

ESSAY

VOICES WITHOUT LAW: THE BORDER CROSSING STORIES AND WORKPLACE ATTITUDES OF IMMIGRANTS*

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INTRODUCTION

In this Essay, we review the narratives that arise out of immigrants' border crossing experiences, and reveal how those narratives appear again when immigrants discuss their workplace experiences. The stories and the narratives in this Essay are gleaned from a series of interviews with immigrant workers over several years. In these narratives, migrants perpetuate stories rooted in masculinity that allow them to take and to withstand increasingly greater risks resulting from border restrictions.¹ The narratives also encourage workers to tolerate difficult conditions in

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¹ See Leticia Saucedo, *Border-Crossing Stories and Masculinities*, in *MULTIDIMENSIONAL MASCULINITIES AND LAW: FEMINIST THEORY MEETS CRITICAL RACE THEORY* (Ann McGinley & F. Rudy Cooper eds., New York, forthcoming 2012) (manuscript at 1, 4–6, on file with author).

the workplace.²

The dynamic between immigration restrictions and migrant masculinities narratives raises important questions about the effects of border crossing masculinities narratives on the employment dynamic in the workplace. The narratives that make migrants protagonists in border crossing stories also make them agents who are able to endure undesirable workplace conditions.³ The same narratives of endurance, facing risk and danger, and the need to become a family provider cause immigrants to accept conditions in the workplace others might not readily accept.⁴ The fact that the narratives intertwine at the intersection of immigration and employment law regimes means that we must consider the effects of law on immigrants in a multidimensional manner, so that the exploitation particular to migrants will be more effectively addressed.

I. BORDER CROSSING AND WORKPLACE NARRATIVES IN ACTION: THE CONSTRUCTION WORKER PROJECT

Between 2006 and 2008, we conducted over 100 interviews with workers in Las Vegas, Nevada, and Hidalgo, Mexico. We discussed their workplace conditions, their migration patterns, and their involvement in organizing or in grievance efforts in the workplace.⁵ In Hidalgo, Mexico, we interviewed thirty-two migrants who had worked in the United States and who had returned to their hometowns.⁶ Among the topics of conversation with these workers were discussions about their own migration and border crossing stories.⁷ A previous article analyzed their border crossing stories for the overarching narratives operating to keep the migration stream moving despite repeated and ongoing efforts to restrict migration between Mexico and the United States.⁸ This Essay analyzes how the border crossing narratives affect workers' assessments of their workplace conditions, their power in the workplace, their workplace rights, and their ability to complain about substandard conditions.

The border crossing and workplace stories we heard demonstrate the powerful effect narratives have on movement across the border. More importantly, we detected a set of attitudes toward workplace conditions, wages, safety, and organizing in low-wage immigrant workplaces that parallel the masculinities revealed in the border crossing narratives. Many of the narratives have deep roots in the historical

² See Leticia M. Saucedo & M. Cristina Morales, *Masculinities Narratives and Latino Immigrant Workers: A Case Study of the Las Vegas Residential Construction Trades*, 33 HARV. J.L. & GENDER 625, 634 (2010).

³ *Id.*

⁴ See Saucedo, *supra* note 1, at 5; Saucedo & Morales, *supra* note 2, at 634.

⁵ Saucedo & Morales, *supra* note 2 at 628.

⁶ Saucedo, *supra* note 1, at 1–2.

⁷ *See id.*

⁸ Saucedo, *supra* note 1.

relationship between the United States and Mexico. They respond to the historical push-and-pull factors of the migration stream, to the restrictive nature of immigration policy, and to immigrants' perceptions of their own power (or lack of it) in the workplace.

II. BACKGROUND: A BRIEF HISTORY OF THE GROWING RESTRICTIONS IN IMMIGRATION LAW

The United States has been enforcing the U.S.–Mexican border to restrict immigration from the southern hemisphere through its Border Patrol since the 1920s.⁹ At the same time, employer needs for compliant and cheap labor have pulled migrants into the United States, both legal and undocumented.¹⁰ During the 1940s both the U.S. and the Mexican governments sanctioned the employer pull by implementing the Emergency Farm Labor Program, also known as the *bracero* program.¹¹ This contract labor program brought millions of Mexicans into the United States for ostensibly temporary work over a twenty-year period.¹² The program was the result of an agreement between the governments of Mexico and the United States that ostensibly protected workers' rights and their entry through contractual obligations between the countries.¹³ The workers themselves did not have enforceable individual rights that protected them in the workplace.¹⁴ Those who entered under contracts covered by the *bracero* program did, however, enter the country with authorization, albeit for only temporary periods of time.¹⁵ The program encouraged further immigration of millions of undocumented workers who were hired alongside *bracero* program workers.¹⁶

The need for labor in the United States was so great—because of the war and increased restrictions imposed by the national origins quota system in immigration law—that many participants, including employers and workers, considered the *bracero* program's entry requirements more of a bureaucratic inconvenience than a serious impediment to the migration stream.¹⁷ Many of the *bracero* program participants remained in the United States after their temporary work assignments ended.¹⁸ Some returned to Mexico, only to come back to the United States after a period, in tandem with the circular migration stream.¹⁹

Even before the *bracero* program, the U.S. government sought to

⁹ See MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA, 67–71 (2004).

¹⁰ See *id.* at 147–52.

¹¹ See *id.* at 138–39.

¹² See *id.*

¹³ See *id.* at 138–40.

¹⁴ See *id.* at 143–45.

¹⁵ See *id.* at 138.

¹⁶ *Id.* at 148.

¹⁷ See *id.* at 148.

¹⁸ See *id.* at 146–47.

¹⁹ See *id.* at 150.

restrict migration flows that were initiated by the need for labor during periods of economic growth. Between the 1920s and the 1950s, the U.S. government restricted immigration mostly from southern and eastern Europe, as well as Asia.²⁰ In 1921, and again in 1924, Congress implemented an immigration system that called for allowing entry to a proportion of the world population that mirrored the racial and ethnic composition of the United States Census in 1910,²¹ and later, 1890.²² This composition turned out to be predominately western and northern European.²³ Asians and southern and eastern Europeans—then the bulk of low-wage workers in the country—were severely limited in their ability to immigrate because of the federal government’s desire to limit the racial/ethnic composition of the country.²⁴ As a result, labor from Mexico became more desirable among employers who were trying to meet their labor needs within the restrictions of immigration law at the time.²⁵

By the 1960s, the civil rights movement and its corresponding moral and political consciousness were the impetus for restructuring the racial preferences embedded in U.S. immigration law’s national origins quota system.²⁶ In 1965, by amending the Immigration and Nationality Act (INA), Congress replaced the national origins quota system with a policy that favored family reunification.²⁷ Although race-neutral, the policy did have the effect of changing the racial and ethnic composition of the migration stream to some extent.²⁸

Due to the 1965 amendments to the INA, nationals from western hemisphere countries were subject to the worldwide quota cap for the first time in the history of U.S. immigration law.²⁹ As a result, for the first time in the history of Mexican immigration, visa petitioners experienced a backlog—one that has persisted to this day. Instead of

²⁰ See Immigration Act of 1924, ch. 185, 190, 43 Stat. 153 (1924) (amended by Immigration Act of 1952, ch. 477, 66 Stat. 163 (1954)); Immigration Act of 1952, ch. 477, 66 Stat. 163 (1954) (amended by Immigration and Nationality Act of 1965, Pub.L. 89-236, 79 Stat. 911 (1965)); Kevin R. Johnson, *Race, The Immigration Laws, and Domestic Race Relations: A “Magic Mirror” into the Heart of Darkness*, 73 IND. L. J. 1111, 1128–30 (1998).

²¹ Immigration Act of 1921, ch. 8, § 2, 42 Stat. 5, 5 (1921) (amended by Immigration Act of 1924, ch. 185, 190, 43 Stat. 153 (1924)).

²² Immigration Act of 1924 § 11; see also Johnson, *supra* note 11, at 1127–28.

²³ Johnson, *supra* note 20, at 1127–28.

²⁴ *Id.* at 1127–31.

²⁵ NGAI, *supra* note 9, at 94–95.

²⁶ See Johnson, *supra* note 20, at 1130–34.

²⁷ See Immigration Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (amending Immigration and Nationality Act of 1952, ch. 477, § 201, 66 Stat. 163, 175); PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA’S IMMIGRATION DISASTER* 80 (Random House 1st ed. 1995).

²⁸ See Brimelow, *supra* note 27, at 75–85. While, arguably, the migration stream had been established for Mexicans through the economic pull, the ethnic composition of lawful migration into the United States became more Asian after the family reunification provisions were in place. See Johnson, *supra* note 20, at 1132–33.

²⁹ Immigration Act of 1965; see Johnson, *supra* note 20, at 1133.

dampening the migration stream, the restrictions served only to increase the undocumented population; migrants became defined by the backlog rather than their place in the historical migration pattern that had been encouraged by the *bracero* program. Congress terminated the *bracero* program in 1964.³⁰

Calling for immigration restrictions in the 1970s and 1980s, the Immigration and Naturalization Service (INS) claimed that the undocumented population had reached the millions.³¹ In 1986, the Immigration and Reform Control Act (IRCA) increased border patrol resources, provided legalization programs for undocumented workers, and sanctioned employers who knowingly hired undocumented workers.³² The legalization programs of the IRCA legalized a significant segment of the undocumented population in the United States and consequently increased the proportion of Latin-American immigrants. These immigrants then created a migration chain of family-sponsored immigrants, leading from Mexico into the southern United States.³³ Furthermore, employer sanctions—though intended to curb future immigration—arguably served only to make workers more averse to seeking legal protection for fear of deportation.

In 1996, Congress implemented the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), adding enhanced removal penalties for criminal violations and an expedited removal provision for immediate removal of border crossers.³⁴ Congress also revamped the definition of “admission” into the United States,³⁵ which essentially stripped immigrants who had already entered the United States of their basic due process rights. The reforms placed the burden on the immigrant in a removal proceeding to prove that she had been lawfully admitted into the United States.³⁶ Immigrants who could not prove their lawful admission were subject to the rules and procedures governing inadmissibility grounds,³⁷ an area that had fewer due process protections than if the immigrant had faced deportation. Finally, the Act created new and far-reaching grounds of inadmissibility and deportation, including automatic bars to admission for those who were unlawfully present in the United States for six months or more.³⁸ The so-called three and ten year

³⁰ NGAI, *supra* note 9, at 158.

³¹ See Vernon M. Briggs, Jr., *Illegal Aliens: The Need for a More Restrictive Border Policy*, 56 SOC. SCI. Q. 477, 477 (1975), available at http://works.bepress.com/vernon_briggs/147.

³² See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986); see also Katherine Donato et al., *Stemming the Tide? Assessing the Deterrent Effects of U.S. Immigration and Control*, 29 DEMOGRAPHY 139, 139 (1992), available at <http://www.springerlink.com/content/71m53645w2154772/>.

³³ See Donato, *supra* note 32, at 155–56.

³⁴ Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

³⁵ *Id.* at § 301(a).

³⁶ *Id.* at § 304(a)(3).

³⁷ *Id.* at § 301.

³⁸ *Id.*

admission bars preclude lawful admission to anyone who left the country and tried to re-enter legally.³⁹ Once again, these provisions, both collectively and separately, were meant to curb immigration and stop the circular migration stream that continued even after the 1986 amendments to the INA.

The 9/11 terrorist attacks brought changes to the legacy Immigration and Naturalization Service (INS) and introduced security-related rationales for stricter border enforcement.⁴⁰ The Homeland Security Act of 2002 reorganized immigration agencies by moving them into the newly created Department of Homeland Security (DHS), and split up the legacy Immigration and Naturalization Service into two agencies: the Immigration and Customs Enforcement (ICE) and the U.S. Citizenship and Immigration Services (USCIS).⁴¹ This change created a new set of immigration restrictions, namely a greater emphasis on border control. The Secure Fence Act of 2006 authorized the construction of a border wall across the southwestern states bordering Mexico.⁴² The act also authorized a virtual wall, in the form of an electronic surveillance system.⁴³ The federal government is currently experimenting with unmanned aerial vehicles to monitor border activity.⁴⁴ These are all examples of the increasing restrictiveness of border enforcement. In response to the recent increase in immigration restrictions targeting Mexicans, we hear stories of persistence, endurance, risk, and danger. These narratives portray immigrants as noble, hardworking, and heroic agents in the migration stream. Additionally, border-crossing stories ascribe decidedly masculine characteristics to immigrants, in keeping with the fact that most migrants to the United States are male, at least since the implementation of the *bracero* program in the 1940s.⁴⁵ The program limited migration to only those who could work in traditionally male occupations, such as farm work.⁴⁶ The *bracero* program spawned a set of narratives that characterized northward migration as a masculine activity,⁴⁷ and that is still the case today.

³⁹ *Id.* (amending Immigration and Nationality Act of 1952, ch. 477, § 212(a)(9)(B), 66 Stat. 163, 182).

⁴⁰ See USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

⁴¹ Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135.

⁴² Secure Fence Act of 2006, Pub. L. No. 109-367, 120 Stat. 2638.

⁴³ *Id.*

⁴⁴ CHAD HADDAL & JEREMIAH GERTLER, CONGRESSIONAL RESEARCH SERVICE, HOMELAND SECURITY: UNMANNED AERIAL VEHICLES AND BORDER SURVEILLANCE (2010).

⁴⁵ See Jorge Durand et al., *Mexican Immigration to the United States: Continuities and Changes*, 36 LATIN AM. RES. REV. 107, 115 (2001); Chad Broughton, *Migration as Engendered Practice: Mexican Men, Masculinity, and Northward Migration*, 22 GENDER & SOC'Y 568, 571–73 (2008); NGAI, *supra* note 9, at 150–52.

⁴⁶ See NGAI, *supra* note 9, at 138–39; Deborah Cohen, *From Peasant to Worker: Migration, Masculinity, and the Making of Mexican Workers in the U.S.*, 69 INT'L LAB. & WORKING-CLASS HIST. 81, 83 (2006).

⁴⁷ See ALICIA SCHMIDT CAMACHO, MIGRANT IMAGINARIES: LATINO CULTURAL POLITICS IN THE MEXICO-U.S. BORDERLANDS 75–111 (New York University Press 2008).

A. *The Current Border Crossing Landscape*

The increasingly restrictive direction of immigration law in the United States has had some effect on the border crossing experience. Crossing the border is now much more fraught with danger and uncertainty. Nevertheless, the migration stream continues to flow. This is in part because of necessity: there are hardly any opportunities for improvement and a better life south of the border. Additionally, the idea of bravery in the face of danger invokes strong, captivating narratives in a culture so accustomed to responding to the economic, social, and political turns of its neighbor state. In very recent times, the specters of mass killings of border crossers, rampant human trafficking, and increasingly repressive and militaristic enforcement on both sides of the border haunt the minds of the migrant population.⁴⁸ These dangers are weaved into the stories of those who seek, or re-seek, to cross into the United States. This section briefly provides context to the stories told by our interviewees, men who considered themselves migrants and who had, for the most part, made multiple attempts to enter the United States unlawfully.

1. The Realities: Death, Trafficking, Injury and Economic Costs

Massacres of migrants on the Mexican border demonstrate the very real dangers involved in crossing into the United States. On August 26, 2010, *The Los Angeles Times* reported that seventy-two migrants were found shot to death in mass graves on a remote ranch about one hundred miles from the U.S. border.⁴⁹ The migrants, mostly men, were discovered after one of the men escaped the massacre and sought the help of law enforcement officials at a highway checkpoint.⁵⁰ One Mexican official explained that the migrants were victims of a drug trafficking cartel, which has branched out into human trafficking.⁵¹ The news changed people's perception of the dangers associated with border crossing northward. Incidents such as the one reported in the *L.A. Times* loom heavily in the minds of those who seek to cross today.

Amnesty International recently documented the dangers, fears, and victimization that border crossers face in Mexico.⁵² In this report, Amnesty International called for increased migrant protections from Mexican government officials.⁵³ In addition to potential death, the

⁴⁸ See e.g., Ken Ellingwood, *Mexico Marines Find 72 Bodies at Ranch*, L.A. TIMES, Aug. 26, 2010, at A1, A5; AMNESTY INT'L, INVISIBLE VICTIMS: MIGRANTS ON THE MOVE IN MEXICO (2010), available at <http://www.amnesty.org/en/library/info/AMR41/014/2010>.

⁴⁹ Ellingwood, *supra* note 48, at A1, A5.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² AMNESTY INT'L, INVISIBLE VICTIMS: MIGRANTS ON THE MOVE IN MEXICO (2010), available at <http://www.amnesty.org/en/library/info/AMR41/014/2010>.

⁵³ *Id.*

Amnesty International report documented incidents of kidnapping, threats, and assaults from private parties, as well as incidents of abuse from law enforcement authorities (including extortion and excessive force).⁵⁴ It further documented numerous cases of beatings, capture, and detention of migrants caught traveling on freight trains, in trucks, and in other forms of vehicles across Mexico.⁵⁵

Furthermore, migrants must pay a “coyote,” or human smuggler, to facilitate safe passage over multiple border crossings.⁵⁶ Migrants frequently pay thousands of dollars to a smuggler for safe passage into the United States.⁵⁷ Stories of kidnapping and holding migrants for ransom on both sides of the border are part of the overall narrative of border crossing dangers.⁵⁸ The journey is, by reputation, one fraught with possible exploitations at every step.⁵⁹

While the trip across the border has always been a dangerous one, popular media today emphasize that those risks have significantly increased.⁶⁰ The narratives we heard confirmed that fact. They also provided a framework to navigate the increased risk, both in border crossing and as they negotiated their way in the workplace.⁶¹

III. THE MASCULINITIES NARRATIVES: ENDURANCE, PERSISTENCE, FAMILY PROVIDER, AND FAMILY ORDER

Those who cross the border face death, trafficking, injury, capture and detention, illness, and high monetary and emotional costs, which multiply with each repeated attempt.⁶² This reality gives rise to border crossing narratives that highlight themes such as necessity, persistence, and endurance in the face of risk or danger, opportunities to improve the family’s quality of life, and the role of migrant men in the family and the community. We term these the “endurance,” “family provider,” and “family order” narratives.⁶³

Shades of the endurance, family provider, and family order narratives re-emerged when the interviewees discussed their workplace conditions and rights.⁶⁴ In the United States, masculinities play a role in the way work and the worksite are structured and in the way that

⁵⁴ See AMNESTY INT’L, *supra* note 52 at 11–24.

⁵⁵ *Id.* at 21.

⁵⁶ See DAVID SPENER, CLANDESTINE CROSSINGS: MIGRANTS AND COYOTES ON THE TEXAS–MEXICO BORDER 87 (2009).

⁵⁷ *Id.* at 117.

⁵⁸ *Id.* at 116–17.

⁵⁹ See, e.g., Interview with Juan Diego, resident in Hidalgo, Mexico (August 10, 2008).

⁶⁰ See, e.g., Ellingwood, *supra* note 48.

⁶¹ See, e.g., Interview with Miguel, Construction Worker, in Las Vegas, Nev. (June 14, 2007).

⁶² See Amnesty Int’l, *supra* note 52.

⁶³ See Saucedo, *supra* note 1, at 5.

⁶⁴ See Saucedo and Morales, *supra* note 2, at 978.

migrants negotiate their identities within those structures.⁶⁵ As gleaned from our interviews, border crossing masculinities narratives helped migrant workers negotiate and understand their place as undocumented workers in the U.S. workplace.⁶⁶

The endurance narrative, in the border crossing context, involves enduring and persisting through the risks and dangers shrouding the journey.⁶⁷ In the workplace, the endurance narrative is characterized by an acceptance of substandard working conditions. More importantly, the narrative contains the idea that migrant workers bear no rights—migrants who crossed the border without documents perceived and accepted their inability to complain in the workplace because of their status.

The family provider narrative highlights the migrant's role as a breadwinner and the sacrifices made to be a breadwinner.⁶⁸ Stories about opportunities to improve family quality of life motivate migrants to make the treacherous journey. In the workplace, the narrative manifests itself as a similar story of sacrifice for others.

The family order narrative in border crossing stories upholds the role of the migrant as head of household and keeper of moral values, discipline, and authority. This narrative is manifest in a migrant's understanding that his perceived role as the head of the household influences his attitude in the workplace. Consequently, workers were sometimes less willing to challenge the workplace hierarchy.

A. *The Endurance Narrative in the Workplace*

Endurance of risk and danger is a classic, quintessential masculine characteristic.⁶⁹ We observed endurance narratives in most of the border crossing stories we heard.⁷⁰ Immigrants who endured the dangers of crossing were also determined to endure the difficult conditions they encountered in the workplace. One migrant noted that, though the work is very difficult and the pay very low, “the most difficult thing is to cross the border.” He also noted that, regardless of the difficulty of the work, he and his peers would perform it.⁷¹ Another migrant, immediately after

⁶⁵ See Broughton, *supra* note 45 (noting that masculinities shape migrants' border crossing identity); Cohen, *supra* note 31 (discussing the gendered ideology inherent in the *bracero* program and that migrant workers see transnational work as a path to capitalization); see also Brent A. Taylor & Andrew Behnke, *Fathering Across the Border: Latino Fathers in Mexico and the U.S.*, 3 *FATHERING* 99, 101(2005) (noting the role of “machismo” and acculturation in family life across Mexico and the United States); Ann C. McGinley, *Masculinities at Work*, 83 *OR. L. REV.* 359 (2004) (noting the influence of masculinities on gender roles and success in the workplace).

⁶⁶ See, e.g., Interview with Miguel, *supra* note 61.

⁶⁷ See Saucedo, *supra* note 1, at 14.

⁶⁸ *Id.* at 5.

⁶⁹ See R.W. CONNELL, *MASCULINITIES*, 55, 168 (University of California, 2nd ed. 2005).

⁷⁰ See, e.g., Interview with Lorenzo, Construction Worker in Hidalgo, Mexico (August 13, 2008); Saucedo, *supra* note 2.

⁷¹ Interview with Raul, Construction Worker, in Hidalgo, Mexico (August 13, 2008).

he described enduring the dangers of border crossing, echoed the themes of necessity and endurance of risk, noting, “We work in what they won’t do, and we risk our lives in building houses, you know . . . We go in early and leave late, but we need to finish the job.”⁷²

As with the border crossing stories, the workplace narrative took the form of enduring difficult and dangerous situations. When workers described their work place, they discussed the tough conditions and the risks involved in performing the most difficult jobs in the workplace. One worker described, “I have never seen anyone from here with a pick and shovel. Only Latinos do that type of work. I don’t like it either.”⁷³

The fact that some of our interviewees admitted to disliking their job indicates that at least some consider endurance a necessary job requirement. The endurance story adds value to work that is typically not highly valued. The narrative that Latinos tolerate conditions and do work that no one else would, is part of the endurance theme. The endurance theme is so strong that it carries over into the workplace, allowing workers to tolerate conditions that others would not normally bear. It was as if the dangers they endured to cross made them unwilling to rock the boat or complain, and willing to withstand undesirable conditions to avoid the threat of deportation and to keep their jobs. One worker said that, if he or his peers ever complained, they “couldn’t work in peace” because their employer would threaten to turn them over to immigration enforcement authorities.⁷⁴

Many of the male workers we interviewed withstood undesirable working conditions even when those conditions violated wage and hour requirements or safety laws. One worker, explaining that the company would not pay overtime, noted, “That’s the first thing they tell us when we start work, not to ask for anything.”⁷⁵ The worker accepted the job, and at the same time accepted the premise that he would not complain about its terms and conditions.⁷⁶ Another worker demonstrated endurance by accepting his supervisor’s admonishments that he, the worker, had to work faster than he thought reasonable so that the contract would remain profitable.⁷⁷ Yet another noted that his only alternative to endurance was leaving the workplace.⁷⁸ Several workers asserted that they would continue to work for the company despite having complaints about the company’s operations. For example, when asked how he

⁷² Interview with Mateo, Construction Worker, in Hidalgo, Mexico (August 13, 2008).

⁷³ Interview with Samuel, Construction Worker, in Las Vegas, Nev. (June 15, 2007).

⁷⁴ Interview with Rogelio, Construction Worker, in Hidalgo, Mexico (August 13, 2008).

⁷⁵ Interview with Juvencio, Construction Worker in Las Vegas, Nev. (June 14, 2007).

⁷⁶ *Id.*

⁷⁷ Interview with Antonio, Construction Worker, in Las Vegas, Nev. (June 12, 2007).

⁷⁸ Interview with Deltorro, Construction Worker in Las Vegas, Nevada (June 15, 2007).

would resolve any problems with the company, one worker stated, “I would just keep working for the company.”⁷⁹

Other interviewees spoke of how hard they worked compared to native-born workers.⁸⁰ The comparison served to bolster workers’ perceptions that they endured more than their counterparts. The narrative focuses on the single-mindedness of their attitude toward work: “When we move here we just focus on working, and we don’t think about how long we’re going to be living and working here. We don’t take into consideration the working conditions of our job, or that we might get ill”⁸¹

The endurance narrative is essential to understanding the day-to-day lives of migrant workers. Workers spoke about their experiences with mixed feelings of pride in their ability to endure as well as a somewhat fatalistic attitude about their life situations. They have accepted their abysmal workplace conditions as part of the deal that they struck when they crossed the border. Because these migrant workers take responsibility for crossing into the United States without documents, they then accept their unequal bargaining power in contracts they negotiate with their employers, even if these were not fully within the law.

B. The Family Provider Narrative in the Workplace

The family provider (or breadwinner) narrative is a familiar figure in masculinities studies.⁸² The family provider narrative relates to the endurance narrative in that it explains why the immigrants we interviewed accepted the substandard conditions they encountered on the job. They endured the conditions and sacrificed their time, effort, and bodies for the sake of fulfilling their roles as the family provider.⁸³ They woke up early and worked late into the night because they were supporting their families.⁸⁴ One worker noted: “There were times when, because I needed the work, I had to leave my house at six in the morning, and I would get home at eleven at night. Sometimes we’d work twelve-and-a-half hours. . . . We all come here with the goal of providing for our families.”⁸⁵ For one worker, the family provider role was sufficient motivation to continue working, no matter what the pay: “It’s better to be out working than to be sitting there at home. Even if I’m just earning five dollars an hour, at least I’ll know that I’ll be earning something and I

⁷⁹ Interview with Juvencio, *supra* note 75.

⁸⁰ Interview with Esteban, Construction Worker in Las Vegas, Nevada (June 16, 2007).

⁸¹ Interview with Diana, Construction Worker in Las Vegas, Nevada (June 13, 2007).

⁸² See Matthew C. Gutmann, *Introduction: Discarding Manly Dichotomies in Latin America*, in *CHANGING MEN AND MASCULINITIES IN LATIN AMERICA* 13–14 (Matthew C. Gutmann ed., 2003); see also, Broughton, *supra* note 30, at 581–82 (providing examples of breadwinner narratives).

⁸³ Saucedo & Morales, *supra* note 2, at 650.

⁸⁴ *Id.*

⁸⁵ Interview with Maria, Construction Worker, in Las Vegas, Nev. (June 5, 2007).

won't be sitting there at home."⁸⁶ When asked why he endured the tough conditions in the workplace, one worker responded: "Well, out of necessity. I have a family in Mexico . . . and I send them money every eight days, and I'm just used to it. I've been with the company for ten, eleven years."⁸⁷

For many workers, the necessity story within the family provider narrative proved to be the dignifying aspect of the overall narrative explaining why they crossed the border and endured the work conditions they found in the United States. The workers responded to the anti-immigrant "outlaw" image prevalent in the public mind with an image of themselves as responsible citizens forced to sacrifice for the well-being of their loved ones.

C. The Family Order Narrative in the Workplace

The family order narrative reflects the traditional hegemonic masculinity that affirms male authority, customary family roles, and conservative family values.⁸⁸ The narratives reveal themselves when the protagonist of a story must choose between work and family.⁸⁹ In these discussions about the workplace, the family order narrative centered on the anxiety that workers expressed in being separated from their families. Workers talked about fearing "familial disintegration" the longer they stayed away from home.⁹⁰

An interesting dynamic that we observed among interviewees was their use of the family order narrative to explain their return to Mexico. Among the many of our interviewees who returned to Mexico, the main reason was frequently that their families needed them, as opposed to the economic downturn or border restrictions. While other factors played into the decision to return, family order was always paramount among the reasons given, and often one of the first articulated by the migrants as they recounted their stories. In fact, the workers invoked the family order narrative when the breadwinner identity no longer made sense because of economic dislocation. Even though they were no longer breadwinners, they could still maintain their masculine identity as keepers of the family order. The narrative, and the identity, seemed to soften the blow of a lost job or lost economic opportunities as the U.S. recession grew in severity. As one worker noted: "They didn't fire me, but I had to leave on my own and come back here to my country, my state, so that I could devote more time to my family here."⁹¹

⁸⁶ Interview with Antonio, *supra* note 77.

⁸⁷ Interview with Samuel, *supra* note 73.

⁸⁸ See Broughton, *supra* note 45, at 574–76.

⁸⁹ *Id.*; see also Patricia Fernández-Kelly, *Reforming Gender: The Effects of Economic Change on Masculinity and Femininity in Mexico and the U.S.*, *WOMEN'S STUDIES REVIEW* 69, 97 (Fall 2005).

⁹⁰ Interview with Antonio, *supra* note 77.

⁹¹ Interview with Paco, Construction Worker, in Hidalgo, Mexico (August 13, 2008).

The family order narrative reappeared in the hierarchy within construction crews. One worker perceived that, among the working crewmembers, one leader made decisions for the rest. He described the group structure as follows: “Suppose the four of us were in a crew. I am the foreman. I’m the one who decides how much to pay each one of you.”⁹²

The notion of the worker as patriarch and keeper of discipline, moral authority, and customary family roles persisted even throughout the back-and-forth movement between the job in the United States and the family in Mexico. This important narrative continues to play itself out as circular migration becomes regularized through economic swings, policy shifts, and legal regime changes in the United States.

D. The Corollary Narrative: Workers’ Self-Perception as Non-Rights Bearers

As a corollary to the masculinities narratives in their border crossing and workplace stories, the interviewees expressed the perception that, as immigrant or undocumented workers, they had very few rights in the workplace, if any at all. Some workers believed that having no rights was a condition that they had to endure in order to keep their jobs. If maintaining the job was not reason enough, successfully providing for their families was. Either way, the image of the immigrant worker as having no rights in the workplace fits into the broader masculinities narrative, of which endurance and necessity are key elements. When asked to describe his workplace rights, one worker responded: “I do not think that I have the same rights as someone who’s a resident here. . . . [T]he people from Hidalgo or the people in Latin America, we don’t have it.”⁹³

The workers’ perception that they could not exercise workplace rights was a pragmatic one. Workers did not seem to know exactly what kinds of protections were available to them.⁹⁴ What they did understand was that, given their immigration status, they could not expect to exercise any rights. As one worker noted: “The majority of us here live with that fear that immigration will come for us. A lot of times we don’t fight the company for fear of being deported. The company can just deport us and they get rid of that problem. Deport us back to Mexico.”⁹⁵

When asked to describe workplace protections for immigrant workers, our interviewees were hard-pressed to articulate what those rights might be. One worker stated the problem succinctly:

I think that with the matter of overtime, yes [we are

⁹² Interview with Deltorro, *supra* note 78.

⁹³ Interview with Miguel, Construction Worker, in Las Vegas, Nev. (June 14, 2007).

⁹⁴ *See, e.g.*, interview with Juvencio, *supra* note 75. When asked whether he thought anti-discrimination laws protected him, Juvencio responded, “I wasn’t even aware of a law against discrimination.”

⁹⁵ *Id.*

protected]. And with safety I think that no because I don't think that the boss and the owner have any interest in the safety of the people who are working. Better to not worry about an illegal, in their eyes.⁹⁶

Another worker echoed the sentiment: "I just put up with it, the abuse sometimes. I can't complain . . . Well, I can, but no one will listen to us."⁹⁷ Another worker noted: "Like you say, there's that law about paying us overtime. They should do it but they don't because if the company doesn't want to pay overtime, you can't make that demand. I think that I would lose my job."⁹⁸ He further elaborated that he was aware he could be deported at any time, and it was this awareness—not his perception that he had few workplace rights—that made him work in fear and silence.⁹⁹ Another worker attributed his lower pay and his station in the workplace to immigration status: "Well to make things really better, there is nothing better than to be legal . . . [W]ith the documents you can work better without having to hide from anybody, and the jobs are better paid. So in order to live better, really better, it would have to be with documents."¹⁰⁰

The perception that immigrant workers did not have rights was not limited to the workplace. Workers felt they lacked rights in other parts of their daily lives as well. One worker noted, "We don't have the same rights . . . [W]e have to pay taxes but to receive medical services, we don't have the same rights."¹⁰¹ Another worker elaborated on the sentiment, explaining that he had fewer rights to medical or emergency services than native-born residents because for all practical purposes, demanding such care could lead to deportation.¹⁰² The following exchange with a worker is illustrative:

Juvencio: They make an application to get unemployment and . . .

Interviewer: And you don't believe an undocumented person can do that?

Juvencio: Well I don't think so, no. No we can't.

Interviewer: Do you believe that being undocumented has an effect on people?

Juvencio: Too much.

Interviewer: How?

Juvencio: Well, it's because they don't have the same benefits as those who are already here.

Interviewer: What kinds of benefits?

⁹⁶ Interview with Miguel, *supra* note 93.

⁹⁷ Interview with Samuel, *supra* note 73.

⁹⁸ Interview with Juvencio, *supra* note 75.

⁹⁹ *Id.*

¹⁰⁰ Interview with Gilberto, Construction Worker in Las Vegas, Nevada (June 14, 2007).

¹⁰¹ Interview with Miguel, *supra* note 93.

¹⁰² Interview with Juvencio, *supra* note 75.

Juvencio: Like Social Security.

Interviewer: No? Do you think that most undocumented people think the same as you?

Juvencio: Do they think like me, as pessimists?

Interviewer: Or do you think that's how they perceive the law? That the law doesn't protect them?

Juvencio: I think so, yes.¹⁰³

This narrative of immigrants as having no rights is one of the most important corollaries of the border crossing masculinities narratives because it invokes both endurance and necessity at its core. The workers are realistic (though some of them say pessimistic) about their position in the workplace and their vulnerability due to their undocumented status. Yet they continue to work in the name of endurance and necessity. This realism about workplace conditions, and the acceptance of such conditions as part of the job, has real implications for both immigration and employment laws. The narratives demonstrate the relative weakness of these laws in the face of restrictive immigration policy and lax enforcement of workplace protections, especially in the low-wage immigrant sectors of the economy.

IV. LESSONS FROM THE NARRATIVES: IMPLICATIONS FOR IMMIGRATION AND EMPLOYMENT POLICY

We recognize that the narratives we have described hold great power, helping migrants cope with ever-increasing dangers, risks, and restrictions, both in border crossing and in the workplace. The migrants we interviewed adapted to the increased risks and dangers by incorporating masculinities themes into their stories. The masculinities embedded in the narratives, in turn, allow workers to endure and withstand sometimes harsh workplace conditions without complaint.

The lessons for immigration law are fairly obvious. Restrictive border enforcement policies do not dissuade individual migrants from crossing the border. Indeed, as we learned from these border crossing stories, increased risks in crossing—and, subsequently, in the workplace—can hardly outweigh the need to provide for migrants' families. Judging from the stories that we heard, and the narratives built around border crossing, militarized border control efforts that make the border more difficult to cross fail in their goal of dissuading migrants from seeking entry in the United States. That is not to say, however, that migrants simply openly and brazenly defy border control efforts because of some stereotypical machismo character. Instead, the narratives we describe demonstrate that the stories are much more complicated, involving family responsibility, opportunity, and sacrifice. Increased border efforts are simply the context that changes the story to include the elements of risk-taking, persistence, and endurance in ways that subsequently have consequences in the workplace.

¹⁰³ *Id.*

The lessons for employment and labor law enforcement are just as clear. If workers feel they have no rights or protection in the workplace—whether because they do not know what those rights are or because they feel that, as immigrants, they are entitled to none—they will not act upon the rights that they, in fact, have under the current U.S. labor and employment laws.¹⁰⁴ Employer sanctions and worksite immigration enforcement policies will not work if their goal is to dissuade undocumented employment. Instead, these policies create the conditions for the prevalent narrative that immigrants have few or no rights in the workplace. They endure, in other words, because the legal restrictions in the workplace, even though aimed at employers, target workers. For the undocumented immigrants it is better, under these circumstances, to accept the story that they can work so long as they keep their grievances to themselves.

The endurance, sacrifice, and family provider narratives do the job of discouraging employee voice in the workplace or challenges to harsh working conditions. If the narratives carry the work of silencing immigrants—by discouraging their participation as private attorneys general in the workplace—then third party mechanisms must play the role of enforcer. It is that much more incumbent upon enforcement agencies, in other words, to spend more of their resources in those industries that have now become dominated by immigrant labor. Agencies such as the federal Department of Labor must make immigrant labor industries a priority in their investigations. They must work with collaborating agencies and nonprofits that will file third party charges on behalf of workers who will not file their own complaints. They must ensure that enforcement in the workplace includes all aspects of enforcement and not just immigration enforcement.¹⁰⁵

An even more thoughtful approach to both immigration policy and employment-based protection is one that takes account of masculinities responses to conditions at home and abroad; this will affect the attitudes and responses of immigrant workers. If U.S. immigration, employment, trade, and related policies focus on changing conditions to which migrants are responding when they migrate north, then this cross-disciplinary approach may affect migration patterns.¹⁰⁶ If the underlying economic and social conditions of immigrants do not correspondingly facilitate compliance, no amount of restrictive policies will work to

¹⁰⁴ Statutes such as the Fair Labor Standards Act and Title VII of the Civil Rights Act of 1964 allow for private enforcement of violations. Fair Labor Standards Act of 1938, 28 U.S.C. § 216(b) (2006); Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e-5(b) (2006).

¹⁰⁵ See, e.g., Stephen Lee, *Monitoring Immigration Enforcement*, 53 ARIZ. L. REV. 1089 (2011) (proposing an enforcement system in which immigration enforcement efforts in the workplace might require a form of preclearance from the Department of Labor).

¹⁰⁶ Our interviews support the arguments that other legal scholars have made about the importance of genuine investment in education, infrastructure, and economic development in Mexico in order to address the push factors in the migration stream. See, e.g., BILL ONG HING, *ETHICAL BORDERS: NAFTA, GLOBALIZATION, AND MEXICAN MIGRATION* 134–41 (2010).

dissuade immigration.¹⁰⁷ It would be just as masculine, for example, to fulfill the family provider roles without traveling if economic conditions allowed for migrants to stay home or to work without anti-immigrant policies in the United States. As the stories here demonstrate, a more holistic, cross-legal, cross-state approach offers more hope of change than the current enforcement-based legal regime.

Armed with this information about how workers perceive their lack of power, we can begin to alter workplace dynamics to achieve more effective worker protection. The narratives themselves point to how to change the dynamic. The narratives that focus on endurance and lack of voice, for example, demonstrate the need for an overhaul of a legal system in which the workers are robbed of a voice by virtue of their immigration status. Even if we tweaked employment and immigration laws, moreover, we would have to recognize the deeply entrenched nature of the stories that immigrants tell themselves. These stories point to the need for a complete overhaul of both our immigration or employment laws. First, we must acknowledge the importance of legal status in the workplace. Second, we must strengthen employment enforcement regardless of immigration status. A two-pronged approach begin to change the conditions that currently make the narratives resonate.

CONCLUSION

This Essay focused on the narratives immigrants employ to explain why they cross the border and specifically how these narratives manifest in the workplace. We asked initially why immigrants crossed the border and asked them to tell us about their border crossing stories. It was in these stories that we discovered the masculinities narratives and themes, common throughout each individual's story.¹⁰⁸ When we asked immigrants to recount their workplace experiences, their responses to difficult conditions at work, and their perceptions of workplace protections, we observed that the border crossing masculinities narratives re-emerged in modified form.¹⁰⁹ The narratives play an important and deeply entrenched role in the attitudes of workers regarding their place and their power in the workplace. We should take these as cues for the direction of reform in the immigrant workplace.

¹⁰⁷ *See id.*

¹⁰⁸ *See supra* Part II.A–B.

¹⁰⁹ *See supra* Part II.C.