁰⁹ See Assemb. B. 2184, Reg. Sess. (Cal. 2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2184 (to be codified as CAL. BUS. & PROF. CODE § 16000.1 AND 16100.1); see also Interview with Sushil Jacob, *supra* note 97.

¹¹⁰ See Assemb. B. 2184 § 1(d).

¹¹¹ See *id.* at § 1(a), (c).

¹¹² *Id.* at § 1(c).

¹¹³ Interview with author

V. CRITICAL ISSUES IN THE SANCTUARY WORKPLACE CAMPAIGN

In carrying out DAWI's Sanctuary Workplace Campaign, a few significant issues arose for the organizers as well as the attorneys. This section discusses those critical issues.

A. PUBLICIZING THE WORK

The organizers of the Sanctuary Workplace Campaign grappled with how to publicly discuss the campaign.¹¹⁴ They wanted to talk about the work in a way that could keep people secure but that also could build the movement, voicing that “taking risks is how movements succeed; you organize people, get others to join, and build power.”¹¹⁵ They questioned whether they should use the term “undocumented” in any outreach, because they did not want to draw unwanted attention. After days of discussion, the organizers agreed to train cooperative members and developers in how to talk to the media.¹¹⁶

They held trainings and put together a reference guide for worker cooperatives that contained tips and talking points for speaking to media about their cooperatives.¹¹⁷ The talking points included general pointers such as using clear talking points, knowing your audience, and having personal and compelling stories ready.¹¹⁸ It also included points to emphasize such as cooperative values of shared ownership, community wealth building and collective responsibility; the creation of quality jobs; contributions to the local economy; developing women leaders; and encouraging civic participation.¹¹⁹ While not specifically mentioning how to respond to questions about documentation status, the guide cautions against discussing anything one does not want to see in print or repeated on radio, and gives pointers for how to steer an interview in a direction favorable to the interviewee.¹²⁰

Similarly, lawyers representing cooperatives comprised of undocumented workers have, for years, contended with how much to publicize the legal underpinnings of immigrant worker cooperatives. These lawyers fear that, while the businesses they represent are legally sound, they may put individuals at risk or highlight areas of the law that could be changed to prohibit the specific type of worker ownership. For reasons similar to what DAWI shared, lawyers have balanced risks and movement-building value and made case-by-case decisions about what, where, when, and how to talk about the work—often in consultation with cooperatives and cooperative developers.

¹¹⁴ See Interview with Vanessa Bransburg, *supra* note 85.

¹¹⁵ See *id.*

¹¹⁶ *Id.*

¹¹⁷ See DAWI, MAKE THE MOST OF YOUR MESSAGE, TALKING TO THE MEDIA, A QUICK REFERENCE GUIDE FOR WORKER COOPERATIVES (on file with author).

¹¹⁸ See *id.*

¹¹⁹ See *id.*

¹²⁰ See *id.*

B. SECURITY OF MATERIALS

The election evoked a heightened sense of concern over the security of sensitive communications. In fact, the encrypted messaging app Signal saw a significant increase in the number of downloads in the days following the election.¹²¹ Attorneys and advocates working with undocumented immigrants questioned whether and how to share information about any efforts pertaining to undocumented immigrants. The NYC network of community economic development attorneys dedicated time at a post-election meeting to discuss various methods of exchanging resources to determine which would be most secure. DAWI decided to password-protect their FAQ and track those who had access of the document.¹²²

C. LAWYERS DECIDING WHETHER TO SHARE TEMPLATES

When DAWI asked if we would share our template governance document for cooperatives, we hesitated for a couple of reasons. First, the template was specific to New York Limited Liability Company Law, and DAWI worked with cooperatives across the country. We did not want cooperatives or cooperative developers using the template in its entirety and possibly be in violation of their particular state's LLC laws. Second, there were many decisions for the cooperative to make, with several points requiring careful counseling so as to maintain a viable structure for immigrant owners. After discussion as a team, we ultimately decided to share the template, with the caveat that DAWI should let us know if they plan to share it with others and to connect us to those with whom they share.¹²³

D. LACK OF LAWYERS WITH EXPERIENCE AND SENSITIVITY TO ISSUES

A worker cooperative is not a business form taught in most law school corporation courses. It is highly likely that the vast majority of transactional attorneys are unfamiliar with worker cooperatives. Further, representing cooperatives made up of immigrant workers is even more of a niche area of the law, requiring knowledge of corporate, tax, employment and immigration laws. While the number of lawyers for immigrant-owned cooperatives has been growing, there still exists a need for more lawyers with the type of knowledge, experience and sensitivity to take on the legal issues specific to working with cooperative members who lack work authorization status.

The Community Development Project organized a full-day training on worker cooperative legal issues at the 2017 Eastern Conference for Workplace Democracy. The first half of the day focused on issues that lawyers new to cooperatives faced, and the latter half touched on more advance topics. Trainings like these help broaden the field of cooperative attorneys. DAWI, the ICA Group and the Sustainable Economies Law Center have created and shared numerous

¹²¹ See Janko Roettgers, *Worried Internet Users Flock to Encryption App after Donald Trump Election*, VARIETY (Nov. 11, 2016), <https://variety.com/2016/digital/news/trump-election-encrypted-messaging-signal-app-download-1201916353> (moving in rank from 98th on the Apple App Store's most downloaded on election day to 45th the day after the election, and to 34th place two days after).

¹²² See Interview with Vanessa Bransburg, *supra* note 85.

¹²³ We of course added disclaimers to the document stating it was not legal advice, and that one should consult an attorney before adopting an operating agreement.

materials for lawyers representing worker cooperatives.¹²⁴ Various listservs for worker cooperative lawyers also help provide support for new and existing attorneys.¹²⁵

VI. CONCLUSION

The plight of undocumented workers is one that is not new and will continue for the foreseeable future. Trump's campaign exacerbated anti-immigrant fervor in the U.S. His taking office put in motion policies and practices that jeopardize the safety of undocumented immigrants, a segment of the U.S. population that maintains a significant stake in a number of industries and that contributes an overall positive effect on the economy. The types of lawyering outlined in this essay offer models and ideas, and serve as a call to action, for transactional attorneys. As the resistance to Trump and his administration presses on, transactional lawyers have an important place in that resistance as sanctuary lawyers helping to create safe spaces for vulnerable immigrants.

¹²⁴ See CO-OPLAW.ORG, <http://www.co-oplaw.org> (last visited Sept. 26, 2018) (an e-resource library); DEMOCRACY AT WORK INST., <https://institute.coop/resource-guide> (last visited Sept. 26, 2018) (resource guides); THE ICA GROUP, <https://ica-group.org/shop> (last visited Sept. 26, 2018) (resource library).

¹²⁵ For information about listservs, contact the author.