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Food Labor and the Trump Administration: A Grim Prognosis

Erik Loomis*

The Obama administration did not make fundamental changes to the American food system nor did it radically transform the conditions for labor organizing. The administration did, however, achieve small, meaningful changes for food workers. Despite initial hopes that President Obama would name a reformer as Secretary of Agriculture to create a more sustainable food system, Tom Vilsack was a choice that changed little. On the other hand, the Obama Administration's choice of Tom Perez as Secretary of Labor for its second term led to a series of Labor Department regulations that improved the lives of food workers. For example, the May 2016 executive order that raised the overtime exemption threshold from \$23,660 to \$47,476 means large numbers of restaurant workers would receive overtime pay or receive pay raises to bring them over the threshold. It worth noting, however, that a federal judge has blocked its implementation.¹

The impact of Donald Trump on food labor remains to be seen but early signs are less than promising. His choices as Secretary of Agriculture, former Georgia governor Sonny Perdue, and his first choice as Secretary of Labor, Andy Puzder, the CEO of CEK Restaurants, which owns fast food chains Hardee's and Carl's Jr., are both strong opponents of worker rights. While Puzder's opponents forced his withdrawal,

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1. Ryan Sutton, *Obama's New Overtime Rules Will Give Restaurant Workers Much-Deserved Raises*, EATER (May 18, 2016), <http://www.eater.com/2016/5/18/11696664/obama-overtime-labor-laws>; The Time Editorial Board, *Obama Should Quickly Appeal Court Ruling Stopping New Overtime Rules*, LOS ANGELES TIMES (Nov. 24, 2016), <http://www.latimes.com/opinion/editorials/la-ed-obama-labor-department-overtime-courts-20161123-story.html>.

Trump's second choice, Alexander Acosta has displayed no evidence that he will continue Obama's advances on food worker rights. We face a strong likelihood for the repeal of Obama era regulations and a grim chance for any new rules that would protect workers.

The likely appointment of dozens of pro-business, anti-worker judges to the federal courts, including the recently confirmed Neil Gorsuch to the Supreme Court, will go far to shape the Trump administration's legacy for food workers. We can expect an increase in state level "ag-gag" bills with Trump-appointed judges unlikely to overturn them. Designed by agribusiness to criminalize animal rights activists from entering in their plants and taking secret footage to expose animal abuse, ag-gag laws make such conduct illegal without the consent of its owner. The poor treatment of animals is intricately connected to the poor treatment of workers, as meatpackers, butchers, and other laborers in the meat industry work in the same dangerous conditions for low pay and without union protections. Moreover, while specifically targeted at animal rights activists, the criminalization of knowledge could easily be applied to any undercover investigations of workplaces in the food industry. Seven agricultural states have passed versions of these bills, including Idaho and North Carolina. In 2015, a judge struck down the Idaho law and activists have challenged other states' laws.² But supporting these sorts of laws is precisely the pro-business regulatory climate that the Trump administration has touted itself as providing and it is highly likely that its appointed judges, including Gorsuch, will look favorably on ag-gag laws.

Ensuring that regulatory agencies do not function as needed is another likely outcome of the new administration that will

2. Lindsay Abrams, *Idaho Passes Industry-Backed 'Ag-Gag' Bill*, SALON (Feb. 28, 2014), http://www.salon.com/2014/02/28/idaho_passes_industry_backed_ag_gag_bill/; Peter Moskowitz, *Idaho Gov. Signs 'Ag Gag' Bill Into Law*, AL JAZEERA AMERICA (Feb. 28, 2014), <http://america.aljazeera.com/articles/2014/2/28/idaho-gov-signs-aggagbillintolaw.html>; Luke Runyon, *Citing the Idaho Decision, Activists Turn Their Ire to North Carolina's Ag-Gag*, KUNC (Jan. 13, 2016), <http://www.kunc.org/post/citing-idaho-decision-activists-turn-their-ire-north-carolina-s-ag-gag#stream/0>.

directly affect food workers. One expected and profound change for food labor is a weakened Occupational Safety and Health Agency. The agency is already underfunded and lacking the resources to inspect the nation's workplaces with consistency. OSHA's protections for workers flies in the face of the anti-regulation atmosphere of the billionaires with which Trump has staffed his Cabinet and the ideologues he is appointing to various agencies. To date, Trump has not nominated an OSHA director, but weakening OSHA whistleblower protections, lowering violation fines, and repealing Obama's executive orders on workplace safety is a top priority of Republicans and there is little reason to believe that President Trump will not act upon these principles.³

Trump's white ethno-nationalism makes predicting his impact on migrating workers and mobile capitalism more difficult. While the vast majority of domestic meat production happens in the United States, outside of fish, processed food production has increasingly left the U.S. for Mexico and Asia. Kellogg's 2013 lockout of its Memphis cereal factory in an effort to crush its union and move most of its production to a Mexican factory is indicative of how anti-labor and food politics are interconnected.⁴ Trump's bluster about outsourcing belies the administration's close relationship with much of corporate America. It's unlikely that major changes on this front take place in the next four years, particularly with Congressional Republicans highly unlikely to pass tariffs on imported goods, even if Trump wants them.

Moreover, Trump's controversial border wall plan will do little to stem Latin American migrants from arriving in the United States. Farmers will still demand low-wage workers to pick fruit and vegetables. Some of that could come from expanded guest worker programs, by which companies import

3. Sydney Smith, *Transitioning to a Trump Administration: What It Could Mean for the Department of Labor and OSHA*, EHS TODAY (Nov. 10, 2016), http://ehstoday.com/msha/transitioning-trump-administration-what-it-could-mean-department-labor-and-osa-0_

4. Steve Payne, *Kellogg's Delivers Memphis a Slap in the Face*, LABOR NOTES (Jan. 20, 2014), <http://labornotes.org/2014/01/kelloggs-delivers-memphis-slap-face>.

foreign workers overseas on short-term contracts with little in the way of worker rights. Trump's anti-labor regulatory regime will provide more incentive to companies like the chocolate maker Hershey, which took advantage of a student program to force foreign exchange students to labor in its Palmyra, Pennsylvania plant, which only ended when the students struck and attracted attention to their cause. Hershey received a \$143,000 fine for this blatant exploitation, hardly enough to convince other corporations that such practices are not worth it.⁵

Immigrants also make up a large percentage of the labor in meatpacking plants. Once unionized in cities such as Chicago, meat companies moved those factories to the rural Midwest and South over the past half-century where unions are non-existent, undocumented labor predominates, and where working conditions are reminiscent of what Upton Sinclair described in his 1906 novel *The Jungle*.⁶ A 2005 Human Rights Watch detailed the massive violations of worker rights in the meatpacking plants and little has changed in the past decade.⁷ The Trump administration will almost certainly support the packers in keeping the plants deregulated, but the impact upon those companies in the face of large-scale crackdown on undocumented food workers would be significant.

One thing that is nearly certain is that the Obama administration's emphasis to hold fast food companies accountable for workers in their franchised stores will end.⁸ Many of those jobs will likely be automated in the next four

5. Dave Jamieson, *Hershey Student Guest Workers Win \$200,000 in Back Pay After Claims of Abusive Conditions*, HUFFINGTON POST (Nov. 14, 2012), http://www.huffingtonpost.com/2012/11/14/hershey-student-guest-workers_n_2131914.html.

6. Shane Hamilton, TRUCKING COUNTRY: THE ROAD TO AMERICA'S WAL-MART ECONOMY 10 (William Chafe et al. 2008).

7. See generally Eric Schlosser, FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL (New York: Harper Collins, 2002); see also Lance Compa, BLOOD, SWEAT, AND FEAR: WORKERS' RIGHTS IN U.S. MEAT AND POULTRY PLANTS (New York: Human Rights Watch, 2005).

8. Lydia DePillis, *Meet the Government Guys Standing Up for Franchise Workers and Contractors*, WASHINGTON POST (Mar. 9, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/03/09/meet-the-government-guys-standing-up-for-franchise-workers-and-contractors/?utm_term=.ec7113cb70c7.

years. Andy Puzder has talked about replacing his fast food employees with robots in response to rising wages in fast food. Unions have strongly criticized this suggestion. Even though Puzder was not confirmed as Secretary of Labor, the rapid growth of automation in fast food will likely expand unemployment among low-wage workers.⁹ Researchers have suggested that 47 percent of American jobs could be automated in coming decades and the industrial food system is a major sector that would be affected in everything from driving to canning and meatpacking to ordering in restaurants.¹⁰ The push for self-driving vehicles comes largely from the trucking industry, who have millions of employees moving food around the country. Eliminating these jobs would increase corporate profit while ending what is in many states the largest single employer of males. One report estimates a potential loss of 1.7 million trucking jobs in the next decade, devastating one of the last well-paid options for working-class employment.¹¹

Food workers have led the fight for raising the minimum wage in the last several years. Bolstered by fast food workers' Fight for \$15 movement to demand a \$15 an hour minimum wage, even voters in conservative states such as Arkansas and Nebraska have approved increases in the minimum wage in recent years, though nowhere near the \$15 hourly wage that many are demanding. Puzder Acosta, and other Trump nominees however, have long opposed raising minimum wages in the fast food industry and have denounced the Obama administration's sick leave policies for federal contractors which includes food service workers in federal buildings. As AFL-CIO president Richard Trumka has stated, Puzder is "a man whose business record is defined by fighting against working people."¹² Such a

9. Tonya Garcia, *Trump Labor Secretary Pick Andy Puzder Talked about Replacing Workers with Robots*, MARKETWATCH (Dec. 10, 2016), <http://www.marketwatch.com/story/trump-labor-secretary-pick-andy-puzder-talked-about-replacing-workers-with-robots-2016-12-08>.

10. See generally CARL BENEDIKT FREY & MICHAEL A. OSBORNE, *THE FUTURE OF EMPLOYMENT: HOW SUSCEPTIBLE ARE JOBS TO COMPUTERISATION* (Oxford: Oxford Martin Programme on Technology and Employment, 2013).

11. Natalie Kitroeff, *Robots Could Replace 1.7 Million American Truckers in the Next Decade*, L. A. TIMES (Sept. 25, 2016), <http://www.latimes.com/projects/la-fi-automated-trucks-labor-20160924/>.

12. Noam Scheiber, *Trump's Labor Pick, Andrew Puzder, Is Critic of Minimum*

record sums up most of Trump appointees' position on workers and their rights in the workplace.

Ultimately, the most profound impact of the Trump administration toward food labor is the larger anti-union legislation he will sign should it get to his desk. A national right-to-work bill has already been proposed by House Republicans. Unions such as the United Food and Commercial Workers have already struggled to unionize the food industry in the face of massive anti-union propaganda, intimidation, and regulatory capture in the Department of Labor. With right-to-work, successful union organizing of food workers will become near, if not entirely, impossible. The Senate filibuster, which Republicans could end at any time, may be the last thing food workers have between the Trump administration and their ability to win a union contract. Food companies, including Walmart and Whole Foods, already engage in union-busting activities, with the former closing a store in Quebec after its workers formed a union in 2004 and the latter firing drivers who voted to join the Teamsters in 2006.¹³ Such activities will only become more universal in the Trump administration. The expected attack on union rights has already convinced the Service Employee International Union (SEIU) to reduce its budget by 30 percent. Given the enormous financial support the SEIU has given workers' movements, such as the Fight for \$15, there will likely be a rapid reduction in support for such movements, especially those that have used union funds for its cause yet have failed to secure any major, determinative victories.¹⁴

Reforming the most exploitative parts of the food labor

Wage Increases, N. Y. TIMES (Dec. 8, 2016), <https://www.nytimes.com/2016/12/08/us/politics/andrew-puzder-labor-secretary-trump.html>.

13. Bryce Covert, *Walmart Penalized for Closing Store Just After It Unionized*, THINK PROGRESS (June 30, 2014), <https://thinkprogress.org/walmart-penalized-for-closing-store-just-after-it-unionized-70945f29e349#.am7qx02pt>; Josh Harkinson, *Are Starbucks and Whole Foods Union Busters?*, MOTHER JONES (Apr. 6, 2009), <http://www.motherjones.com/politics/2009/04/are-starbucks-and-whole-foods-union-busting>.

14. Mallory Shelbourne, *SEIU Plans 30 Percent Budget Cut during Trump Admin.*, THE HILL (Dec. 27, 2016), http://thehill.com/regulation/311910-seiu-plans-30-budget-cuts-in-wake-of-trump-win_

system will likely be impossible for the next four years. This is especially true on the global labor exploitation that is inherent within American food consumption. The Los Angeles Times' devastating expose' on Mexican tomato farmers located just over the U.S. border has demonstrated in disturbing detail the horrendous working conditions of laborers producing for the American marketplace. In addition, it suggests the need to regulate the operations of American food supply chains internationally.¹⁵ Recent Obama administration decisions that could lay the groundwork for improving working conditions throughout global food supply chains are threatened. This is especially true in regard to the new seafood importation standards that force any importer of seafood to the United States to meet American standards of marine mammal bycatch.¹⁶ Undercover journalism in recent years exposing slave labor in the global fishing industry led President Obama to sign legislation banning the import of American fish caught by forced labor in southeast Asia, although the enforcement mechanisms remain vague.¹⁷ Building upon these rules in a Trump administration is highly unlikely. Seeking to create regulations that would lead to a race to the top in labor conditions should be a top priority for those working on food law, despite the reality of the next four years.¹⁸

Overall, the Trump administration has grave implications for food workers. An aggressively anti-union and anti-regulatory stance likely means that standards for food workers will not only fail to improve the industry, but possibly set it back by decades.

15. Richard Marosi, *Hardship on Mexico's Farms, A Bounty for U.S. Tables*, LOS ANGELES TIMES (Dec. 7, 2014),

<http://graphics.latimes.com/product-of-mexico-labor/>; Richard Marosi, *Desperate Workers on a Mexican Mega-Farm: 'They Treated Us Like Slaves,'* L. A. TIMES (Dec. 10, 2014), <http://graphics.latimes.com/product-of-mexico-labor>.

16. Matt Burgess & Rob Williams, *New US Seafood Rule Shows Global Trade and Conservation Can Work Together*, THE CONVERSATION (Jan. 10, 2017), <https://theconversation.com/new-us-seafood-rule-shows-global-trade-and-conservation-can-work-together-70903>.

17. Ian Urbina, *Sea Slaves': The Human Misery that Feeds Pets and Livestock*, N. Y. TIMES (July 27, 2015), <https://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html>.

18. ERIK LOOMIS, *OUT OF SIGHT: THE LONG AND DISTURBING STORY OF CORPORATIONS OUTSOURCING CATASTROPHE* 11 (2015).

Food workers have led the resistance to labor exploitation for years and will continue to do so. By placing those concerns central in our overall resistance to the administration, we can work to ensure greater justice for food labor the next time Democrats take power.