

**The Social and Economic Costs of Illegal
Misclassification, Wage Theft and Tax Fraud in
Residential Construction in Massachusetts**

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Executive Summary

This study examines labor and employment practices in the residential construction industry in Massachusetts. Our research is based on more than 60 in-depth interviews with documented and undocumented workers, union and non-union contractors, union and public officials, and community activists involved in residential construction. The results of these interviews are complemented by a comprehensive quantitative analysis of data from the Massachusetts Department of Revenue, Department of Unemployment Assistance and Department of Industrial Accidents that provides statistical projections of the extent and economic costs of worker misclassification in Massachusetts construction.

Based on our extensive interviews, we have identified a new and fully institutionalized business model operating in residential construction across the Commonwealth. Practices such as the illegal misclassification of workers as independent contractors, wage theft and tax fraud, and paying workers in cash that were once at the margins of the construction industry, are now at the center of medium and large residential construction in Massachusetts. We have identified four dimensions of this new business model:

- The majority of builders in residential construction have almost completely jettisoned regularized employees in residential construction. However, upon closer inspection, the vast majority of these workers in non-union construction, under current law in the Commonwealth, should be classified as employees. The lack of regular employment in legitimate businesses creates the conditions for the hyper-exploitation of precarious and mostly undocumented workers.
- This reliance on illegally misclassified workers has been greatly facilitated by the emergence of a new labor intermediary: labor brokers, who supply the vast majority of mostly undocumented workers for jobs in residential construction. Without corporate identities, they operate largely in the shadows and are nearly untraceable in that they pay their workers in cash and do not keep any records of employment. This cash-only world is a hothouse for wage theft, a central feature of this business model. For example, on a Beacon Communities project in Amherst, MA nine drywallers working for a labor broker received

no payment for five six-day weeks averaging 10-hours a day and were owed collectively \$50,713.

- Workers in residential construction are pushed to work incredibly hard in precarious working conditions and as cash workers, are not covered by workers' compensation and have no access to the social and economic benefits normally obtained through employers. Hanging drywall—already a dangerous occupation—has become intensely unsafe because of the primitive working conditions under which most of these workers toil. Workers are encouraged not to report on-the-job accidents and, if they are injured, neither labor brokers nor any other entity are held responsible; their medical costs often end up being paid for by the Commonwealth and its taxpayers.
- These practices are not restricted to the margins of residential construction. Major developers and general contractors who allow wage theft and tax fraud on their construction projects are fully aware of these illegal, unethical, and predatory practices in the construction process, yet they choose to utilize them anyway and profit greatly. They sign contracts with contractors and subcontractors knowing full well that they can only be completed at the contract price if workers are illegally misclassified, hyper-exploited to work in unsafe conditions, or have their wages regularly stolen from them.
- These practices are likewise extraordinary harmful to legitimate contractors. Since a contractor can save up to 30% of costs by committing wage theft and tax fraud, legitimate contractors playing by the rules cannot effectively compete.

Audits of employer payrolls from 2017 through 2019 provided by the Department of Unemployment Assistance provide *direct* evidence of illegality in the industry. In addition, we utilize a well-established empirical approach of *indirectly* estimating the full extent of misclassification using data from the Census and Bureau of Labor Statistics. We found that:

- Employer payroll audits conducted by the DUA between 2017 and 2109 indicate that more than one in six Massachusetts construction employers (16.8% to 17.9%) misclassify workers as independent contractors.
- Our indirect method assessing the full extent of misclassification and off-the-books employment in the Commonwealth's construction sector projects that there were between 22,146 and 36,719 workers affected by wage and tax fraud in 2019, accounting for 9.5% to 15.8% of the industry's workforce.

Data from DUA and the Department of Revenue (DOR) indicate widespread misclassification of employees in residential construction and specifically in the finishing trades.

- Employer audits conducted by the DUA reveal that misclassification is especially prevalent among building finishing contractors (e.g., drywall, finish carpentry, painting), with 26.6% of audited firms engaging in misclassification between 2017 and 2019.
- Tax records on sole proprietorships from the DOR reflect alarming rates of contract labor usage in siding, framing, finish carpentry, painting, drywall, flooring and roofing. For example, framing contractors reported \$189 in contract labor costs for every \$100 of employee wages in 2019. In contrast, electrical contractors spent just \$13 in contract labor for every \$100 of wages.
- DUA audits show that residential builders have some of the highest rates of misclassification in the industry. DOR data on sole proprietorships also reflect that residential builders have some of the highest rates of contract labor usage in the sector (\$180 in contract labor for every \$100 in wages in 2019).

Wage theft, tax fraud, cash payment and misclassification are central to this new business model in residential construction and have significant economic costs to both workers and taxpayers in Massachusetts.

- We project that misclassification in the Massachusetts construction industry led to a \$24.5 million to \$40.6 million shortfall in the state's unemployment insurance fund in 2019.
- Contractors evaded between \$37.0 million and \$78.3 million in workers' compensation insurance premiums and shortchanged workers by not paying between \$19.3 million to \$40.8 million in required overtime premiums in 2019.
 - o Our interviews suggested that many employers did not carry a valid workers' compensation insurance policy. This is confirmed by reports from the Department of Industrial Accidents that indicate that the construction industry accounted for 47.3% of Workers' Compensation Trust Fund cases—a public fund that covers workers whose employers failed to purchase coverage—from 2016 to 2020 despite representing only 9.4% of claims made through the coverage of law-abiding employers.
- Because of companies' failure to withhold state payroll taxes, we project that the Commonwealth lost between \$6.7 million to \$41.3 million in personal income taxes in 2019. Estimates of income tax losses were generated using very conservative assumptions and, especially at the low end, are likely to undercount the amount of income tax losses to the state.

Our baseline estimates suggest that worker misclassification and off-the-books employment allowed Massachusetts construction employers to reduce labor costs by at least \$140.4 million in 2019. This likely undercounts the true social harm to workers and taxpayers. In addition to using conservative assumptions in building

our models, our analysis is restricted to areas in which there is sufficient empirical data to defensibly quantify the issue. Given that data availability is limited when studying the underground economy, our total does not include statewide estimates of direct wage theft (explicit non-payment for work), business tax revenue shortfalls attributable to non-filing by labor brokers, medical costs on unreported workplace injuries, and a host of other direct and indirect effects that were reported in our interviews. As a result, the true social and economic costs of worker misclassification are likely an unknown multiple of the totals offered in this study.

It is very clear that current state laws, regulatory structures and the level of public resources allocated to monitoring and enforcement has been unable to curb illegal misclassification of workers, cash payments, wage theft and tax fraud and a variety of illegal and unethical activities in residential construction. The egregious conditions we have documented on jobsites across the Commonwealth and the hyper-exploitation of undocumented workers have no place in Massachusetts. The Commonwealth has a responsibility to ensure that its laws are followed in the construction industry and that workers are not routinely asked to perform unsafe work, cheated out of their wages, or forgo access to the economic benefits enjoyed by workers classified as employees. We have identified four areas where changes need to be made:

- It is imperative that the Commonwealth review and revise its current laws and also invest significantly in monitoring and enforcement. The Massachusetts construction industry is a \$22 billion sector featuring over 174,489 employees and many other workers not directly employed. Despite the enormity of the industry and its critical place in the state's economy, neither the laws nor the enforcement of them is sufficient.
 - o More state resources should be allocated to addressing wage theft and tax fraud in the Commonwealth. Increased monitoring and enforcement will not only protect the most vulnerable workers toiling in the shadows, but it will generate additional tax revenues beyond the costs of more vigorous monitoring and enforcement.
 - o There needs to be penalties assessed against companies and individuals found to have committed wage theft and tax fraud that actually deter the illegal behavior. Further there needs to be effective enforcement of these penalties since at the present time, many companies and individuals adjudicated to have violated the law essentially ignore their obligations and disappear or otherwise fail to pay what has been ordered.
 - o The Administration should reinvigorate the Council on the Underground Economy (CUE) and require the Secretary of Labor and Workforce Development to fulfill the statutory mandate of the CUE. As of this date, the CUE has only held one meeting in six years under this Administration,

does not regularly act and has not issued an annual report past 2018. All state agency members of the CUE should similarly be required to fulfill their statutory obligations under the CUE.

- In order to stem wage theft and the illegal misclassification of workers developers, general and sub-contractors must be held fully responsible for what happens on their job sites. Until we hold developers responsible for the illegal activity that occurs on their projects, the egregious wage theft we saw in Amherst will continue. We need to develop joint liability laws and successor policies that holds developers and general contractors accountable for the behavior and actions of contractors, subcontractor and labor brokers. A number of other states, including California, have passed or are considering this kind of up-the-chain legislation and Massachusetts needs to adopt this legislation to hold developers, contractors and subcontractors liable for the illegal behavior of those they have contracted with. Such action is critical to address the abuses we have documented and to restore fairness and integrity to residential construction.
 - o The Commonwealth needs to recognize the important roles that worker centers, community organizations and unions can play in gathering information and education and should encourage these stakeholders to participate as intermediaries in combating illegal misclassification and wage theft. This model already exists in other states and municipalities throughout the country and can be readily adopted in Massachusetts.

No serious effort at restoring fairness and integrity in residential construction is possible without the regulation of labor brokers. The Commonwealth of Massachusetts needs to establish a system for both licensing and regulating labor brokers. The licensing process should begin by requiring all labor brokers to register with the Secretary of State, as we expect firms from other industries in the Commonwealth to do. Second, there needs to be an establishment of the Bill of Rights for those workers recruited and paid by labor brokers. Finally, licensure and oversight of labor brokers must prohibit the use of cash payments that are not in compliance with their legal obligations.

Immigration reform will also be necessary to restore fairness and integrity in the residential construction industry. Without immigration reform, unscrupulous companies and individuals will continue to use workers' immigration status against them forcing them to work long hours and to undertake work while frequently underpaying them or not paying them at all.

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INTRODUCTION

We get to the jobsites, we sign into Metro Walls' sign-in sheets. That's what you do, we're on their payroll, supposedly. I never got hired by Metro Walls. When we are on the site, if any OSHA [staff] or any person outside of the site comes through and asks us, we got to say we work for Metro Walls. I've seen people get fired for saying that they work for the subcontractor.¹ Sometimes the company already has a name for you to sign in with. What they're doing is they're rotating guys sometimes that are on their payroll, and using their names over here, or using them over there, just to try to make some sort of paperwork on these jobs.²

—Jonathan Nuno, carpenter

These poor workers [at the North Square Apartments built by Beacon Communities]—working for five weeks with the promise that they would get paid. One of the women—she's a single mom who came from Honduras—she was devastated because she's two months behind on rent. She's got a kid. She's got a babysitter she can no longer afford. So she was there in limbo, "Please help me. I really need the money." Now, because the single mother can't pay her rent, it makes it seem like the workers "are the bad people now."³

—Ricardo Xavier, NASRCC organizer

Trouble in residential construction is not new in Massachusetts.⁴ A 2004 Harvard University study found that between 14% and 24% of Massachusetts construction workers were illegally misclassified as independent contractors. No longer considered employees, they weren't covered by workers comp if hurt and couldn't collect unemployment benefits if laid off. During the period from 2001 to 2003, between \$1.03 and \$3.9 million went unpaid into the unemployment insurance system by employers in the construction industry who illegally misclassified their workers as independent contractors; and underreporting the wages of these misclassified workers in the construction industry defrauded the state of \$6.9 million in state income tax.⁵

Lacking a regular employer, these workers—many of them undocumented and among the most vulnerable in the Commonwealth—were frequently not paid overtime, cheated out of hours they worked, and sometimes not paid at all. A 2015 study of residential construction by the University of Massachusetts documented an epidemic in wage theft in residential construction in the Commonwealth.⁶ This was not just a problem in Massachusetts; national and individual state studies showed other states with similar levels of misclassification and the theft of wages.⁷

Reports from the field suggest that this jettisoning of direct employees and wage theft have dramatically escalated in the non-union residential construction industry in the Commonwealth, following the trend we have seen in much of the United States. To evaluate the extent of these problems, and the mechanisms by which illegal misclassification and wage theft are taking place, the North Atlantic States Regional Council of Carpenters (NASRCC) commissioned this study to take both a qualitative and quantitative look at the current state of residential construction in the Commonwealth.

The qualitative portion of this research is based on more than 60 in-depth interviews with both documented and undocumented workers, contractors, union and public officials, and community activists.⁸ Our goal was to gather information from a wide variety of individuals who have had very different experiences with, and perspectives on, residential construction, and thus be able to build a comprehensive portrait of what is happening in residential construction in the Commonwealth today. To focus this research, we looked primarily at the drywall sector of residential construction—the hanging and finishing of sheet rock in the interiors of living areas.

The results of these interviews are complemented by a comprehensive quantitative analysis of data provided by the Massachusetts Department of Revenue, Department of Unemployment Assistance and Department of Industrial Accidents that allowed us to develop statistical projections of the extent and economic costs of worker misclassification, wage theft and tax fraud in the Massachusetts construction industry.

PART ONE: THE NEW BUSINESS MODEL FOR RESIDENTIAL CONSTRUCTION IN MASSACHUSETTS

Based on our extensive interviews, we have identified the emergence of a new and fully institutionalized business model operating in residential construction across the Commonwealth. Practices such as the illegal misclassification of workers, wage theft, and paying workers in cash, once at the margins of the construction industry, are now at the center of medium and large-scale residential construction in Massachusetts. From our interviews we have identified four dimensions of this new business model in residential construction.

The first dimension involves an almost complete jettisoning of regularized employees in residential construction. While some contractors maintain a small number of direct employees, using workers who are not direct employees saves employers approximately 30% of labor costs by not having to pay federal and state tax, Social Security, unemployment insurance contributions, and a number of associated costs. But upon closer inspection, the vast majority of these workers in construction, under current law in the Commonwealth, should be classified as employees. The lack of regular employment in legitimate firms creates the conditions for the hyper-exploitation of these precarious and mostly undocumented workers.

This reliance on illegally misclassified workers has been greatly facilitated by the emergence of a new labor intermediary: labor brokers, the second dimension of this new business model. These brokers now supply the vast majority of largely undocumented workers who fill the jobs in residential construction. Without corporate identities, they are not accountable and operate largely in the shadows. Their activities are nearly untraceable in that they pay their workers in cash, a fundamental cornerstone of this new business model. This cash-only world is a hothouse for wage theft, which we have identified as a central feature of this business model. Labor brokers routinely sign contracts with general contractors or subcontractors that they know are impossible to fulfill without stealing the wages from workers they have brought to the job—something they do regularly.

Third, our research also found that workers in residential construction are pushed to work incredibly hard in precarious working conditions, are not covered by workers' compensation, any company-based healthcare or disability program. We have documented how hanging drywall—already a dangerous occupation—has become intensely unsafe because of the primitive working conditions under which most misclassified workers toil. Workers are encouraged not to report accidents and, if they are seriously injured, employers are rarely held financially responsible; their medical costs end up being paid for by the Commonwealth and its taxpayers.

Finally, none of these practices are restricted to the margins of the residential construction industry where they began. Indeed, many major developers and general contractors alike are fully aware of these illegal, unethical, and predatory practices

in the construction process, yet choose to condone them anyway. They too sign contracts with subcontractors and/or labor brokers knowing full well that they can only be fulfilled if workers are illegally misclassified and hyper-exploited to work in unsafe conditions, and when wages are regularly stolen from them. We look more carefully at these four dimensions below.

(1) The Hyper-Exploitation of Precarious and Undocumented Workers Illegally Misclassified

The past two decades have seen tremendous consolidation at the top tier of residential construction.⁹ According to Ormiston and his colleagues “In 1994, the ten largest homebuilders (by numbers of homes) accounted for 9.2 percent of new homes sold in the United States; in 2017, the ten largest companies were responsible for 27.5 percent.”¹⁰ This concentration at the top does not reflect the actual process of building. According to Walsh and his colleagues, “Most large production homebuilders in the United States have discontinued the practice of self-performing work on their projects, and instead rely upon a network of highly specialized subcontractors organized by trade or activity.”¹¹ Weil and Theodore suggest that this fundamental change in residential construction demonstrates how the major homebuilders have moved away from acting as general contractors and now perform as construction managers.¹²

The subcontractors who actually perform the work for a growing number of very large firms are themselves very small-scale. According to the Bureau of Labor Statistics, 88.4% of the subcontractors “had fewer than ten employees and less than 1 percent had more than fifty workers.”¹³ In this way, residential buildings built by large national homebuilders that dominate the market are actually constructed by a very large number of very small subcontractors who operate in local markets.

Without unions to represent the workers, the pay and working conditions offered by these small subcontractors have significantly deteriorated. “When I started in 2003, if you were building a custom home, you would get about \$11 or \$12 a square foot. If you were doing multi-residential, you got about \$9 a square foot. Now, on custom homes, people are getting \$9 or \$10 a square foot, and on multi-residential, they’re getting \$5,” says a longtime carpenter now working in management for a major construction firm. “So rates in Massachusetts have gone in half in 20 years. So if you were a carpenter [between] 1999 and 2003—and say that guy just hired you off the street—you would get \$20 an hour cash. Now, its 2020, the guy hires you off the street, you’re still getting \$20 an hour cash. So the rate has not moved.”¹⁴

Brian Richardson, Organizing Director for NASRCC, adds:

So, you know, inflation in construction—land has gone up a thousand percent, material has gone up double in the last 10 years, but the labor price is actually going down, you know. Not necessarily what the subcontractor is

bidding, but what the subcontractor is actually paying his people has gone way down. So, you know, the developers are making a lot of money, the contractors are making a lot of money, but the community suffers, the worker suffers because of this dynamic.¹⁵

Similar to situations in meatpacking and fish processing, the entrance of immigrants did not result in the deterioration of jobs in residential construction; rather, working conditions and pay became so bad that subcontractors faced continual labor shortages.¹⁶ Thus the growth of immigration, especially from Central America, created a large pool of workers to fill jobs in residential construction. Their undocumented status, however, made them extremely vulnerable to employment abuse, and with a growing number of undocumented workers on the job, conditions have continued to worsen on most non-union sites.

As was clear in the Harvard report, contractors were already misclassifying their workers as independent contractors, but former NASRCC Executive Secretary-Treasurer Tom Flynn noticed that things were changing. “It kind of shifted into the labor broker model to a point where we are now where a lot of the companies are just flat-out paying people cash. They don’t even exist at all on the books.”¹⁷ This is exactly how it worked in Amherst, MA, at the construction of a major project.

Massachusetts Governor Charlie Baker was on hand on June 14, 2018, for the groundbreaking for the North Square Apartments in North Amherst, Massachusetts. This \$47.5 million development of 130 housing units is just a few miles north of the University of Massachusetts, Amherst. The developer for the project, Boston-based Beacon Communities, has built and operates more than 90 developments in 11 states and the District of Columbia and has a long-standing commitment to building affordable housing.¹⁸ In North Square, 26 units are classified as affordable so Amherst will be providing Beacon with \$2,795,009 over 10 years as an affordable housing tax incentive.¹⁹

Given the developer’s reputation and its location in a progressive community shadowed by the university, one would expect the highest quality construction carried out by well-trained and fairly compensated construction workers. This would not turn out to be the case. When we examined how the construction was done at the North Square development, we documented nothing less than a tragedy.

Beacon hired Keith Construction Inc. (KCI) as the general contractor for the development. As is the norm for construction projects of this size, KCI in turn hired a number of subcontractors who would take charge of different components of the construction. The contract for drywall was awarded to Combat Drywall Inc., based in Billerica, Massachusetts. Although Combat registered as a company with the Massachusetts Secretary of State in 2013, the firm has no website. Its listings on a number of business webpages show only two employees and a revenue of approximately \$160,000 per year.²⁰ These figures do not appear credible, until one looks more closely at the operation of the firm.

Employees of Combat would not actually hang drywall in Amherst or the other jobs they have signed onto as a subcontractor. Instead, they would subcontract the work to a labor broker. This accounts for their low number of employees —although perhaps not as low as suggested online—given that the workers who *perform* the work are not their employees. The role of their employees, as we will see, is largely supervisory.

In this case, they subcontracted the actual hanging of drywall work to Jimmy Reyes d/b/a/Alvarez Drywall, a labor broker. Alvarez is not registered with the Secretary of State in Massachusetts as a business, has no website, no phone number, and no real company identity. Alvarez finds the workers to do drywall. Combat primarily supervises workers on the job, and Alvarez is expected to pay them. Neither Combat nor Alvarez consider the workers to be employees.

As a labor broker, Reyes, who the workers knew as “Poncho,” simply brought workers as individuals to the job site. He provided no tools, no ladders, and no Bakers (the rolling scaffolding named after an original manufacturer that are the basic staging for hanging drywall) Workers provided their own basic tools, including a screw gun to affix the drywall to the studs, knives to cut the sheetrock, and routers to make holes for light switches and receptacles. The big equipment, the Bakers and ladders, were provided by Combat, not Alvarez.

Combat Drywall is not alone in this reliance on labor brokers. Jonathan Nuno started in construction as a teenager—he is now 30—and he has 15 years of experience in residential construction, most of it working for labor brokers in drywall and metal framing. Starting out in New England was not easy for him. “I think it was Thanksgiving, and I was working with Poncho [Jimmy Reyes, the labor broker who also worked on the Amherst North Square Apartments]. Around that time, he didn’t pay me, and we were struggling. ... It was coming up to two weeks. ... I went [into] the holidays with no money.”²¹ He reached out to the Worcester-based Carpenters Union organizer Manny Gines. Nuno told us that Gines “went, and he met up with the guy, and he got me more money than I was supposed to get paid, because he made them pay the time and a half [for the overtime he had worked].”²²

Nuno worked a number of years for labor brokers who were subcontractors to Metro Walls. Metro Walls is a very different kind of firm than Combat Drywall,. According to the company website, “Metro Walls was established in 2004 in Manchester, New Hampshire. In less than a decade we have grown to one of the leading drywall & framing companies in New England.”²³ Metro Walls’ owner and President Mike Dion grew the firm’s sales tenfold from \$770,000 in 2010 to \$7,940,000 in 2018.²⁴

The Metro Walls website further boasts: “With more than 250 employees and up to a 600-man workforce, the company proudly provides outstanding solutions to the region’s biggest and best contractors.”²⁵ Unlike many drywall companies who rely almost exclusively on workers brought to them by labor brokers to do the actual work of hanging drywall, the firm has its own workforce. But even in the numbers

it reports publicly, the company reveals a reliance on labor brokers and the workers they recruit, more than double its workforce.

One of the major factors behind Metro Walls' growth and profitability is its ability to hold down labor costs by routinely using labor brokers—brokers who never pay overtime, keep wages low, pay in cash, do not deduct payroll taxes or pay into the workers' compensation or unemployment insurance contributions and routinely cheat workers out of wages. This became the practice of not only modest companies such as Combat Drywall, but also of major industry players like Metro Walls in major markets such as greater Boston.

Nuno describes working on a Metro Walls job. "We get to the jobsites; we sign into Metro Walls' sign-in sheets. That's what you do, we're on their payroll, supposedly." But he continues, "I never got hired by Metro Walls." And he knows he won't be paid by Metro Walls, but by the labor broker who actually hired him. So, says Nuno, "When we are on the site, if any OSHA [staff] or any person outside of the site comes through and asks us anything—could be union guys, it could be anybody—they ask us who we work for, we got to say we work for Metro Walls, yeah." He adds, "I've seen people get fired for saying that they work for the subcontractor [labor broker]." ²⁶

"Sometimes, the company already has a name for you to sign in with." He explains how this is an attempt to make their employment practices look more legitimate. "What they're doing is they're rotating guys sometimes that are on their payroll, and using their names over here, or using them over there, just to try to make some sort of paperwork on these jobs." ²⁷ What may have been haphazard early on was fine-tuned by Metro Walls. To anticipate regulators and auditors, the firm built in a system to cover the tracks of its illegal behavior. Brian Richardson explains. "So, when somebody comes from the AG [Attorney General] and says, 'I want to see, you know, your payroll records,' they show 80 guys. The AG says, 'Well, they have 80 guys; they have workman's comp, everybody is getting what they're supposed to be. They're good.'" But Richardson adds that despite appearances this is just a manipulation: "Nobody actually has the names or knows who the workers are. Nobody ever peels the onion back." ²⁸

In terms of the labor brokers who worked with Metro Walls, Nuno reports that the workers on the job knew nothing about them. "A first name, and where to meet him so you could get paid, sometimes not even the real name, it's a nickname." I've talked to workers that have been working for the same guy for almost two years, and all they know about him is his name and that he pays them every week." ²⁹ Carlos is a young carpenter who got his start hanging drywall in the non-union residential housing industry." When it came time to be paid, he tells us, "They would either come to our house or we'd go to their house or meet somewhere. It would be the most underground thing ever. Always cash." When asked if he ever saw the labor broker on the job, he replied, "Never, they're never there." ³⁰

Jonathan Nuno reports that on Metro Walls jobs the labor broker is nowhere to be seen. The job is run by a Metro Walls foreman. When pushed about how he knew these foremen were from Metro Walls, Nuno reported that they told him they work for the company, and “they have Metro Walls shirts, Metro Walls trucks, coats ... they’re company guys. And that’s the person that you talk to if you’re going to leave early or anything, anything like that. ...Even [the foreman’s] helmet, his hardhat, its Metro Walls.”³¹ Given that the work is entirely run and managed by Metro Walls and not the labor broker, this is without a doubt the illegal misclassification of these workers.

From our interviews it is clear that the era of residential construction being built by the employees of contractors and subcontractors is largely over. In projects large and small built by small and very large non-union firms, the new model for residential construction in the Commonwealth is that residential buildings are built by workers not directly employed by general contractors or subcontractors but supplied by labor brokers. It is important to look more closely at labor brokers and how they operate in this new environment.

(2) The Emergence of Labor Brokers, Wage Theft, and Corruption in a Cash-Only World

As we have seen in small firms such as Combat Drywall and in very large ones like Metro Walls, the majority of work in drywall is done by workers who are not direct employees of general or subcontractors. As this became more the norm in non-union residential construction, the demand for workers far outstripped the informal networks that supplied workers in the early 2000s. In this void, a new labor intermediary has emerged that in many ways represents the addition of another level of subcontracting in residential construction. As we saw in both examples, Combat Drywall and Metro Walls relied on workers brought to them by a labor broker. It is important to note that the brokers are neither involved in the actual work nor are they the employer of record. They simply provide workers for the jobsite. Although the subcontractor does the supervising – which classifies the workers as employees – the workers are not considered employees. Instead, they are handed cash by the broker, who gets paid by the subcontractor.

Like most drywallers in the Boston area, Fernando has worked for subcontractors doing business with Metro Walls. He describes the economics of working for a labor broker. Grabbing a notepad that was on the table he jots down numbers as he talks. “Metro would start by paying each guy, \$28 an hour, while the second guy [subcontractor] comes in, they’re paying him \$24 an hour [and he] gives me \$20. ... Sometimes even a third tier where he’s taking \$2 off of him and the worker ends up getting paid \$18 an hour.”³² As Fernando details, up to \$10 per hour are being taken from workers by brokers who actually do nothing on the job, except supply

workers. And, he adds, he was paid in cash, always in cash. He had no record of his employment or what he was paid.

The brokers realize that if they paid workers by check and issued 1099s, they could be traced. So, for them it is strictly a cash operation. But in this world of cash, it is easy for brokers to delay paying workers in a timely fashion, to pay them less than they earned, and sometimes to not pay them at all. This is what happened at the North Square Apartments in Amherst, Massachusetts.

In the construction industry, workers get paid at the end of each week they work. Although Combat was supervising the drywall hanging at North Square, the workers were supposed to be paid by Alvarez in cash. When payday came, Alvarez (Jimmy Reyes) told the workers "That they were going to have to wait two, three weeks for him to pay them." Alvarez said that Combat Drywall had not paid *him*. As one worker explained, "This guy Alvarez says, 'You're going to have to wait for two, three weeks before I get caught up ... [so] keep on working.'"³³ From experience, the workers knew that these kinds of delays were not uncommon. Having already invested a number of weeks of their time, they knew that walking away would make it very difficult to stake claims on the substantial amount they were owed, so they stayed on.

Several of the workers also reached out to Frank Gomez, an organizer with the North Atlantic States Regional Council of Carpenters (NASRCC), based out of Worcester, Massachusetts, on June 14, 2019. Some of the workers on the Amherst project had also worked for Combat and Alvarez on a Plumb House project in Weymouth, another case Gomez had been investigating because Alvarez hadn't paid his workers properly. "I went to Weymouth and I saw all of them working over there. And I show up, and I said, 'Look, this guy you're working with is going to rip you off sooner or later. And here's my card.'"³⁴ For a number of years, the NASRCC has employed organizers like Gomez who work full time assisting nonunion workers in the industry combating wage theft. They have become a known presence in the non-union residential industry in the North Atlantic states.

Combat's owner, Luc Gagnon, was no stranger to Gomez. "He is a repeat offender," Gomez acknowledges. "He's been doing it over and over."³⁵ By the time Frank Gomez became involved in the Amherst project, nine workers had worked five six-day weeks averaging 10-hours a day. The workers estimated they had hung one half of the sheet rock for the North Square Apartments³⁶ and had not been paid one penny by Alvarez Drywall or any other entity. This is classic wage theft: namely, failing to pay earned wages to some of the most vulnerable workers in America. All of this in a development built by a socially conscious developer underwritten by the taxpayers in the progressive town of Amherst.

Gomez got nowhere with his efforts to reach an informal settlement, so he filed a Wage Complaint with the Massachusetts Attorney General's office on July 28, 2019. The complaint reads, "The workers who performed drywall and related du-

ties at the Beacon Properties, Cows Road, Amherst, MA project were hired at the rate of \$26.00 per hour for straight time. These workers worked a total of 1,361 straight-time and 303 overtime hours during the [period] listed."³⁷ The total owed amounted to \$50,713—\$35,386 for straight time and \$15,327 for overtime—and not a single worker had been paid for this work.

But what happened in Amherst is not the exception. Virtually every non-union worker we interviewed reported regularly being cheated out of their wages. Carlos describes the process. "You don't want to pay me for a week? I can't go to your boss and be like, 'he won't pay me,' because your boss doesn't even know I'm there. He doesn't know who's working for his subcontractor. He doesn't know who's below the sub. He doesn't know any of that. So, to him, he doesn't even know you're on the jobsite. How is he going to know that you were there? He doesn't. So, you can't come to him, 'oh, I worked 40 hours this week, he's only trying to pay me 25.'" With his voice on the edge of anger Carlos exclaims, "You can't. You're just a number. And even if you're not a number, you're nobody. All they care is about their production, their money, and their people."³⁸

Fernando explains, "That happens all the time, and it's part of the game. And unfortunately, when you're a Latino, you get discriminated against." He recalls when he first started working for a labor broker for Metro Walls: "They owed me a thousand dollars that I just [have] never been able to recover." Fernando reflects that he "did not have enough education, not enough know-how to know how to react in situations like that."³⁹

Based on our interviews it is well known in the industry that many labor brokers make their income from stealing the wages of their workers. But this is not a system driven alone by the unethical and illegal behavior of labor brokers. Brian Richardson describes how the general contractors and subcontractors take advantage of the labor brokers, many who have limited English and are inexperienced in running large jobs. "They don't have the business acumen."⁴⁰ We interviewed a longtime carpenter who now works for a construction firm. He describes how the process works for him. "So, when we bid these jobs, you know, I spend a lot of time looking at blueprints. We have multiple people looking at it, we ask advice, we figure it out, we figure out hours, methods, site logistics." It is a very different process for the labor brokers. "They just say, how much? Okay, we'll do it. And then they will abuse the workers by not paying them, or whatever it takes to make whatever money they have in their head. So, there's no math that they're doing. They just take the job for whatever they're told and that's it, and they don't care."⁴¹

The carpenter goes on to explain the perverse incentives: "They're just happy to have the job, because if they're going to lose money, they just walk. They go, 'Well, I got 20 grand: I'm happy with 20. I'm out, see you later.'" In terms of their crew, "they'll make promises, on the next job, I'll take care of you."⁴² As he describes it, all the power remains in the hand of the general contractor.

If they're not happy with the framer, then they back-charge the framer, throw them off the job, steal the rest of the money from his contract. Then the framer can't do anything, because he's doing everything illegal, so they go, you're done. We're taking your 600 grand, you're gone, and then they pay the next guy. And then if they don't like him, they say the same thing and they pay the next guy, because when the framer's doing something illegal, the general contractor has total control. They're in charge. You don't like it? You don't want to fix it for free? You don't want to do what we want? We're just going to get somebody else, and they're not going to fight, because they know they're doing something illegal.⁴³

But despite this failure of the subcontractor being unable to finish the work, it is a boon to the general contractor. Richardson explains, "So when he doesn't get it done... I don't pay him because he didn't finish, and I hire somebody else [saying] 'I'll give you \$20,000 to finish it.'" But in terms of the total cost, the contractor is getting a lower price. The contractor wins, the labor broker wins—not by actually performing the work they were supposed to do, but through stealing the wages that their workers were supposed to get. And the workers lose. The carpenter now working for a contractor says that the contractors know all this: "Well, they'll never admit to that, but they know. They don't care; they're just looking to get the price as low as possible."⁴⁴

We had the opportunity to interview a labor broker who works in the greater Boston area. Jorge is young and new as a labor broker, although he has had jobs in the industry since he was a teenager. He works for a variety of firms including Optiline,⁴⁵ a large regional drywall contractor competing with Metro Walls. Jorge agrees with the workers we interviewed about how jobs are run by the big sheetrock companies. He was very clear that he does not run the job. "Every company has their own foremen. So, they tell me, 'we have 16 units on this floor that are ready, it's these, these.' So, I just call my crew, we take them up." Jorge is unusual in that unlike the majority of labor brokers he actually works on the job. We asked him again, just to be sure who was in charge, and he repeated that the sheetrock companies are: "Yeah, they're actually supervising."⁴⁶

Jorge explained how he determined a bid for a job. He replies that "there's not a lot of mystery" in hanging drywall. "Usually, we don't really work with bids. Companies like Optiline and Combat Drywall, Metro Walls, all those companies—they have a set price for each sheet they put. And that's how we usually work." Jorge says he then turns around and pays his workers—a pretty tight crew of family and friends—also by the sheet. This is a pretty tough way to run a business. Without making any calculations, he is assuming that all of his overhead and profit needs to come out of the difference between what Metro Walls or Optiline pay the broker per sheet and what he pays his workers per sheet. But he doesn't really have any bargaining power. This is what the big companies are offering—take it or leave it, he says: "It's tough out there. If you let yourself get eaten, you'll get eaten."⁴⁷

Following the path of many textile workers and plasterers before him, Richard Pelletier came down from Quebec to New England in 1986. He worked as a subcontractor until 2002 when he started Universal Drywall. “We had over 120 [workers] at one point. Everybody was getting a 1099. Everybody was paying taxes. Everybody was [living] the American dream, except for maybe two or three guys that didn’t pay taxes, that couldn’t own a house, couldn’t own a truck. But it’s better than what we have today, with the labor broker.”⁴⁸

“The labor brokers came in and at first, it was just the one guy. And then they’re like, ‘I have two other guys I could bring on, if you need more guys.’ So, there’s always like the need for more guys, if you’re taking on some larger contract, bigger jobs. So yeah, bring them. ... And then that kept growing and growing.”⁴⁹ Pelletier goes on to describe how this fundamentally changed his business. “We were a management company, where we hired subcontractors that knew what they were doing...So we were managing the drywall industry, not really doing the work ourselves.”⁵⁰

In 2015, Pelletier decided that this business model would no longer be viable for him, and he decided to become a union contractor. “I didn’t want to monitor everybody’s payroll. I have one business to run. I don’t want to run 6 businesses or 10 businesses. And I don’t want to run a subcontractor’s business, making sure that their guys are getting paid on payroll. ... or pay anybody in cash.” He concludes, “I like the union better, because I know everybody gets a payroll check, and nobody gets paid in cash. And everybody is paying taxes and doing their work every day. Guys are getting better benefits, pensions.”⁵¹

The net result of this use of labor brokers—and, as we have seen above, sometimes sequential labor brokers—is that it makes it virtually impossible to work as a legitimate non-union contractor who fairly (legally) pays workers. Tom Flynn describes:

Not too long ago, [we had a] wood frame [job] with a big national developer. ... Three union companies bid it. They were all within \$100,000 of each other ... and they’re all bidding it through the lumber yard, so, you know, they’re giving a price for labor and materials. The non-union contractors [bidding on the job] through the same lumber yards, their price was \$4 million less than the union contractors. ... There’s only one way you can get to a price that’s 40% to 60% of what the other guy was ... The common denominator is the use of the labor broker.⁵²

The carpenter we spoke to who is now working for a construction company suggests that the difference between legitimate non-union companies and the labor brokers used to be “10% more. Now it’s almost sometimes 40, 50%.”⁵³ Industry insiders we interviewed suggested that as a result, there are virtually no legitimate non-union contractors operating in drywall in the greater Boston area or anywhere in the Commonwealth. The labor brokers have now taken over in the industry.

Labor brokers work entirely in the world of cash which makes their operations invisible. Although labor brokers may be receiving checks from subcontractors, our

interviews suggest that labor brokers do not use conventional banking services that would leave traces of these deposits, but instead choose local cash-checking services. As many have noted, these check-cashing firms operate outside the regulatory framework that governs more traditional banking and therefore escape monitoring. This provides the mechanism to avoid taxation and formally declaring income.⁵⁴

Additionally, paying undocumented workers in cash (as well as not classifying them as employees) means that no one is responsible for the employment of undocumented workers—there is no paper trail to follow. When contractors first began using independent contractors, they issued them 1099s, which is required under IRS regulations. But they discovered that these 1099s could be traced and abandoned them in favor of cash transactions.

In many ways this new business model is a response to the increased use of undocumented workers and amounts to a workaround absolving general contractors, subcontractors, and even labor brokers from any responsibility for employing workers without appropriate papers. Actual records for these undocumented workers do not exist in non-union residential construction—yet as we have seen, they are its dominant workforce.

As much as this cash world benefits employers—and putting aside for the moment the wage theft that all too frequently occurs—it has an additional cost for undocumented workers. As the Biden administration begins to explore paths to citizenship for undocumented workers in the United States, one of the important factors will be individuals' work records; they will help to demonstrate not only a worker's level of responsibility, but also the fact that many undocumented workers have already paid large amounts of federal and state taxes, as well as made contributions to the Social Security system. As Gladys Vega from the Chelsea Collaborative suggests, "it's a way that they can put in an immigration application 'Listen, I was undocumented, but I never stopped paying my taxes.'" ⁵⁵ Undocumented workers in residential construction who are paid in cash will have no such records, even though many have worked for extended periods of time.

According to a number of people we interviewed, some labor brokers also provide letters to the people who work for them so that they can receive free health insurance through a state program. As one contractor reported, "They just have to go to their boss, and they have to do a letter, saying you make \$400 a week. So, I'm able to get that letter signed by my boss and go and apply for free health insurance."⁵⁶

As we have seen, labor brokers operate in a netherworld—a world of cash without legal responsibilities and without regulation. They accept jobs they are not sure they can complete within budget, and then they steal workers' wages to ensure their own profitability. And because the workers they supply to the job site are not their employees, they—and the subcontractors who employ them—absolve themselves of any responsibility for their wages or benefits, working conditions, or their

safety and health. It is important to take a closer look at the consequences of the business model.

(3) No Limits, No Safety, No Responsibility

In our interviews with drywallers, what we learned about their working conditions was harrowing:

We try to do it simply, as fast as we can so that we're not hurting. But at the end of the day, your body feels like you can't lift your hand, then next day to get up at four o'clock in the morning to be in at six, you're like, I don't want to go. I don't want to go. Do we have to? And then you know in your mind that you're going to have to go do ceilings again. And then you're going up a ladder, and you're carrying it, and you're... ready, I'm ready, and then you miss a screw, and then [a co-worker], he's like, "Hurry up," and you're like, "Trying, I'm trying." And he's like, "Oh, shit, I'm fuckin' tired! Man, come over and help me."

Fernando, now in his late 30s, was hardened by surviving almost a decade in the non-union drywall industry, recently just joining the union. He brought along with him his nephew, also a drywaller. Maybe 20, he looked young and innocent. Fernando spoke about how hard it was on his body when he first started in the industry. The contractors he was working for would squeeze as much out of them as they could. "I was working six in the morning to six in the afternoon for \$125." He laments that things have not changed at all in the industry over the decade. "This was how I lived ten years ago, but you know, the bad thing is that my nephew here has lived it [since] two years ago—it's still the same, [he's] going through the same as what I went through."⁵⁷

We interviewed two union carpenters who went to work as "salts" for a labor broker. "Salting" refers to the process whereby union members go and work for non-union employers to both gather information about non-union employers and to potentially organize new union members. One of them describes the setting:

The working conditions there were—the break was 10 minutes, 15 the most. Sometimes they only gave you lunch break, and that's it. And it was sometimes 15, 20 minutes for lunch and that's it. Trash is all over the floor, people tripping—you could trip and fall really easy. Nobody ever knows anything. Who's the foreman? What's his phone number? "Oh, I don't know, you have to wait until he walks around." It took me three days to find out how much I'm getting paid, when I first started working. And the people were afraid to ask for money, because they'll let them go right away. It was an eye opener because I was in the union sector.⁵⁸

After working several months on this crew, this carpenter's colleague, who also had more than a decade of experience, told us:

They're working harder than any documented person, I could say. I see them working, they're killing themselves. This is slavery, the way that they're working. This is not humane. ... It's 100 degrees outside, because it was hot in the building we were working, and you want to take a two-minute micro-break, what we call micro-break, to drink water, I don't think you should get in trouble for that or feel like you can't do it. These people don't feel like they can do it. They work so hard that they don't even want to go down to the bathroom and use the bathroom, they just grab a water bottle, and they'll just piss into a water bottle and keep going. They feel like they don't produce X amount they're going to get fired.⁵⁹

NASRCC organizer Martin Sanchez talks about the pace. "They work more than eight hours, yes. They get paid for those, no. They work seven days a week, yes. They get paid for it, no." But it doesn't stop there. He continues, "You know what's the saddest? That you can go to a project on a Sunday, he brings his kids to help him."⁶⁰ He describes stopping by Assembly Square, a Callahan (a very large non-union general contractor) job site in Somerville:

And this guy was insulating, rushing the job because the electricians are behind him. The plumber was ready... And I was there walking the floors. I saw the kids. And I said, "Why you here?" "Oh, I'm with my dad." "Uh, where's your dad?" "He's out there insulating." People are paid by the sheet, so, in that case, you bring your teenagers along...⁶¹

The vast majority of the workers in drywall are young. When I asked Nuno how many workers over 50 were in this trade, he responded, in the "non-union world, none." His co-worker responds, maybe "one, two, or three." They guessed that the average age is 20. "I've worked with kids that are 16 years old, man. The thing is they're hungry, they're undocumented and need a place to work."⁶² We asked one of the union organizers, Ernie Belo, to imagine, given these working conditions, what their lives will be like at 60. "Oh, 60? Half of them will be in wheelchairs. Um, they'll have to go back to their country because they won't be able to survive here. They don't have anything. They don't have any Social Security. They can't go on disability. They pray that they save enough." He told me about an undocumented worker he'd been on the job with. "He worked 20 years in the construction industry here. He went back. He's all busted up. He told me, 'Oh, Ernie, my back, it's my knees.'"⁶³ For those who can't go back, Brain Richardson adds, "That's a person the average taxpayer is going to pay for, forever, you know."⁶⁴

Workers for the labor brokers that Metro Walls relies on told us about the terrible condition of Metro Walls equipment. "The equipment they provide you, like skill saws and the Baker scaffolds, the ladders, all these other things that they give you, are sometimes in worse conditions than your own personal tools that you brought from your house," Jonathan Nuno tells us. He describes how Metro Walls supplies Bakers whose "wheels are broken, but you either get it done or you're going to be

out of a job. So, all these guys keep working and keep working until somebody gets hurt, and then they come with new Bakers after, and—because OSHA's all over the building—they got to make it look nice."⁶⁵ It's not just the Bakers, Nuno says: "I've dealt with saws with ripped cords, saws with no (safety) guards."

Without proper equipment they make do with what they have. "I've hung over stairs on two-by-sixes, from ladder to ladder, on top of a bucket, to hang drywall," Nuno recalls. "You can't say no, because then they'll just get someone else to do it anyways. So, you just kind of go for it, just kind of wishing for the best."⁶⁶ It is troublesome to think of these makeshift solutions, when in fact there is equipment designed to assist with the hanging of drywall. A sheetrock lift is a simple mechanical device that allows one worker to load a piece of drywall and, using a crank and a pivot, allow the sheet to be precisely positioned into place so it can be fastened to the wall or the ceiling. These kinds of lifts are standard equipment in union jobs. Nuno worked for over a decade in the non-union drywall industry and reports:

The first time I've seen a drywall jack was my first time in the union. ... I swear to God I never knew it existed. I never knew it existed until I came on a jobsite for the union, and they were like, "Okay, you're going to hang ceilings by yourself." I'm like, "What the fuck?" They're like, "twelve-footers." And I'm like, "Give me an eight and I'll be there all day hanging." So, [he] comes over with this yellow thing with little buttons. What the fuck is this? I didn't know how to use it. I've never seen this thing before. So, I went to the other room next door where the other guy was working and I see him, he was already jacking it up. I'm like, holy shit...⁶⁷

Instead of using basic technology that would create safer work conditions and higher productivity, the labor brokers throw the bodies of young undocumented workers at the work at the workers' peril. And this not just the case on small informal jobs, but on the multimillion-dollar projects Metro Walls bids on. But what one don't see in the glossy photographs on their website is the primitive working conditions that largely undocumented workers must endure to create these spaces.

Accidents and injuries are commonplace on a Metro Walls job. "I have a friend who's a taper," says Jonathan Nuno. "She sliced her whole [side of her] face, working for Metro Walls, actually. Never got a dollar for it. Never got nothing. Didn't even get paid the days she was off. She had no choice but to literally just cover it up and go back to work the very next week."⁶⁸

Nuno has his own story about being injured on a Metro Walls jobsite "I can't feel this finger because I got cut on a jobsite, and this whole side of my hand, it's practically dead. I went to the supervisor and I told him, 'Hey, I cut my hand,' and they were like, 'Oh, yeah, yeah, put some alcohol on it,' and they give me a Band-Aid. Little did I know I cut a nerve."⁶⁹

Although workers on the Metro Walls jobs are brought in by a labor broker, the broker doesn't train workers, teach them how to work safely, or even check if they

have the general manual skills or the specific skills necessary to hang drywall. Any training that takes place on the job is actually done by the workers themselves. Without any training “You got to learn from somebody,” tells Carlos. “You watch and learn, you listen—that’s how you learn.”⁷⁰ Carlos learned from his brother. NASRCC organizer Frank Gomez concurs “The training they have is another guy.”

Fernando describes how, in fact, it is almost impossible to work safely. “They just want so much production, having [safety] glasses, you start sweating, and they become burdensome. With the gloves, because you’re putting so many screws, so fast, they start getting in the way. In the union, because it’s not at an exploitation pace, you’re able to be safe but in the non-union [work], you’re not, because [this kind of protection], it’s just going to get in the way; you’re not going to get the work done that they want you to do.”⁷¹

Milagros Barreto is an organizer with the Massachusetts Coalition for Occupational Safety and Health (MassCOSH). When we asked her about how often wage theft occurs in residential construction in the Boston area, she replies, “Every day,” and provides example after example.⁷² She is “OSHA-training certified in general industry, and it’s really sad when you stand in front of the students and say, your employer has to provide you your personal protection equipment, and [then the students] say, ‘They never gave me the appropriate gloves, and they didn’t even give me a mask or a respirator.’” Barreto continues, “What I’ve been hearing is that most of the time the equipment is in really bad condition. There’s a lot of retaliation also in construction. ... You know, like when a worker says, ‘listen, this ladder is broken,’ and then next day they don’t call him to come to work.”⁷³

Brian Richardson describes how injuries have become commonplace for those working for labor brokers:

I bet [we had] 30 cases in the last five or six years of people who get hurt at work, were dropped at the steps of the hospital, [and told] “You were hurt at home.” ... And then, you know, there’s no comp. They’re not being paid. They’re just dumped in the hospital. One of his workers fell off a Baker staging, doing drywall, and had a compound fracture of his leg, bone through the skin. Went to the hospital; they knew he didn’t have insurance. ... They treated him, but they didn’t want to do surgery on him because, you know, it’s an expensive bill and they were trying to figure out who was responsible. And it just played on and played on and played on. So, when we interviewed him, it was almost a year after, and the foot was still, like, the darkest purple I ever saw. It wasn’t quite gangrene, but it looked like that. Still couldn’t walk on the leg; had gone a year without any income, his wife working two jobs, trying to keep the house going. And the company just walked away, abandoned him.⁷⁴

A major local subcontractor feels very strongly about safety on the job for his people and is upset about how conditions have changed since labor brokers appeared

on the scene. “They’re wearing sneakers. They’re not wearing hardhats, not wearing safety gloves. They’re using stilts instead of ladders. On and on. I mean, it’s just a very dangerous situation.”⁷⁵ They also point out that “Debris is certainly one of the safety aspects. It can be dangerous if workers aren’t focused on putting up barricades. They’re not covering up holes that are open in floors, then there’ll be safety issues there. Those are the types of things that we see.”⁷⁶ The contractor and his site managers are not afraid to speak up about these issues to the general contractors; he provided several examples of pulling their workers off jobs sites because of these safety concerns.

In the middle of conducting this research, tragedy happened at a construction site in the state. “We had a new case in Framingham,” says NASRCC organizer Frank Gomez. “There was a worker that fell through a roof and then he actually died on-site. He was brought back twice, and they sent him to a hospital.”⁷⁷ There were guys working on the roof with a bunch of rotten spots that were covered by plastic and ... he went through one of the rotten spots on the roof. It was very, very bad. It was a head injury.”⁷⁸

As reported in a local news site, the worker was not an employee of Dellbrook, the general contractor on the site. Instead, “Framingham Detective Stacey Macaudda discovered Dellbrook had hired a subcontractor, TCT Contractors, to work on the roof at the power plant building. The worker had been hired by a TCT subcontractor, Milford-based GS Siding, just a few days before the accident.” The story continues:

Framingham Detective Stacey Macaudda ... interviewed GS Siding owner Camilla DeSouza at the scene. DeSouza told the detective the worker was just trying out for a job and hadn’t officially been hired. DeSouza was unsure if the worker had received OSHA safety training. “I asked (DeSouza) for his information as well as any family contact information, and she responded by saying, ‘I don’t know really know his name or anything about him, we are trying him out, it’s his third day, I don’t even know if he has an OSHA card, I didn’t get any information on him yet,’” Macaudda wrote in a police report.⁷⁹

Something didn’t seem right about the police report to Gomez. First, workers don’t “try out for construction jobs.” The most plausible explanation is that the worker was brought to the job by GS Siding acting as a labor broker. And Gomez found evidence that he had in fact worked for them for a long time. He pulls out his phone, shows us a photo, and tell us, “In fact, I just found a picture when the guys were on the roof of that same building ... so it’s happy Fourth of July, it’s on Facebook, the company posts it, the guy’s right there on the roof.”⁸⁰

Although the newspaper reported that the worker had recovered, Gomez went to see him at the hospital and reported that he was in very rough shape, very confused and not even sure where he was. There were no further reports on him, his condi-

tion, or his recovery in the local press. Just another victim of labor brokers and this new business model of construction.

(4) Beyond the Margins—Developers/General Contractors Fully Embrace These Business Practices

Our interviews have revealed a great deal about this new business model of residential home construction. We have seen how it jettisoned regularized workers employed by contractors and subcontractors, and how it relies now almost exclusively on workers supplied by labor brokers. These brokers have emerged in a very large scale in the Commonwealth and play a central role in the process. Because they have chosen to work in a cash world, the brokers, the subcontractors, and the developers who hire them have insulated themselves from responsibility for the working conditions, the safety and health, the compensation of workers, payroll taxes and benefits and the immigration status of the workers. And despite their shiny exteriors, these new housing developments and multi-unit buildings are built by workers who are hyper-exploited in unsafe and dangerous working conditions with virtually no oversight or consequences. Although labor brokers themselves are small informal entities, our research clearly demonstrates that many major developers and general contractors have fully accepted their fundamental place in the new business model, and it reveals how they have become mechanisms for generating profits.

As we saw at the North Square Apartments site in Amherst, Massachusetts, as well as in several others that utilize Metro Walls, these are not marginal projects at the fringes of the economy; they are among the largest complexes built by major developers in New England. As the former carpenter who works for a major contractor told us: “On the multi-residential jobs that are 50 to 100, to 200, 300, 400 units, every one of those (non-union) jobs is guilty for sure, because they’re importing workers from wherever, it’s just cash money hustle for sure. And there’s just no job site inspection, there’s no enforcement, there’s nothing going on. No one cares, the GC doesn’t care, no one cares because everyone’s making money, that’s it.”⁸¹

NASRCC’s Tom Flynn speaks about how this model has emerged, partly as a result of the changing economics of the building industry, particularly because of the cost of land. “In more urban areas, the price of the land is tremendous, right? ... So that’s part of the economics of this is that with the land prices being so high, developers [have] also been squeezed, and one of the ways they top up their profit is again, is by communicating to their GCs and then to the subs that we have to build this cheaper. ... Their investors would be demanding that they build it for as cheap as they can.”⁸²

And developers accomplish building more cheaply by adopting this new business model and using labor brokers. “Part of the business model is that general contrac-

tors know who they're going to be working with. It's a line of history that they got already. They know the practices of the subcontractor. And they just try to cover their eyes not knowing the reality," Martin Sanchez an NASRCC organizer, tells us. He continues, "And they know that they can bid that project lower because they're going to be using that guy, that company, that sub. And they know that the sub is going to be using that labor broker... I can put a bid on that project for this developer for so much amount of money less and get that project, knowing that I can hire like I did on the project before."⁸³

Based on our interviews, we see no indication that this business model is being effectively challenged. In the Commonwealth today, developers and general contractors are insulated from any legal action, so that they continue to exploit this system, as well as the workers who actually do the construction, to increase their profits despite changes in the industry. And now that the use of labor brokers has become central in residential construction, it is virtually impossible for legitimate non-union subcontractors to compete and they are quickly disappearing. Tom Flynn suggests that this will continue at even a greater pace in residential construction, with the involvement of major lumber distributors were now increasingly becoming directly involved in large scale residential construction. He describes:

The big national developers that develop thousands of units all over the country, they want to deal with as few subcontractors, suppliers, as they can. So, they go to National Lumber and ask National Lumber to give them a price for a turnkey operation, which means that they want them to not only supply the product but also give them a cost for the labor that is going to take place to build this building. And in many cases, National or Lumber 84 they give the subcontractor a price, and they say, if you can do it for this price, you can have the job. They know full well that the only way that they can get to that price is by, misclassifying the workers or paying them in cash. The developer knows that there's only one way for them to get to that number, and that's for them to be cheating, but they have plausible deniability because they're not the ones that are actually taking the bids. They're taking the bids through the lumber yard.⁸⁴

Our interviews provide insights into the mechanisms by which this new business model operates in residential construction and the consequences it has had on workers and contractors in the industry. To offer perspective on the extent and economic costs of this illegal behavior, we now turn to a quantitative analysis of the construction industry in Massachusetts.

PART TWO: THE EXTENT AND ECONOMIC COSTS OF WORKER MISCLASSIFICATION IN THE MASSACHUSETTS CONSTRUCTION INDUSTRY

Introduction

We quantitatively assess the extent and economic costs of worker misclassification in the state's construction industry using two overarching approaches. First, we have been provided a substantial amount of data by three state agencies in Massachusetts: the Department of Unemployment Assistance (DUA), the Department of Revenue (DOR), and the Department of Industrial Accidents (DIA). Most prominently, this includes the results of employer payroll audits as conducted by the DUA in its role overseeing the state's unemployment insurance system; this provides *direct* evidence of illegality in the Commonwealth. This analysis is supplemented by business tax records and 1099-MISC filings from the DOR, the first known use of such records in a study of payroll fraud in the construction sector. We further incorporate data from the DIA to examine patterns in workers' compensation insurance claims that reflect illegal labor practices in the Massachusetts construction sector.

Data provided by state agencies offers considerable perspective on wage and tax fraud, however government data is incomplete; after all, those engaged in illegality often go to great lengths to conceal their actions from government regulators and data collectors. As such, this study also utilizes *indirect* empirical methods designed to assess the full extent and costs of payroll fraud in the Massachusetts construction industry. Indirect measures are commonly used in studies of underground economic activity, as discrepancies between two data sources often indicate illegal behavior. Although these approaches are inexact and the resulting estimates include a nontrivial margin of error, the indirect methods applied in this study represent the most advanced techniques of using publicly-available data to assess the full extent and economic costs of wage and tax fraud in the sector.

(1) The Prevalence of Wage and Tax Fraud

Unemployment Insurance Audits

The most direct and compelling evidence of wage and tax fraud in the construction industry comes from state agencies' audits of employer payroll records. The U.S. Department of Labor requires that representatives from state unemployment insurance agencies audit employers' records to ensure that workers, if determined to be "employees" and not independent contractors, are correctly classified and that relevant taxes are by paid by the employer.⁸⁵ In the course of these audits, state agencies have frequently uncovered substantial evidence of worker misclassification.

While employer audits have long been required of states by the U.S. Department of Labor, they remained largely out of public view until a 2004 report by Françoise Carrè and Randall Wilson of UMass-Boston. Often referred to as the “Harvard Study,” this report presented the results of employer audits in Massachusetts by the Department of Unemployment Assistance for 2001 through 2003.⁸⁶ The current report updates this landmark 2004 study, featuring the results of payroll audits of construction employers as conducted by the DUA between 2017 and 2019. There are two types of audits included. First, the DUA reviews records from randomly-selected firms from its UI database. Second, the DUA conducts “targeted” audits based on past violations, tips from workers, or other factors. Mirroring the approach used in the 2004 Harvard Study, Table 1 presents the results of both the random audits (first column) and the sum of random and targeted audits (second column).⁸⁷

Table 1. Results of Employer Payroll Audits, Construction Industry (NAICS=23), Massachusetts Department of Unemployment Assistance, 2017-2019

	Random Audits Only	Random + Targeted Audits
Audit Results		
Percent of Employers Misclassifying	16.8%	17.9%
Misclassified Workers per Offending Employer	10.6	11.6
Percent of Offending Employers’ Workers Misclassified	17.9%	19.0%
Percent of All Workers Misclassified	6.6%	7.6%
Statewide Estimates		
Total Number of Workers Affected, 2019	11,593	13,496

Source: Authors’ analysis of data provided by Massachusetts Department of Unemployment Assistance.

The direct evidence compiled by the agency offers an unmistakable conclusion: wage and tax fraud is widespread in the Massachusetts construction industry. DUA audits reveal that between 16.8% and 17.9% of Massachusetts construction employers were determined to be “misclassifying” at least one worker between 2017 and 2019.⁸⁸ The DUA defines this to include either the improper employ of independent contractors or off-the-books workers.⁸⁹ Firms discovered to be misclassifying did so extensively, with the average offending employer misclassifying between 10.6 and 11.6 individuals; this represents nearly one-fifth of the employees of these businesses (17.9% to 19.0%). Taken as a proportion of legal wage-and-salary employees among all audited firms, the data reflect that between 6.6% and 7.6% of all construction employees in the Commonwealth were misclassified between 2017 and 2019.⁹⁰ Extrapolated to the industry as a whole, this rate suggests that there were between 11,593 and 13,496 misclassified construction workers in Massachusetts in 2019.⁹¹ While DUA audits reveal that worker misclassification is a substantial concern across all industries, the results reflect that the problem is particularly acute in the state’s construction sector.^{92,93}

Two important trends emerge in comparing the audit outcomes in the current study (2017-19 results) to those from the 2004 Harvard Study (2001-03 results). First, it appears that the proportion of employers engaged in worker misclassification in the Massachusetts construction industry has remained high, increasing slightly over the last 15-20 years. On random audits, only 14% of construction employers were found to be misclassifying in 2001-03; the results in this study indicate this rose to 16.8% in 2017-19.⁹⁴ However, the proportion of each company's workforce that was being misclassified in the construction sector declined from 40% in 2001-03 to 17.9% in 2017-19.⁹⁵

The data do not provide an explanation for the decline in the extent of misclassification by offending construction firms since 2001-03. It is our view that this result should not be interpreted as a sign of progress, but rather as a warning that the industry has moved even further underground. The experience of Universal Drywall offered in Part 1—the gradual shifting of work from established contractors to labor brokers—is consistent with our many conversations with industry stakeholders in Massachusetts and across the country. In effect, the construction industry has seen a clear trend moving away from independent contractors using 1099-MISC forms (easier to detect in audits) and towards a business model that predominantly depends on labor brokers and cash-only employment relationships (much more difficult to detect).

While our approach in Table 1 replicates the 2004 Harvard Study, the data provided by the DUA allow for a deeper analysis as the random audits are also aggregated for four subsectors of the construction industry.⁹⁶ Audit results for different areas *within* the construction industry have been rare in state-specific studies and were not included in the 2004 Harvard Study, thereby allowing the current report to add to state and national understanding of worker misclassification.⁹⁷ Subsector data provided by the DUA were limited to random audits; the results are presented in Table 2.

Although worker misclassification occurs in all four subsectors of construction, Table 2 reflects that it is more prevalent among residential builders than many other parts of the industry. The results demonstrate that as nearly one in five (19.7%) residential builders misclassify workers with an industry average of 14.0 workers per offending employer; this equates to 14.3% of all employees working in the residential building subsector of construction.

Among the specialty trades, Table 2 reveals that misclassification is heavily concentrated among building finishing contractors; this includes drywall and insulation, painting and wall covering, flooring, tile and terrazzo, and finish carpentry contractors. DUA results reflect that more than one in four (26.6%) of these employers engage in misclassification, affecting 15.1 workers per offending company and amounting to nearly one-sixth (16.6%) of all employees in this sector. Misclassification is not as extensive among other specialty trades contractors. Rates are rela-

tively low among building equipment contractors—which includes plumbing and electrical contractors—with just 12.2% of firms engaging in misclassification and just 2.0% of all employees affected. In sum, the results of the Table 2 offer direct evidence that worker misclassification is rampant in residential construction and among specialty trades contractors—such as drywall and finish carpentry—responsible for some of the final stages of residential construction projects.

Table 2. Results of Employer Payroll Audits, Subsectors of Construction (by NAICS code), Massachusetts Department of Unemployment Assistance, Random Audits Only, 2017-2019

	Residential Building Construction (2361XX)	Foundation, Structure, & Building Exterior Contractors (2381XX)	Building Equipment Contractors (2382XX)	Building Finishing Contractors (2383XX)
<i>Random Audits Only</i>				
Firm-Level Results				
% of Employers Misclassifying	19.7%	12.8%	12.2%	26.6%
Misclassified Workers per Offender	14.0	7.3	4.7	15.1
% of Offenders' Workers Misclassified	21.1%	15.0%	9.2%	25.5%
% of All Workers Affected	14.3%	3.4%	2.0%	16.6%
Statewide Estimates				
Total Number of Workers Affected, 2019	2,783	577	1,132	4,717

Source: Authors' analysis of data provided by Massachusetts Department of Unemployment Assistance.

Indirect Method: The Full Extent of Misclassification

Payroll audits conducted by the Massachusetts Department of Unemployment Assistance offer direct and compelling proof of widespread worker misclassification in the state's construction industry. However, audit results underrepresent the full extent of wage and tax fraud in the sector for three reasons.⁹⁸ First, the DUA audits employers who pay into the state unemployment insurance system; this would not include direct oversight of labor brokers and other contractors that exclusively hire workers on a cash-only basis.⁹⁹ Second, some forms of wage and tax fraud—especially cash-only payments—are difficult to detect for even the most skilled auditor, especially given the lengths that some contractors go to conceal their actions.¹⁰⁰ Finally, while the DUA attempts to audit firms of all sizes, the *completion* of an audit on small construction employers—which comprise a substantial portion of the industry—is notoriously difficult.¹⁰¹ Some small business owners cannot be located, others will stall and evade DUA representatives for as long as possible and, in some cases, the company simply disappears.¹⁰² DUA data clearly reflect this problem, and the disproportionate exclusion of small businesses—whose elusiveness presumably reflects efforts to conceal illegality—results in audits likely underrepresenting the

rate of illegal activity, an outcome exacerbated by the outsized role of small employers in the Massachusetts construction industry.¹⁰³

Payroll audits represent the only source of direct, quantitative data on misclassification available to researchers. However, because of their limitations, an empirical assessment of the *full* extent of wage and tax fraud in the industry requires an alternative approach. To resolve this issue, academic scholars have developed indirect methods of estimating the total number of workers who are misclassified as independent contractors or working off-the-books in a state's construction industry. While approaches differ slightly between studies, they share a common foundation: a comparison of national surveys of workers (e.g., the Census) to aggregated payroll records submitted to state UI programs. Here, researchers consistently find large differences between the number of individuals who self-report as working in the construction industry and the number of employees on contractors' official payroll records.¹⁰⁴

Researchers contend that the sizeable disparity between data sources reflects the extent of payroll fraud. However, isolating an *exact* number of workers employed fraudulently by comparing data sets encounters several complications.¹⁰⁵ Although numerous studies have proposed empirical solutions to these problems, each suggested approach has shortcomings that introduce a nontrivial margin of error into projections of worker misclassification. This is an expected outcome, as nearly any study of the underground economy—either in construction or otherwise—suffers from data limitations that complicate researchers' ability to make accurate estimates of illegal activity. This study is no different. However, we minimize such concerns by applying the most advanced empirical methodology available to assess worker misclassification in a state's construction industry using publicly-available data: an approach developed in a 2020 study published by the Institute for Construction Economic Research (ICERES).¹⁰⁶ A full review of the methodology, its limitations, and its application to Massachusetts is presented in Appendix A.

Using this approach, we estimate that there were between 22,146 and 36,719 workers who were misclassified as independent contractors or working off-the-books in the Massachusetts construction industry in 2019, equating to 9.5% to 15.8% of the sector's workforce in the Commonwealth.¹⁰⁷ These estimates climb to 11.3% to 18.8% if considering only blue-collar workers in the construction sector.¹⁰⁸ There is evidence supporting these projections as reasonable, if not conservative.¹⁰⁹ Our industry-wide results in Massachusetts (9.5%-15.8%) are comparable to studies using similar empirical methodologies in other states, including New Jersey (16%), California (16%) and Tennessee (11%-21%); they are also consistent with the national estimates (12.4%-20.5%) reported in the 2020 ICERES study.¹¹⁰ For a full discussion of the reasons supporting the credibility to these estimates, see "Validating the Results" in Appendix A.

While these results are consistent with other data points on payroll fraud, the authors have reasons to suspect that the proposed maximum may *understate* the full extent of wage and tax fraud in Massachusetts. The first set of reasons are methodological in nature; for details, see “Discussion” in Appendix A.¹¹¹ Second, studies that estimate the prevalence of payroll fraud by surveying construction workers *on job sites* find substantially higher rates of illegality (consistently over 30%). While surveys often feature small sample sizes and are typically conducted in cities and locations rife with payroll fraud, they offer evidence supporting higher projections of payroll fraud.¹¹²

1099-MISC Filings

As further confirmation of expansive rates of wage and tax fraud in the construction industry, this study examines data on 1099-MISC filings provided by the Massachusetts Department of Revenue. Unfortunately, the data supplied to the authors include only a fraction of all 1099-MISCs issued by employers in the Commonwealth; while firms are required to file their 1099-MISCs with the Internal Revenue Service, businesses are not required to file 1099s with the Massachusetts DOR.¹¹³ The incomplete nature of the data renders it a less effective measure of some employment outcomes, such as estimating the number of independent contractors in the Commonwealth.

Nevertheless, the data provided by the DOR still offer several powerful insights into employment practices and underground activity in the Massachusetts construction sector. Primary among these is that many construction workers who receive 1099-MISC forms never file income taxes with the Department of Revenue. As evidence of this, the DOR data reflect that Massachusetts construction employers issued 24,387 1099-MISC forms to state residents between 2016 and 2019; it is from this group that one would expect workers to file income taxes with the Commonwealth’s Department of Revenue. However, the data reflect that 7,867 (32%) of these forms were issued to Massachusetts residents using Social Security Numbers that did not appear in personal income tax returns submitted to the Department of Revenue in the year the 1099-MISC form was issued.¹¹⁴

There are non-fraudulent reasons that explain some non-filing behavior, suggesting that the 32% number over-represents the rate of tax fraud among these workers.¹¹⁵ However, our analysis of the data and conversations with DOR representatives suggest that these exceptions are not so large as to change the fundamental conclusion that there are thousands of 1099-MISC forms issued to Massachusetts construction workers using Social Security Numbers that do not appear on state tax returns. This outcome is even more alarming considering that the DOR could only provide us access to a fraction of all 1099-MISCs issued in the industry.¹¹⁶ It is unclear in the data why workers may not be filing tax returns; some may be trying to conceal earnings from the DOR, while others may have been using a fake Social Security Number in order to secure work. Both reasons, however, are reflective of underground eco-

conomic activity and offer further confirmation of widespread illegal activity in the Massachusetts construction industry. For more analysis of the DOR's 1099-MISC data, see Appendix B.

Workers' Compensation Trust Fund

Rampant wage and tax fraud in the Massachusetts construction industry is also revealed in an analysis of workers' compensation cases. Workers' compensation coverage is required of employers in Massachusetts, however it has become commonplace for non-union contractors to let their policy lapse, forego coverage altogether, or potentially engage in complex fraudulent schemes to minimize policy costs.¹¹⁷ Workers bear a considerable burden as a result of these actions, as they are left without insurance benefits to cover medical bills and lost income should they get hurt on a jobsite. But state law provides injured workers in Massachusetts a potential remedy: the Workers' Compensation Trust Fund (WCTF) was established to provide benefits for workers who have approved claims while working for employers who are uninsured in violation of state law. Summary data on WCTF claims is published annually by the Workers' Compensation Advisory Council.

The WCTF records offer unmistakable evidence pointing to widespread failures among construction employers to provide workers' compensation insurance in accordance with state law. Between July 2016 and June 2020, a stunning 47.3% of approved WCTF cases (220 of 465) originated in the construction industry.¹¹⁸ In comparison, construction accounted for just 9.4% of workers' compensation claims made through the coverage of law-abiding employers in the private sector between 2014 and 2016.¹¹⁹ The astounding gap highlights that the failure to maintain a valid workers' compensation insurance policy is endemic in the Massachusetts construction industry, further reflecting the overall pervasiveness of wage and tax fraud in the sector.¹²⁰

Indirect Method: Misclassification by Trade

The DUA audits described earlier provided clear and direct evidence that worker misclassification is more extensive in some parts of construction than in others. But while this report used an indirect method to estimate the *total* number of workers affected by payroll fraud in the entire construction industry, data limitations make it practically impossible to use this approach to obtain exact numbers of workers affected by trade or narrowly-defined contractor type (e.g., framing, drywall).¹²¹ Fortunately, other data sources can be used to investigate these issues, each of which demonstrates alarming employment patterns in some trades and in some narrowly-defined contractor categories.

To identify the trades most affected by payroll fraud, Table 3 compares occupational employment estimates as computed through surveys of Massachusetts construction workers and surveys of legal construction employers in the Commonwealth. Similar to the indirect method offered earlier, the critical outcome is the size of the

discrepancy between the two sources. The difference between the worker surveys (total employment) and employer surveys (legal wage-and-salary employment) is largely measuring “self-employment.”¹²² While this includes the legally self-employed, it also includes all misclassified independent contractors and off-the-books workers. Unusually large differences between worker and employer surveys is considered evidence of extensive wage and tax fraud is in that occupation.

Table 3. Comparing Occupational Employment in Worker Surveys and Employer Surveys, Massachusetts Construction Industry, 2016-19 (minimum 3,000 workers)

Occupation	Worker Survey (ACS)	Employer Survey (OES)	Difference	Difference as % of Workers
<i>Group 1: High “Self-Employment”</i>				
Painters & Paperhangers	13,036	4,304	8,732	67.0%
Roofers	3,328	1,500	1,828	54.9%
Laborers	31,455	15,230	16,225	51.6%
Carpenters	29,408	15,580	13,828	47.0%
<i>Group 2: Low “Self-Employment”</i>				
Masons, Ironworkers & Sheet Metal Electricians	10,756	8,740	2,016	18.7%
Plumbers, Pipefitters & Pipelayers	16,085	13,600	2,485	15.4%
Construction Equipment Operators	12,631	11,500	1,131	9.0%
<i>Others</i>	5,277	4,970	257	4.9%
Drywall and Ceiling Tile Installers	1,578	2,500	-923	
Construction Helpers	359	4,380	-4,021	
First-Line Supervisors	14,221	10,950	3,271	

Notes: Authors’ analysis of the 2016-2019 American Community Survey and the 2019 Occupational Employment Statistics series at the Bureau of Labor Statistics.¹²³ The samples are limited to workers who self-identify as working in the construction industry in Massachusetts and to construction employers in the state (i.e., NAICS=23). The 2019 OES is the result of six employer surveys conducted from November 2016 through May 2019. As a result, the authors weight the 2016-19 ACS by year to mirror the structure of the OES to allow direct comparisons between surveys (for more, see: https://www.bls.gov/oes/current/oes_tec.htm.)

The results of Table 3 demonstrate that rates of “self-employment” are *substantially* higher in four trades—painters, roofers, laborers and carpenters—than elsewhere in the construction industry. While some of this may be due to differences in legal self-employment, the disparity in numbers from these four trades from the rest of the industry is stunning: the top four exhibit a self-employment rate exceeding 45% while the bottom four feature rates less than 20% (and two are in single digits). Given the magnitude of the disparity between the two groups, there is only one conclusion: payroll fraud is far more extensive among painters, roofers, laborers and carpenters than in other trades. This finding is further supported by the authors’ conversations with industry stakeholders, who have consistently pointed to these trades as the ones most troubled with wage and tax fraud concerns.¹²⁵

This approach is the best available statistical method of identifying potential payroll fraud by trade, however we suggest caution before explicitly citing the numbers

presented in Table 3. First, the results do not offer direct evidence of illegality, as the results also reflect differences in legal self-employment across trades. Second, there are methodological concerns that introduce some margin of error into the analysis.¹²⁶ As one example, there are inconsistencies in how workers identify their occupations on surveys and how employers classify them. This is reflected in the bottom part of Table 3, as the negative rates for drywall installers and construction helpers are suggestive that, for example, many drywall installers in Massachusetts identify themselves as carpenters or laborers when asked on surveys to provide their occupation.¹²⁷ While methodological concerns may reduce the estimated discrepancy for carpenters and other trades, any decrease in magnitude would not be substantial enough to change the conclusion that the self-employment rate in these trades is alarmingly high and likely indicative of extensive worker misclassification.

Tax Records of Sole Proprietors

The conclusion that carpenters are among the trades most affected by payroll fraud is further supported by an analysis of 2019 tax data on sole proprietorships provided by the Massachusetts Department of Revenue.¹²⁸ Schedule C filings from personal income tax returns (Form 1) include employers' expenses for "Contract Labor" (line 9B) and "Wages" (line 25); aggregating this data by industry code allows for a direct comparison of labor practices across different types of contractors.¹²⁹ This data is presented for 14 categories of specialty trades contractors in Massachusetts in Table 4.¹³⁰ The first four columns offer the number of firms by industry code, followed by the value of gross receipts, contract labor, and wages. The final column offers a simple and powerful metric: a ratio of expenditures on contract labor to expenditures on wages. It would be expected that sectors in which payroll fraud is most prevalent would have high levels of contract labor expenditures relative to wage-and-salary employment costs.

The results in Table 4 are astounding: the labor practices in some subsectors look fundamentally different than other parts of the state's construction industry. For instance, framing contractors who are sole proprietors in Massachusetts paid a total of \$9.03 million to contract laborers but just \$4.77 million in wages in 2019; this equates to a ratio of 1.89, or the equivalent of \$189 in contract work for every \$100 paid to wage-and-salary employees. And framing contractors were not alone: among sole proprietorships, eight of 14 categories of specialty trades contractors paid more to contract laborers than wage-and-salary employees in 2019, including one sector—siding contractors—with an exorbitant rate of contract labor usage (\$525 paid to contract labor for every \$100 in wages).

These labor practices are profoundly different than those employed in other parts of the construction industry. For example, electrical contractors who are sole proprietors paid just \$13 to contract laborers for every \$100 distributed to wage-and-salary employees, or less than one-tenth the rate of contract work of framing contractors. The differences in contract labor usage by employer type are so pronounced

that the results in Table 4 reflect a clear distinction between contractor types: those featuring “high” contract labor usage and those with “low” usage, with the latter appearing to rely more on traditional employment relationships.

Table 4. Analysis of Contract Labor and Wages, Sole Proprietorships (Schedule C), Specialty Trades Contractors (NAICS=238XXX), Massachusetts, 2019 (\$ value in millions)

Industry	# of Firms	Gross Receipts	Contract Labor	Wages	Ratio: Contract Labor-to-Wages
<i>Group 1: High Contract Labor Usage</i>					
Siding Contractors	450	\$43.07	\$4.55	\$0.87	5.25
Framing Contractors	1,565	\$134.53	\$9.03	\$4.77	1.89
Finish Carpentry Contractors	5,895	\$498.15	\$29.50	\$16.59	1.78
Painting and Wall Covering Contractors	7,295	\$424.12	\$29.59	\$17.38	1.70
Drywall and Insulation Contractors	1,079	\$119.99	\$12.40	\$7.67	1.62
Flooring Contractors	1,986	\$180.80	\$10.00	\$6.67	1.50
Roofing Contractors	831	\$119.99	\$7.08	\$5.70	1.24
Tile and Terrazzo Contractors	597	\$48.80	\$2.22	\$2.03	1.10
<i>Group 2: Low Contract Labor Usage</i>					
Poured Concrete Foundation/Structure	231	\$45.53	\$2.29	\$3.81	0.60
Masonry Contractors	1,441	\$151.64	\$4.94	\$11.41	0.43
Glass and Glazing Contractors	113	\$15.75	\$0.30	\$1.61	0.19
Site Preparation Contractors	511	\$96.17	\$1.45	\$7.96	0.18
Plumbing, Heating and AC Contractors	3,994	\$605.14	\$8.66	\$51.80	0.17
Electrical Contractors	4,319	\$520.87	\$7.97	\$63.10	0.13
<i>Other Specialty Trades Contractors</i>					
Specialty Trades Contractors, Undefined	12,503	\$1,387.01	\$51.12	\$83.35	0.61

Source: Authors' analysis of tax data provided by the Massachusetts Department of Revenue. Data aggregated on basis of five-digit NAICS code. Only trades with at least 100 sole proprietorships. All categories include both full-year and part-year resident tax returns except siding contractors and glass and glazing contractors; those feature absence of data on dollar values for at least one category for part-year residents due to DOR disclosure rules and thus only include full-year resident returns. The "other" category derived from data where contractors are only identified by a four-digit NAICS code (238100, 238200, 238300, and 238900) or explicitly included in an "other" category (238190, 238290, 238390, and 238990) that features; all such components include both full-year and part-year residents unless one of the dollar values of the latter is excluded from authors' data due to DOR disclosure rules.

The results in Table 4 offer no *direct* proof of misclassification—hiring contract labor is not illegal on its face—and the data only cover sole proprietorships, which account for a fraction of most subsectors of construction (see Appendix C for more analysis of DOR tax data). But the reliance on contract labor in some subsectors is so substantial—and the distinction between high and low usage groups so stark—that the only reasonable conclusion is that wage and tax fraud is more extensive in these “high usage” categories. This inference is further supported by two important

commonalities among this group. First, it cannot a coincidence that the contractors identified as most likely to be engaging in payroll fraud (Table 4) are also the ones that disproportionately employ tradespeople from the “big four” occupations identified earlier: painters, carpenters, roofers and laborers (Table 3).

Table 5. Comparison of Contract Labor/Wage Ratio of Sole Proprietorships (Massachusetts) to Proportion of Legal Wages Paid by Residential Contractors in the Industry (United States), 2019

Industry	Ratio: Contract Labor-to- Wages	% of Wages in Residential (US)
<i>Group 1: High Contract Labor Usage</i>		
Siding Contractors	5.25	81.6%
Framing Contractors	1.89	73.1%
Finish Carpentry Contractors	1.78	69.0%
Painting and Wall Covering Contractors	1.70	50.5%
Drywall and Insulation Contractors	1.62	36.9%
Flooring Contractors	1.50	55.5%
Roofing Contractors	1.24	43.2%
Tile and Terrazzo Contractors	1.10	67.9%
<i>Group 2: Low Contract Labor Usage</i>		
Poured Concrete Foundation/Structure	0.60	41.9%
Masonry Contractors	0.43	41.7%
Glass and Glazing Contractors	0.19	26.7%
Site Preparation Contractors	0.18	30.9%
Plumbing, Heating and AC Contractors	0.17	41.9%
Electrical Contractors	0.13	24.9%

Source: Authors' analysis of tax data provided by the Massachusetts Department of Revenue and the 2019 Quarterly Census of Employment and Wages via the Bureau of Labor Statistics.

Contractors featuring the most alarming employment patterns share a second important commonality. Table 5 pairs the contract-labor-to-wage ratio of Massachusetts sole proprietors with data from the Bureau of Labor Statistics that assesses the proportion of wages in each contractor category that are paid by residential contractors in the United States.¹³¹ The results, once again, are striking: contract labor usage is highest among contractors that predominantly operate in the residential sector. First, the three types of contractors with the highest rates of contract labor—siding, framing and finish carpentry contractors—are also the three types most likely to be operating in the residential sector. Further, the seven contractor types that conduct the largest proportions of their work in residential construction are *all* in the group that disproportionately relies on contract labor.¹³²

As further evidence that residential construction relies heavily on contract labor, Table 6 presents the aggregate 2019 tax records of sole proprietorships in the Massachusetts construction industry that are not specialty trades contractors. Any comparison of these firms is complicated by the fact that they may differ markedly in size, type of work, and general place in the contracting chain; in essence, it is dif-

difficult to compare the actions of a one-person homebuilding operation and that of a multi-million dollar company that builds highway bridges. Nevertheless, the reliance on contract labor among residential builders is striking, as the results of Table 6 demonstrate that residential construction firms pay \$180 to contract laborers for every \$100 paid to wage-and-salary workers. This is more than double the rate of nonresidential builders, and more than six times that of firms operating in the heavy and civil engineering sector of the construction industry. As a reminder, the reliance on contract laborers among residential builders offered in Table 6 is consistent with the findings of DUA audits (Table 2) that reflected widespread worker misclassification within that sector.

Table 6. Analysis of Contract Labor and Wages, Sole Proprietorships (Schedule C), Construction of Buildings (NAICS=2361XX and 2362XX) and Heavy and Civil Engineering Construction (NAICS=237XXX), Massachusetts, 2019 (\$ value in millions)

Industry	# of Firms	Gross Receipts	Contract Labor	Wages	Ratio: Contract Labor-to-Wages
Residential Building Construction	13,142	\$2,242.90	\$103.55	\$57.64	1.80
Nonresidential Building Construction	1,340	\$296.06	\$10.16	\$14.60	0.70
Heavy & Civil Engineering Construction	566	\$143.80	\$2.48	\$8.98	0.28

Source: Authors' analysis of tax data provided by the Massachusetts Department of Revenue. NAICS codes only included in the totals if their values feature non-zero totals for firms, gross receipts, contract labor and wages.

(2) The Economic Costs of Wage and Tax Fraud

Introduction

The profits reaped by contractors and developers engaging in illegal labor practices come at a substantial cost to the workers and taxpayers of Massachusetts. This section assesses the dollar value of the *direct* costs of wage and tax fraud in the Commonwealth's construction sector for 2019. We approach this in two ways. First, DUA audits identify both the number of workers misclassified and the gross payroll of workers who are directly affected. By applying tax and contribution rates required of Massachusetts construction employers, we calculate the losses to the state and its taxpayers directly resulting from the violations discovered by the DUA. However, since DUA audits represent just a fraction of the instances of payroll fraud, this approach can only provide a lower-bound projection of the economic costs.

Estimating the *full* costs of wage and tax fraud is challenging and, in the end, inexact. This is not unexpected, as firms and individuals involved in fraud often go to great lengths to conceal how much money is exchanged in the underground

economy. This includes, but is not limited to, the use of cash-only payments and check-cashing operations instead of more established (and regulated) banking institutions. Because so much occurs in the shadows, we cannot directly assess the amount of cash that exchanges hands in order to estimate the full costs of payroll fraud. Instead, the approach we use—based on a model developed in a 2019 report commissioned by the Attorney General’s Office of the District of Columbia, which sought to resolve this very problem—relies on assumptions about the number of workers affected by fraud and their annual earnings.¹³³ We believe that the results of this approach are a thoughtful step forward in quantifying the costs of wage and tax fraud in the Massachusetts construction industry, however we acknowledge the inexactness of our outcomes and have accordingly been transparent about our assumptions and methods (see Appendix D).

Unemployment Insurance Audits

Table 7 presents the projected economic costs of worker misclassification in the Massachusetts construction industry for 2019 based solely on the findings of DUA audits. As a starting point of the analysis, DUA records reveal that the average worker identified as being misclassified earned an average of \$9,459 on random audits and \$10,866 in the sample that includes both random and targeted audits. These amounts imply that affected workers are typically seasonal, temporary, or otherwise hired for short-term projects.

**Table 7. Estimated Costs of Worker Misclassification using
DUA Audits, Massachusetts Construction Industry, 2019**

	Random Audits Only	Random and Targeted Audits
Starting Information		
Payroll per Misclassified Worker (DUA)	\$9,459	\$10,866
Number of Misclassified Construction Workers (est.)	11,593	13,496
Total Payroll of Misclassified Construction Workers	\$109,657,525	\$146,648,042
Calculations: Cost of Payroll Fraud		
Unemployment Insurance Fund Shortfall	\$8,081,760	\$10,807,961
Workers Compensation Fund Shortfall	\$5,199,960	\$6,954,050
Employer Share of FICA Offloaded onto Workers	\$8,388,801	\$11,218,575
Overtime and Premium Pay Not Received	\$2,711,502	\$3,626,166
Totals		
Reduced Labor Costs Due to Misclassification	\$24,382,022	\$32,606,752

Source: Authors’ analysis of data from Massachusetts Department of Unemployment Assistance, incorporating information from the Workers’ Compensation Rating and Inspection Bureau of Massachusetts and the National Compensation Survey.

The results in the bottom half of Table 7 reveal that worker misclassification in the Massachusetts construction industry allowed offending employers to illegally reduce their labor costs between \$24.4 million and \$32.6 million in 2019.¹³⁴ Workers bear a substantial portion of the burden, as it is projected that they were not paid between \$2.7 million and \$3.6 million in overtime pay (i.e., the “half” in

“time-and-a-half”). In addition, misclassification allowed construction employers to offload between \$8.4 million to \$11.2 million of FICA tax obligations onto the backs of workers; this is because under the eyes of the law, workers operating as independent contractors or in an off-the-books arrangement are considered “self-employed” and therefore responsible for *both* the employee and employer share of the FICA tax. Misclassification also denies workers their legal rights to UI coverage, workers’ compensation insurance, and other benefits; this is the result of contractors’ evasion of contributions to these social programs, including \$8.1 million to \$10.8 million uncollected by the state’s unemployment insurance system and an additional \$5.2 million to \$7.0 million in workers’ compensation insurance premiums not paid.¹³⁵

Empirical Method: The Full Costs of Misclassification

The cost projections presented in Table 7 are substantial and calculated using direct evidence of worker misclassification from the Department of Unemployment Assistance. But these results are *lower-bound* cost estimates, as it is reminded that DUA audit results underrepresent the volume of payroll fraud occurring in the Massachusetts construction industry. Further, while the costs above are based on an assumption of \$9,000-\$10,000 earnings per worker at each employer, it should be recognized that construction workers typically work for multiple contractors in a given year; as a result, the annual income of affected workers is likely much higher than the numbers provided. In order to develop a more complete set of cost projections—which encompass all instances of wage and tax fraud outlined in this study and workers’ *annual* earnings—we rely on an empirical method advanced by Dale Belman and Aaron Sojourner in 2019 and refined in a 2020 study by the Institute for Construction Economic Research. For a full review of this approach, its limitations, and its application to Massachusetts, see Appendix D.¹³⁶

In building cost projections of the full extent of worker misclassification, the lack of direct evidence of many instances of wage and tax fraud requires us to make assumptions about the total number of workers affected, their hours worked, and their annual earnings had they been employed legitimately; the use of assumptions introduces a nontrivial margin of error into the cost estimates. This issue compels us to present four different scenarios; these are provided in Table 8. The first column examines the economic costs assuming the minimum number of workers (22,146) offered by the indirect method described earlier in the paper and a conservative assumption about workers’ earnings level (\$35,200, or the 10th percentile of legal earnings in construction occupations in the state).¹³⁷ Conversely, the last column explores the outcome with the maximum number of workers (36,719) affected and a less conservative income assumption (\$44,960; the 25th percentile of legal earnings).¹³⁸

The results of this methodology presented in Table 8 reflect that wage and tax fraud likely allowed Massachusetts construction employers to reduce their labor costs

by well over \$100 million in 2019. Workers bear a substantial burden of these illegal labor practices. The results suggest that contractors evaded at least \$19.3 million in overtime and premium pay in 2019 (i.e., the “half” in “time-and-a-half”). Employers also offloaded at least \$59.6 million in Social Security and Medicare tax obligations onto the backs of workers. Add in the fact that these workers are not typically eligible for unemployment insurance benefits and are not covered by a workers’ compensation insurance policy, and it is evident that contractors’ and developers’ decisions to operate illegally degrades living conditions for workers and their families.

**Table 8. Projected Economic Costs of Payroll Fraud,
Massachusetts Construction Industry, 2019 (in \$ millions)**

	Low Estimates (22,146 workers)		High Estimates (36,719 workers)	
<i>Earnings (10th vs. 25th Percentile)</i>				
Assumed Legal Worker Earnings	\$35,200	\$44,960	\$35,200	\$44,960
<i>Direct Effects of Payroll Fraud</i>				
Overtime and Premium Pay Not Received	\$19.3	\$24.6	\$32.0	\$40.8
Unemployment Insurance Fund Shortfall	\$24.5	\$24.5	\$40.6	\$40.6
Workers’ Comp Premiums Not Paid	\$37.0	\$47.2	\$61.3	\$78.3
Employer Share FICA onto Workers	\$59.6	\$76.2	\$98.9	\$126.3
<i>Effect of Worker Income Underreporting</i>				
Social Security & Medicare Shortfall	Min \$27.1	Min \$34.6	Min \$44.9	Min \$57.4
	Max \$86.6	Max \$110.6	Max \$143.6	Max \$183.4
Federal Income Tax Shortfall	Min \$8.4	Min \$13.7	Min \$13.9	Min \$22.8
	Max \$31.7	Max \$49.9	Max \$52.5	Max \$82.7
State Income Tax Shortfall	Min \$6.7	Min \$9.1	Min \$11.1	Min \$15.0
	Max \$18.4	Max \$24.9	Max \$30.5	Max \$41.3

Source: Assumptions about legal earnings drawn from the Bureau of Labor Statistics Occupational Employment and Wage Statistics (OES) series. The two incomes are identified as the 10th percentile and 25th percentile of earnings among legal employees in construction occupations for legitimate Massachusetts employers in 2019. Data on overtime and premium pay drawn from the National Compensation Survey. UI and workers’ compensation insurance shortfalls generated using the average rates for construction employers in Massachusetts in 2019, as provided by the Massachusetts Department of Unemployment Assistance and the Workers’ Compensation Rating and Inspection Bureau of Massachusetts. Tax shortfalls generated using 2019 income and tax rates.

Payroll fraud also harms taxpayers, representing an unwelcome public subsidy of illegal and unethical behavior. The results of Table 8 suggest that contractors’ evasion of their legal responsibilities led to a shortfall in the Massachusetts unemployment insurance fund of at least \$24.5 million in 2019. Fraudulent employment practices also allowed contractors to avoid paying a minimum of \$37.0 million in workers’ compensation insurance premiums. Combined with the evasion of overtime pay and the offloading of FICA responsibilities, the results of Table 8 reflect that wage and tax fraud allowed construction employers to illegally reduce their labor costs

by an estimated \$140.4 million using conservative assumptions rising to more than \$200 million using less conservative models.

The results offered in Table 8 represent the direct costs associated with payroll fraud in Massachusetts' construction industry, however there are also indirect economic costs. Although workers have a legal responsibility to report their full earnings to the IRS and Massachusetts DOR, employers' failure to withhold taxes and provide required employment documentation open the door to affected workers to under-report or not report their income.¹³⁹ This leads to substantial income tax shortfalls for federal, state and local governments. The estimated income tax loss in Massachusetts caused by payroll fraud in the construction industry in 2019 is between \$6.7 million and \$41.3 million; this range is broad for reasons outlined in Appendix D. Further, these projections are based on very conservative assumptions; as such, the authors believe that these estimates likely understate the income tax loss to the Commonwealth.

While Table 8 represents an attempt to project the direct economic costs of wage and tax fraud, there are reasons to conclude these values may *understate* the full costs of worker misclassification in the Massachusetts construction industry. First, Part 1 of this study highlighted that contractors engaging in this form of illegality are also more likely to forego safety expenditures and ignore OSHA regulations. Such cost savings, however, are not captured in Table 8 as we lack credible estimates of the per-worker cost of safe and responsible contracting. Second, these results assume zero direct wage theft, or the explicit nonpayment of promised compensation to employees discussed in Part 1. We know this is an egregiously conservative assumption, however we lack credible quantitative estimates for its extent in the Massachusetts construction sector. However, if we had assumed that workers in fraudulent employment relationships lost 1% of their earnings to wage theft, the aggregate loss to workers—and cost savings to employers—would range from \$7-\$8 million (most conservative income and worker assumptions) to \$14-\$16 million (least conservative assumptions).¹⁴⁰ Finally, there are many other indirect costs—such as increased demand for public services, downward pressure on legal wages in the industry, lost profits for law-abiding businesses, lost tax revenue from labor brokers not reporting their income to the DOR, and decreased funding for apprenticeship training—that are also not incorporated in the analysis due to data limitations.¹⁴¹

1099-MISC Filings

The enormous projected cost to taxpayers offered above is further supported by a re-examination of 1099-MISC data provided by the DOR. Despite accounting for just a fraction of all 1099-MISC forms issued in the industry, the results indicate that \$165.9 million in non-employee compensation was not reported on personal income tax forms between 2016 and 2019; this equates to 32% of the dollar value of all 1099-MISCs issued in the construction sector and reported to the DOR.¹⁴²

Although some of this income underreporting is attributable to non-fraudulent reasons, it is revealing that the “missing” money appears to be disproportionately lost to subsectors of construction identified earlier as the most likely to be engaging in wage and tax fraud (e.g., framing, painting, roofing, flooring); see Appendix B for a full review of 1099-MISC data by contractor type.^{143,144} Considering that income underreporting rates are expected to be even higher among workers operating on a cash-only basis (i.e., those *not* issued a 1099-MISC), these results highlight both the magnitude of the dollars lost and the importance of employers issuing W-2s and engaging in income tax withholding.¹⁴⁵

Workers’ Compensation Trust Fund

As discussed earlier, contractors engaging in wage and tax fraud often fail to maintain a valid workers’ compensation insurance policy. These decisions impose substantial financial and psychological costs on injured workers and their families, as they must deal with enormous medical bills and a loss of income that should have been covered by a workers’ compensation policy. It is a practical impossibility to know the full extent of this problem, however data from the Department of Industrial Accidents offers some perspective. For this study, the DIA provided us with de-identified data on Workers’ Compensation Trust Fund cases from 2016 to 2020; the authors focused on the 300 cases with complete data on cash settlements in the file with at least \$1,000 paid out. While the data do not allow for the definitive identification of workers’ occupation or industry on a case-by-case basis, our review of the data suggests that the state fund distributed between an estimated \$5 million and \$8 million to injured construction workers given the failure of their employing contractors to have a valid workers’ compensation insurance policy.^{146,147}

While the numbers above represent the financial impact to the Commonwealth, a review of the case files reflect a far more heartbreaking human cost. Injuries include blindness, amputations, broken spines, skull fractures, and innumerable broken bones. A substantial number of workplace accidents occur when workers fall from ladders, roofs and building tops; accidents involving table saws and nail guns also happen with unfortunate regularity. To make matters worse, some contractors’ self-interest and callousness goes beyond their failure to maintain a valid workers’ compensation policy: some cases involve the employer putting a worker in an unsafe situation and then failing to call an ambulance after the worker has suffered a devastating injury.

(3) Conclusion

The primary takeaway from this chapter is that *all* signs in the data point to the same conclusion: wage and tax fraud is endemic in the state’s construction industry. Payroll audits by the Massachusetts Department of Unemployment Assistance revealed that more than one in six construction employers were misclassifying

workers between 2017 and 2019. Further, using an indirect method of estimation, the authors estimate that 9.5% to 15.8% of the industry's workforce in 2019 was engaged in a fraudulent employment relationship. Findings of widespread illegality are consistent with government data on contract labor usage among sole proprietorships, 1099-MISC filings, and workers' compensation claims made to the Workers' Compensation Trust Fund. These issues appear especially concentrated in residential construction, a small subset of trades (carpenters, laborers, painters and roofers), and certain types of contractors (e.g., siding, framing, drywall, finish carpentry, painters).

Wage and tax fraud costs the Commonwealth substantial amounts of money. While analyses of payroll data uncovered in DUA audits confirms that the loss of tax dollars and insurance premiums undoubtedly counts into the tens of millions of dollars, an indirect method of analysis—which more broadly accounts for *all* forms of misclassification and fraud—indicates that the cost likely exceeds \$100 million annually and may be far beyond that threshold; this includes substantial revenue shortfalls in the state's unemployment insurance fund, workers' compensation insurance premiums, state income tax underreporting, and a host of other costs to taxpayers both nationally (e.g., Social Security) and in the Commonwealth.

PART THREE: HOW THE CURRENT SYSTEM FAILS WORKERS, THE INDUSTRY AND MASSACHUSETTS TAXPAYERS AND HOW WE CAN RESTORE FAIRNESS AND INTEGRITY IN RESIDENTIAL CONSTRUCTION

It is very clear that current state laws, regulatory structures and the level of public resources allocated to monitoring and enforcement have been unable to curb illegal misclassification of workers, cash payments, wage theft and tax fraud and a variety of illegal and unethical activities in residential construction. The egregious conditions we have documented on jobsites across the Commonwealth and the hyper-exploitation of undocumented workers have no place in Massachusetts. The Commonwealth has a responsibility to ensure that its laws are followed in the construction industry and that workers are not routinely asked to perform unsafe work, cheated out of their wages, or forgo access to the economic benefits enjoyed by workers classified as employees.

We have identified four areas where changes need to be made:

(1) Rebuilding a Vigorous Monitoring and Enforcement System in the Commonwealth

The regulatory structure at the federal and state level based on workers being classified as employees is deeply challenged by this new business model in non-union residential construction where the vast majority of workers are not direct employees. This reflects a larger trend with the growth of precarious work across the economy. Precisely at the moment when more resources are necessary to monitor these new workplace practices and enforce violations, the Commonwealth has not increased resources sufficiently or consistently to insure sustained monitoring and enforcement of wage theft and tax fraud.

Joanne F. Goldstein previously served as chief of the Fair Labor Division under Attorney General Martha Coakley and then as Secretary of Labor and Workforce Development in the Patrick Administration. She confirms that wage theft and tax fraud have not only become more rampant and part of the core of construction since her tenure but also that contractors, subcontractors and labor brokers have become more brazen and shameless because the law has not been updated and enforcement has not kept pace with their illegal actions. Goldstein suggests that state government needs to revisit this problem and address it by amending wage and hour laws to reflect current illegal models and practices and to dedicate more resources to enforcement.¹⁴⁸

The need for more resources is demonstrated by the activity of the Attorney General's Office in monitoring the construction industry. For example, in 2019, the last full year before the COVID-19 shutdowns, the Attorney General's Office in

Massachusetts visited only 24 construction sites. It issued 205 citations against 102 construction companies where “850 employees will receive \$1.6 million in restitution and the companies will pay nearly \$1.3 million in fines.”¹⁴⁹ This is an industry of \$22 billion in sales in 2019¹⁵⁰ with over 174,489¹⁵¹ employees and many more working off-the-books. Given the level of abuse and illegal activity we have documented, this is well below the level necessary to both compensate victims and to create deterrents to stop labor brokers and contractors from engaging in this behavior.

As Tom Flynn laments: “What little government oversight was there before, there’s none now because there’s nobody from the AG’s office working out in the field. There’s nobody that’s out in -- nobody from the USDOL, nobody from this agency, so for the unscrupulous developer it’s a license to print money.”¹⁵² A former carpenter now working in construction management concurs that onsite inspection is a top priority, “The key to this is for us, we need some more enforcement from the Department of Labor, onsite enforcement.”¹⁵³

This lack of resources is also clear in how the case against Alvarez and Combat dry-wall at the North Square Apartments played out. It was not until April 16, 2020, that the Massachusetts Attorney General’s Office issued three citations for violations of Massachusetts Wage and Hour Laws. The AG cited Alvarez Drywall, Inc. for “failure to make timely payment of wages from 4/22/2019 to 5/4/2019,” and ordered them to pay nine employees \$11,686 in restitution and to pay a civil penalty of \$2,500.¹⁵⁴ They were also cited for “Failure to furnish true and accurate payroll records to the AGO on 9/2/2019” and assessed a civil penalty of \$15,000.¹⁵⁵

In most cases the Attorney General’s practice has been to charge only the labor broker, and not the general or sub-contractors for these wage theft violations. In this case, however, the AG also charged Combat Drywall, the subcontractor with “failure to make timely payment of wages and owing from 5/06/2019 to 5/25/2019,” and it ordered them to pay restitution of \$12,291.85 and a civil penalty of \$2,000.¹⁵⁶ Charging Combat and not just Alvarez, the labor broker, is a very significant development and recognition of the role of the subcontractor in facilitating wage theft.

At the same time, however, after ten months of waiting, the nine workers will potentially receive only \$23,977.85—less than one half of what they were owed for the work they performed. They may not actually receive all these funds because labor brokers, who are not legitimate companies at all, are notorious for not making restitution and paying fines, often closing their operations and reopening up under new names to avoid liability. The restitution agreement did not indicate why the workers would receive such a small amount. In what way does this provide justice to these workers who were cheated out of their wages?

And it must be noted that the civil penalties can be incredibly small. The \$2,000 penalty for Combat was little more than a slap on the wrist, and the \$17,500 the AG assessed Alvarez can be more than covered by the money he stole from workers

and not included in the restitution he was ordered to pay. In no way do these very small penalties deter employers like Combat and Alvarez – or others like them – from engaging in illegal practices.

The Commonwealth must step up and impose much larger penalties that carry real economic costs for all levels of construction companies at a job site who engage in illegal activity. It must provide a financial incentive for employers to comply with their legal and civic obligations if we expect to change the conditions for vulnerable workers in drywall and other industries as well as for Massachusetts taxpayers. We must also renew and expand efforts to make sure that these funds are in fact collected. This action is fundamental to stopping illegal misclassification, wage theft, tax fraud and the hyper-exploitation of undocumented workers.

We should remember, however, that the Combat workers were luckier than most undocumented workers cheated out of their wages. They had the support and advocacy of Frank Gomez and other staff from NASRCC who filed the case and advocated with the AG's office on their behalf. Without any assistance by a union or a worker center, many undocumented workers would have to just accept the theft of their wages and move on.

In addition to this legal and moral imperative, there is an economic reason to rebuild our monitoring and enforcement capacity. As we have documented, under current business practices in construction, \$68.2 million to \$160.2 million in 2019 was not being paid into workers' compensation, unemployment, and state tax coffers each year. Rebuilding and reimagining a vigorous enforcement system in the Commonwealth could contribute significant funds, particularly at a time when the state is grappling with budgets deeply impacted by the Covid pandemic. We can dramatically increase monitoring and enforcement activities in such a way that the additional costs of enforcement will lead to a significant increase in funds for the state budget as well as the workers' compensation and unemployment systems.

It should be noted that the Commonwealth has a number of statutes and policies in place to combat the issues we have documented in this research. In 2004, Massachusetts passed the Independent Contractors Law [Chapter 193 of the Acts of 2004] which codified what is known as the "ABC" test used in many other states to determine independent contractor status. Under Democratic Governor Deval Patrick, Executive Order #499 created the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification in 2009 to coordinate the activities of a number of state agencies to address illegal misclassification, wage theft and the working conditions of those working in the underground economy.¹⁵⁷ The Task Force was codified in law in Chapter 144 of the Acts of 2014, changing its name to the Council on the Underground Economy (CUE). Massachusetts is one of eight states, along with the District of Columbia, that have these kinds of joint task forces. Virginia also just established its own "Worker Protection Unit."¹⁵⁸

The Joint Task Force was very successful, recovering \$21 million in the last half of 2011 and 2012, \$15.5 million in 2013 and another \$20.1 million in 2014. However, with the election of Republican Governor Charlie Baker, the commitment to combating the underground economy dropped significantly. Only \$7.8 million was recovered in 2018, which is the last year that the Council issued an annual report. The last post on their website is a notice of the only meeting held by CUE in September 2019. The current state of the Council is unclear and suggests a continuing disinterest in addressing wage theft and tax fraud.¹⁵⁹ On January 20, 2021, the Attorney General's Office expressed its concern to the Baker Administration about the effective demise of CUE and noted the need for "substantive . . . collaboration amongst the (CUE) members on how best to address the ever-growing issue of misclassification and payroll fraud in the Commonwealth."¹⁶⁰

The Administration should reinvigorate the Council on the Underground Economy (CUE) and require the Secretary of Labor and Workforce Development to fulfill the statutory mandate of the CUE. All state agency members of the CUE should similarly be required to fulfill their statutory obligations under the CUE.

(2) Holding Developers and General Contractors Responsible for What Happens on Their Jobsites

There is little opportunity under current law and practice to hold the developer and general contractor responsible for the actions of their subcontractors and the labor brokers on their jobs. The current system allows them to absolve themselves from responsibility for what happens to workers on their jobsites. Under current law, it is challenging to obtain owner liability for wages. For example, despite the egregious wage theft on the Amherst project, Beacon Communities continues their work, moving on to other developments, carrying along their claimed progressive values of providing low-cost housing.

And it's not as if Beacon remained unaware of the illegal misclassification and wage theft on the Amherst project. Goldstein, on behalf of the Carpenters Union, had been in touch several times with Howard Cohen, Chairman of the Board of Beacon Communities. In these exchanges, Beacon was advised that there were workers on the Amherst job who had not been paid for the work they performed over many hours a week for a number of weeks. "I've been having this rather interesting email exchange with Howard Cohen of Beacon—urging him to rectify the matter," Goldstein acknowledged. "Beacon professed that it was not sure what it could do despite hearing that it could (1) pay the owed wages for workers on their site and (2) develop a requirement of accountability for the contractor and subs on future sites."¹⁶¹ Goldstein suggested to Cohen that based on Beacon's professed mission and alleged adherence to doing it right, Beacon should have ensured that the owed wages were paid.

Finally, in April of 2021, nearly two years after the wage theft occurred, Beacon agreed to pay only the unpaid wages ordered by the Attorney General, but not the full back wages claimed by workers. Aside from the long lag between violation and payment, it took the release of a preliminary version of this report, press coverage and repeated overtures of NASRCC, both direct and indirect, for this payment to be made. While the workers appreciated receiving what is rightfully owed them, it shouldn't take all of these efforts to shame a developer to get involved and make even partial payment of owed wages.

In addition to not being legally responsible for the payment of workers' wages, under the current system, developers, general contractors and even subcontractors are also not held responsible for the lost tax revenue, workers' compensation insurance premiums or unemployment insurance contributions, all of which are mandated. In this way, Massachusetts taxpayers are providing massive subsidies to these developers and contractors, increasing their profitability at taxpayer expense.

There will be no serious inroads at stemming wage theft and the illegal misclassification of workers until developers and contractors are held responsible for what happens on their jobsites. In addition to statutory reform, one suggestion made of a simple mechanism to improve focus on job "oversight" would be to tie the issuance and the continuance of the building permit to compliance with wage and safety laws. As one large contractor told us:

So if someone is on a jobsite and the jobsite has a building permit or any type of agency permit pulled, it should behoove the person who's the permit holder to sign a sworn affidavit that the contractors (people) that will be working on the property will be in compliance with all federal and state laws...there should be compliance requirements so that the owner makes sure he hires contractors that are reputable, that pay state and federal wages, or it'll go back to them, that they should have to pay the back wages.¹⁶²

He continues, "It all goes back to—it's a privilege to be able to build a building in your city or town. It's a privilege for the town to give you a building permit." He makes an analogy. "It's a privilege to have a driver's license. If you drive against the laws and you become a habitual traffic offender, they will pull your license. You will not be able to drive." He suggests that the same principle be applied in construction. "If you do wrong, we (the government agency) will come and find restitution [from] anybody that has any money, that didn't pay attention to the laws."¹⁶³

David Weil has written extensively about both joint liability and successorship as part of his model of strategic enforcement he pioneered while in the Wage and Hour Division in the Department of Labor in the Obama administration.¹⁶⁴ As part of his larger thinking about supply chains in the fissured economy in the 21st century, he notes that we cannot hold on to 20th century conceptions of developers, general contractors and subcontractors as disconnected entities; instead, we must recognize their joint liability. Joint liability will shift enforcement efforts from low-

level operators with few resources and fleeting legal existence to more established firms with resources and reputations to protect. These established firms are far more vulnerable to legal sanction and corrective actions.

The Massachusetts Legislature has considered bills to address this matter in prior legislative sessions but none became law. Currently, there are bills pending in both the House and Senate to once again try to resolve this persistent problem. H. 1959 sponsored by Representative Daniel Donahue and others¹⁶⁵ and S.1179 sponsored by Senator Sal DiDomenico and others,¹⁶⁶ propose legislation to prevent wage theft, promote employer accountability, and enhance public enforcement.

In the absence of state-level legislation, several Massachusetts communities have not waited for remedies at the state level but have instituted municipal wage theft ordinances. J.T Scott was one of the councilors deeply involved in passing a wage theft ordinance in Somerville. Along with Mary Jo Rosetti, Jesse Clingan and a number of other progressive city council members, they pulled together a broad coalition of community groups and activists as well as Greater Boston Legal Services and attorneys from NASRCC and other unions to help frame a new wage theft ordinance.

One of the innovations of the Somerville ordinance is its reliance on an ongoing advisory committee. "I think the solution that is proposed in this ordinance that we are attempting [is that] it puts power back into the worker organization's hands. By creating this wage theft advisory committee that is staffed by people from these different community organizations like the Brazilian Worker Center... There are going to be people who both connect to, relate to and are very close to all these different types of wage theft that can and do happen and also gives a body the reporting center."¹⁶⁷

Janice Fine has written extensively about using civil society organization to enforce labor standards, reviewing successful examples in Austin, Los Angeles and San Francisco. She suggests that "Co-enforcement, in which government partners with organizations that have industry expertise and relationships with vulnerable workers, has the potential to manage the shifting and decentralized structures of twenty-first-century production, which were explicitly designed to evade twentieth-century laws and enforcement capabilities."¹⁶⁸ This is exactly the model codified in the Somerville ordinance and one that hold promise for larger efforts at the state level.

The ordinance in Somerville had an immediate impact. As one Carpenters union official told us:

So, we met with a developer that we have a decent relationship with ...So Metro Walls was the low bidder on the non-union side. On the union side, Universal was the low bidder, and he was \$1.3 million higher than Metro Walls. When Metro Walls got wind of the ordinance in Somerville and knew that it was going to be potentially under a microscope, his price went up almost \$800,000. So now this developer [is] saying, 'okay, fine. Now the dif-

ference is \$500,000, as opposed to \$1.2 or \$1.3. Now it's manageable. I can go to my board and say, you know what, the skill and level of professionalism and no bullshit, not getting dragged through the mud for doing this or doing that, you know what, I recommend that we come up with the extra \$500,000.'

Mandi Jo Hanneke, Cathy Shoen, Patricia C. DeAngelis are town councilors who worked to craft a wage theft ordinance in Amherst, MA. They worked closely with Lisa Clausen from NASRCC who had recently been involved in the campaigns in Springfield, Northampton, and Easthampton. They had been working on this ordinance; as word spread about the wage theft at North Square, their efforts intensified. Like the councilors in Somerville, they worked hard with a number of community partners to craft the language of the ordinance. They also came to recognize that the developers often drove the development process, coming in with boilerplate contracts that only served their own interests. As Shoen describes, it was not enough to just to have general language about wage theft, but to build it into the (municipal) contracts with developers. "If we make as a condition both of initial bidding and then if an award is made, the contract language will have an agreement to abide by the laws, then we have the tool, a penalty... get it written into the contractual agreement to the project... So, it's not just 'thou shalt not' in a bylaw."¹⁶⁹

These innovations in Somerville and Amherst provide important models that could be applied in other municipalities and state-wide.

(3) Regulation of Labor Brokers

The labor brokers that have emerged to play a central role in residential construction operate largely outside the legal system. They are not registered as businesses with the Secretary of State; they have no other business identities on the web or elsewhere. In their current form, they simply have no relationship with the Commonwealth of Massachusetts. It is as if they do not exist. And because they operate in the world of cash, their work and operations are not traceable. There's is truly an underground economy.

Such "invisibility" prevents them from being held responsible for anything that happens on a jobsite—working conditions, safety and health, and whether workers get paid appropriately in a timely manner—or, as we saw the case of the North Square Apartments in Amherst, paid at all. We have seen, in case after case, that when things get difficult the brokers just walk away. This is especially problematic when the Attorney General has ordered them to pay back wages or penalties. For example, in another case the Carpenters Union worked on regarding Pulte Homes, less than 10% of the back wages and penalties were ever paid by a number of labor brokers who were charged by the Massachusetts AG's office.¹⁷⁰ When faced with

finer, they literally shut down and reopened the same operation under a different name.

As a former carpenter who now works for a contractor told us, "If partner A has an issue, he goes, 'I got in trouble guys, and you're in charge now.' They close the company; partner B opens a company. Then as soon as partner B gets in trouble, he goes, 'Uh-oh, I'm in trouble guys,' partner C opens a company, and they just keep rolling...."¹⁷¹ Because the brokers operate completely under the radar, there is no property to seize or any other mechanisms to ensure payment of back wages and fines and there is also no way under the current regulatory structure to bar them from reentering the industry under a new name.

Each Labor Day, the Attorney General in Massachusetts issues a report that details the back wage settlement and penalties it has assessed against employers, including construction firms. What is not reported and what we don't know is in fact how many of those payments are actually made, particularly in terms of fines brought against labor brokers such as Alvarez Drywall. In their investigative piece in the *Boston Globe*, Beth Healy and Megan Woolhouse report: "Companies oftentimes fail to pay even small sums. [AG Maura] Healey's office has collected just one-third of the \$1.7 million in violations since January 2015, [amounting to] \$580,234. The bulk of the rest is under appeal or past due."¹⁷² Although the orders to pay back wages and fines are an important first step, they are only meaningful to the workers and a deterrent to future actions when the payments are made.

No serious effort at restoring fairness and integrity in residential construction is possible without the regulation of labor brokers. Even when developers and contractors are held responsible for what happens on the jobsites, the continued reliance on labor brokers will make it more likely that there will continue to be an underground economy, abuse, exploitation, and wage theft. The use of labor brokers is not only an issue in residential construction. The use of labor brokers has exploded in the United States and around the world; as these factors become central to employment in a number of industries there has been widespread calls to both license and regulate their activities.¹⁷³

The Commonwealth of Massachusetts needs to establish a system for both licensing and regulating labor brokers. The licensing process should begin with all firms registering with the Secretary of State, as we expect firms from other industries in the Commonwealth to do. Second, there needs to be a Bill of Rights for those who utilize labor brokers. This could be based upon the rights of temporary workers in Massachusetts, which has already been established in the Commonwealth.¹⁷⁴ As part of this process, there would need to be a mechanism by which labor brokers who violate these rights would be banned for some period of time from reentering the marketplace.

Finally, licensure and oversight of labor brokers must prohibit the use of cash payments. As we have seen, it is far too easy (and common) in the cash world for a

company to avoid paying taxes and engage in wage theft. As long as cash is allowed in the construction industry it will continue to be a subterfuge for illegal activity.

(4) A Path to Citizenship for Immigrant Workers

Our research confirms the hyper-exploitation of immigrant workers, many of them undocumented, at residential housing jobsites across the Commonwealth. We know that immigrant workers theoretically have the same legal rights on the job as US citizens and residents, but we have seen in practice that most undocumented workers experience no such equal treatment. Unscrupulous employers will continue to use immigration status against them, forcing them to work long hours and to undertake dangerous work while frequently underpaying them or not paying them at all. There will be no long-term remedy to restore fairness and integrity in residential construction without immigration reform.

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Supporting Organizations

UNIVERSITY OF MASSACHUSETTS AMHERST LABOR CENTER

<https://www.umass.edu/lrrc/>

For over fifty years, the University of Massachusetts Amherst Labor Center has been one of the premiere graduate programs in Labor Studies in the United States with over 1,000 graduates in key position in the Commonwealth and nationwide. In addition to our innovative graduate programs, the UMass Amherst Labor Center has an extensive program of applied and policy research. This has includes studies of: wage theft; asbestos monitoring; temporary staffing agencies and labor law; and the state of labor and employment in Massachusetts. Most recently the Center launched a Covid 19 Workplace Project.

INSTITUTE FOR CONSTRUCTION ECONOMIC RESEARCH (ICERES)

<http://iceres.org/>

The construction industry and its stakeholders face pressing long term issues regarding workforce sustainability, safety, productivity and integration of technology. The Institute for Construction Economic Research (ICERES) supports high quality research with the goal of finding and disseminating pragmatic solutions to these and other construction issues. The Institute for Construction Economic Research undertakes non-partisan research on issues facing the industry, collaborating with existing construction researchers and attracting new investigators into the field of construction research. The Institute also works to develop a network of researchers with ongoing programs on construction issues. In addition to its work in supporting research, the Institute disseminates this research with a working paper series, a web presence, and conferences.

(Endnotes)

- ¹ Jonathan Nuno, interview by author, July 10, 2019: 6-7.
- ² Jonathan Nuno, interview by author, July 10, 2019: 13.
- ³ Ricardo Xavier, interview by author, July 10, 2019: 11–12.
- ⁴ Residential construction today is not just the building of individual homes but multimillion dollars housing developments.
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- ⁶ Tom Juravich, Wage Theft at the North Square Apartments in Amherst, Massachusetts, *Working Worker Series*. [Juravich Wage Theft at North Square 6 29 20f.pdf \(umass.edu\)](https://www.umass.edu/juravich/WageTheftatNorthSquare62920f.pdf)
- ⁷ Extensive documentation of wage theft appears in a 2009 study by Annette Bernhardt and her colleagues, who surveyed 4,387 low-wage workers in three US cities: Chicago, Los Angeles, and New York. Of those surveyed, they found that more than two-thirds had experienced a pay-related violation in the previous week. Additionally, 26 percent were paid less than the minimum wage, and of those workers, 60 percent were paid more than a dollar less than the minimum wage; moreover, 76 percent of those working overtime had not been paid the legally required overtime rate. “Foreign-born Latino workers had the highest minimum wage violations of any ethnic-group” A more recent study conducted by the Economic Policy Institute focuses on just one component of wage theft: paying below minimum wage. In a survey of the 10 most populous states, it reports that workers are underpaid by more than \$8 billion, and the institute extrapolates that this would amount to more than \$15 billion dollars lost each year by workers in the country who are paid below the minimum wage.
- ⁸ Our interviews, ranging from 45 to 120 minutes long, were recorded and professionally transcribed. While some individuals requested that their name be used, the majority of quotations are anonymized for their protection. Although it is not possible in a report of this length to include statements from everyone we interviewed, our account is representative of what we learned (and from whom) during the entire process.
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- ¹⁶ Ruth Milkman, *Immigrant Labor and the New Precariat* (Cambridge: Polity Press, 2020).
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- ²⁰ <https://www.manta.com/d/mb4vc00/combat-drywall-inc>

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- ²² Jonathan Nuno, interview by author, July 10, 2020: 48–49.
- ²³ <https://metrowalls.net/executive-team>
- ²⁴ <https://www-mergentintellect-com.silk.library.umass.edu/index.php/search/companyFamily-Tree/360640424>
- ²⁵ Mergent Intellect is a major commercial database of employers in the U.S. that compiles data from the Dun and Bradstreet reports that all businesses complete on a regular basis. Their report <https://www-mergentintellect-com.silk.library.umass.edu/index.php/search/printquickreport/360640424> indicates that Metro Walls has only 52 employees which calls into question how many of “250 employees” are in fact independent contractors?
- ²⁶ Jonathan Nuno, interview by author, July 10, 2019: 6–7.
- ²⁷ Jonathan Nuno, interview by author, July 10, 2019: 13.
- ²⁸ Brian Richardson, interview by author, July 10, 2019.
- ²⁹ Jonathan Nuno, interview by author, July 10, 2019: 10–11.
- ³⁰ Carlos (pseudonym), interview by author, January 9, 2020: 10.
- ³¹ Jonathan Nuno, interview by author, July 10, 2019: 22–23.
- ³² Francisco (pseudonym), interview by author, January 9, 2020: 7.
- ³³ Combat Workers, interview by author, January 9, 2020: 9.
- ³⁴ Frank Gomez, interview by author, January 9, 2020: 15.
- ³⁵ Frank Gomez, interview by author, January 9, 2020: 5.
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- ³⁷ Wage Complaint filed by Frank Gomez, NERCC, on behalf of nine workers, July 28, 2019.
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- ⁴⁰ Brian Richardson, interview by author, July 10, 2019: 13.
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- ⁵⁵ Gladys Vega, interview by author, July 13, 2020: 22.

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- ⁵⁸ Interview by author, July 10, 2019: 4.
- ⁵⁹ Interview by author, July 10, 2019: 13.
- ⁶⁰ Martin Sanchez, interview by author, December 16, 2019: 13.
- ⁶¹ Martin Sanchez, interview by author, December 16, 2019: 13–14.
- ⁶² Jose Anaya, interview by author, July 10, 2019.
- ⁶³ Ernesto Belo, interview by author, December 12, 2019: 6.
- ⁶⁴ Brian Richardson, interview by author, July 10, 2019: 14–15.
- ⁶⁵ Jonathan Nuno, interview by author, July 10, 2019: 19–20.
- ⁶⁶ Jonathan Nuno, interview by author, July 10, 2019: 32.
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- ⁶⁹ Jonathan Nuno, interview by author, July 10, 2019: 5.
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- ⁷⁷ Frank Gomez, interview by author, December 16, 2019: 1.
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- ⁷⁹ Neal McNamara, “Man Nearly Dies After Fall at Framingham Apartment Work Site,” *The Patch*, October 14, 2019. <https://patch.com/massachusetts/framingham/man-nearly-died-after-fall-framingham-apartment-work-site>
- ⁸⁰ Frank Gomez, interview by author, December 16, 2019: 3–4.
- ⁸¹ Interview with author, July 6, 2020: 30.
- ⁸² Tom Flynn, interview by author, June 23, 2020: 13–14.
- ⁸³ Martin Sanchez, interview by author, December 16, 2019: 19.
- ⁸⁴ Tom Flynn, interview by author, June 23, 2020: 4–5.
- ⁸⁵ The only other known approach to collect direct evidence of payroll fraud has been through surveying workers on construction job sites about the legality of their employment status. These studies offer important insight and have typically revealed substantial amounts of payroll fraud occurring in the industry. While these reports reveal substantial rates of illegality—ranging from 32% to 47% of the industry—these types of studies typically feature concerns about the representativeness of the sample, the sample size, or both. For more, see: Workers Defense Project. 2013. “Building a Better Texas: Construction Conditions in the Lone Star State”; Workers Defense Project. 2009. “Building Austin, Building Injustice”; Theodore, Nik, Bethany Boggess, Jackie Cornejo, and Emily Timm. 2017. “Build a Better South: Construction Working Conditions in the Southern U.S.”; Sinai, Clayton and Ernesto Galeas. *Forthcoming*. “The Underground Economy and Wage Theft in Washington, D.C.’s Commercial Construction Sector.” Catholic Labor Network.
- ⁸⁶ This report—colloquially referred to as the “Harvard Study” as it was sponsored by the Labor and Worklife Program of Harvard Law School and the Harvard School of Public Health—was groundbreaking, as it was one of the first published studies in the nation that offered direct and demonstrable proof of widespread wage and tax fraud in the construction industry. In addition to its impact in the Commonwealth, Carrè and Wilson’s report sparked a wave of similar studies across multiple states—

Maine (2005), Illinois (2006), New York (2007), Minnesota (2007), Michigan (2009), Indiana (2010) and Virginia (2012)—in the years that followed. While we are not aware of a UI audit study that has been published since that time, a 2019 report out of Washington State used the same approach to publish the results of workers' compensation audits, which similarly demonstrated widespread fraud in the state's construction sector. For more, see: Carre, Francoise, and Randall Wilson. 2004. "The Social and Economic Costs of Employee Misclassification in Construction," Cambridge, MA: Construction Policy Research Center and Labor and Worklife Program, Harvard Law School and Harvard School of Public Health. Accessed at: <https://lwp.law.harvard.edu/publications/social-and-economic-costs-employee-misclassification-construction>. For a review of each of these studies and their findings, see Ormiston, Russell, Dale Belman, and Mark Erlich. 2020. "An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry." Accessed at: <http://icer.es.org/wp-content/uploads/2020/06/ICERES-Methodology-for-Wage-and-Tax-Fraud.pdf>.

⁸⁷ Neither random audits nor the sum of random and targeted audits is perfectly representative of the industry. A part of this is that audits are disproportionately completed of large construction employers, an outcome that will be explored later in the paper. That issue aside, employers who are the recipients of an audit are typically exempt from a random audit for up to three years; this means that the results of random audits are likely excluding a small number of firms who were subject to a targeted audit within the past three years. In other words, while random selection is often seen as a way of identifying the most representative sample of firms—and it is our preferred method in this study—there are reasons to believe that restricting the analysis to random audits would undercount the amount of worker misclassification. Conversely, the sum of random and targeted audits would be expected to overestimate the amount of worker misclassification (since it overweights the worst offenders), assuming that the underlying population of firms was representative of the industry as a whole. Finally, note that the 2004 Harvard Study referred to the random audit totals as the "Low Estimate" and the combination of random and targeted audits as the "Moderate Estimate."

⁸⁸ The fact that the sum of random and targeted audits produces higher estimates of worker misclassification than random audits alone is unsurprising. Construction employers scrutinized by the DUA via a targeted audit are substantially more likely to be committing illegal labor practices (50.0% of construction employers) than firms identified through a random audit (16.8%).

⁸⁹ Representatives from the Massachusetts Department of Unemployment Assistance note that "misclassification" includes both workers falsely receiving a 1099-MISC instead of a W-2 as well as others who may be paid off-the-books. However, in the authors' conversations with multiple individuals from the DUA, it seems that misclassified independent contractors are much easier to detect in the auditing process and are likely to make up a substantial portion of the total even if we were not provided with a breakdown of each category.

⁹⁰ This number is calculated by dividing the number of misclassified workers (numerator) by the sum of legitimately classified wage-and-salary workers and the number of misclassified workers (denominator); this is the approach taken in most state studies presenting UI audit results and this study follows that lead. However, later calculations in this paper will also include the self-employed in the denominator in order to estimate the overall proportion of the industry's workforce.

⁹¹ The results of the random audits reflect a ratio of 14.07 legitimate wage-and-salary construction workers for every one misclassified worker in the industry. The Massachusetts DUA's Labor Market Information portal suggests that there were 163,106 private-sector wage-and-salary workers in the state's construction sector in 2019; this ratio leads to an estimated 11,013 workers affected by payroll fraud. For more on LMI data, see: <https://lmi.dua.eol.mass.gov/lmi/EmploymentAndWages>.

⁹² Between 2017 and 2019, the DUA conducted thousands of audits across all industries in Massachusetts. Across all industries—including construction—the results of random audits reflect that 15.3% of employers were discovered to be misclassifying workers. Firms who were determined to be misclassifying did so extensively, as there were 13.1 affected employees, on average, among firms who were classifying workers incorrectly. Altogether, the results suggest that 6.2% of all employees in Massachusetts were affected by misclassification; extrapolating that against the number of private-sector employees in the Commonwealth in 2019, this suggests that misclassification affected an estimated 211,249 workers that year statewide. This number is calculated by multiplying the rate of misclassification (1 misclassified worker for each 15.2 legitimate wage-and-salary employee) by the number of private-sector employees in the state as presented by the Massachusetts DUA's Labor Market Information portal (3,201,289 in 2019).

⁹³ Predictably, the inclusion of targeted audits increases the rate of discovered misclassification when reviewing the DUA results across all industries for 2017 through 2019. Summing random and targeted audits, the results suggest that 16.5% of all employers were misclassifying, affecting 9.4% of private-sector employees in the state (or 330,060 workers). We suggest caution, however, when using the sum of random and targeted audits to represent the all-industry total. As discussed in a previous endnote, the inclusion of firms subject to targeted audits—where there are reasons to suspect that an employer is misclassifying before the audit—undermines the representativeness of the sample and results in presumed overestimation of statewide misclassification. This appears especially true in the all-industry totals. While 15.3% of businesses subject to a random audit were found to be misclassifying (averaging 13.1 workers per offending firm), those subject to a targeted audit were far more likely to be engaged in widespread illegality: 57.5% of firms were misclassifying, averaging 73.1 affected workers per offending firm. The substantial gap between these two totals is not unexpected, however this would cause the sum of random and targeted audits to overstate the extent of misclassification across all of Massachusetts.

⁹⁴ When combining random and targeted audits, the proportion of construction employers committing worker misclassification was higher in 2001-03 (24%) than in 2017-19 (17.9%). However, given that the authors do not know the proportion of targeted audits that made up this estimate in 2001-03, they cannot be sure whether that is reflective of a trend or simply the outcome of the DUA conducting relatively more targeted outcomes in 2001-03. As such, a comparison of random audit totals represents a more apples-to-apples comparison between years.

⁹⁵ Using a mix of random and targeted audits, the Harvard Study suggested that offending employers were misclassifying 48% of the workforce.

⁹⁶ Subsectors are identified using four-digit NAICS codes, or the North American Industrial Classification System. The authors have access to industry codes 2361XX (Residential Building Construction), 2381XX (Foundation, Structure, and Building Exterior Contractors), 2382XX (Building Equipment Contractors), and 2383XX (Building Finishing Contractors). While there are other four-digit NAICS codes within the construction industry, results for these subsectors were not made available to the authors due to DUA disclosure rules. A full composition of each subsector is as follows: Residential Building Construction (Single-Family Housing Construction; Multifamily Housing Construction; New Housing For-Sale; Residential Remodelers); Foundation, Structure, and Building Exterior Contractors (Poured Concrete Foundation and Structure; Structural Steel and Precast Concrete; Framing; Masonry; Glass and Glazing; Roofing; Siding; Other); Building Equipment Contractors (Electrical; Plumbing, Heating and Air Conditioning; Other); and Building Finishing Contractors (Drywall and Insulation; Painting and Wall Covering; Flooring; Tile and Terrazzo; Finish Carpentry; Other).

⁹⁷ The only study known to the authors that had audit results for subsectors within the construction industry was a 2007 report by the Office of the Legislative Auditor in the State of Minnesota. The report noted that 15% of construction employers were found to be engaging in worker misclassification, with the highest rates in roofing (38%) and drywall installation (31%). Unfortunately, data at this granular level of the industry were not available to the authors for Massachusetts due to DUA disclosure rules prohibiting the public dissemination of results where it would be possible to identify individual firms. For more, see: Office of the Legislative Auditor. 2007. "Misclassification of Employees as Independent Contractors," State of Minnesota. <https://www.leg.state.mn.us/docs/2007/other/070704.pdf>

⁹⁸ The fact that the DUA audit data does not represent a complete estimate of all payroll fraud in the industry should in no way be an indictment of the agency's work. First, it may be that the goals of the DUA are to maximize their limited resources to identify as much worker misclassification as possible, rather than to conduct a representative "census" of the industry. Second, our conversations with industry stakeholders and regulators inside and outside of Massachusetts highlight that identifying cash-only arrangements and accessing small employers is a national problem and is not reflective of deficiencies in the DUA's work.

⁹⁹ DUA auditors may be successful in identifying a labor broker's workers if visiting a job site, but Chapter 1 of this report makes clear that a direct audit of labor brokers would reveal substantially more numbers of workers who are operating off-the-books. Further, Chapter 1 highlights the extent that contractors and labor brokers often go in order to conceal these workers from government auditors and regulators.

¹⁰⁰ Conversations with multiple DUA officials have confirmed the difficulty of proving cash-only employment compared to misclassified workers hired using a 1099-MISC form; this outcome should be of little surprise given the lengths some contractors will go to conceal their actions (e.g., the purported practices of Metro Walls offered in Chapter 1).

¹⁰¹ Small employers comprise a substantial part of the Massachusetts construction industry, as more than two-thirds of firms had five or fewer employees as of the first quarter of 2019. For more, see: https://data.bls.gov/cew/apps/data_views/data_views.htm#tab=Tables.

¹⁰² Source: Author's conversation with DUA auditor, March 12, 2021.

¹⁰³ The average private-sector, UI-paying construction employer in Massachusetts had 7.6 employees in 2019; meanwhile, the average construction business for which a random audit was completed in 2017-19 had 25.0 employees (pre-audit total). The former number is calculated from the Massachusetts DUA web site, which lists 21,389 private-sector construction establishments in 2019 employing an average 163,106 workers on a monthly basis (7.6 workers per firm). For more, see: <https://lmi.dua.eol.mass.gov/LMI/EmploymentAndWages>.

¹⁰⁴ As discussed in the Appendix, this method relies on the critical assumption that the industry codes inputted on worker surveys and submitted by employers are identified and coded correctly. In terms of worker surveys, there is research identifying that it is not uncommon for workers' occupations to be miscoded; we presume similar findings may occur for workers' industries. Similarly, our conversations with DOR representatives in the course of this research revealed that employers' industry classifications may evolve over time without the companies updating their industry code from their initial time of registration with the state; further, it is possible that construction employers may be strategic in how they classify their industry code on state and federal forms. While these issues are likely to affect the employment estimates in some way, there are no known credible assessments of the net effect *in construction*. As a result, we assume the net effect is zero and that the data utilized in this study are accurate, a presumption bolstered by the fact that the data sets are extracted from two government agencies—the Census Bureau and the Bureau of Labor Statistics—that represent the gold standard for large-scale data collection in the United States.

¹⁰⁵ One methodological complication is that the difference between worker surveys (which offers “total employment”) and payroll records (which presents “legal wage-and-salary employment”) includes both legal self-employment and illegal self-employment (i.e., misclassified independent contractors and off-the-books workers). Unfortunately, there is no clear way of distinguishing between legal and illegal self-employment in this data. For a full discussion of this issue and all of the approaches used to navigate this issue, see Ormiston, Russell, Dale Belman, and Mark Erlich. 2020. “An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry.”

¹⁰⁶ For more, see Ormiston, Russell, Dale Belman, and Mark Erlich. 2020. “An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry.”

¹⁰⁷ As a starting point of the analysis, the results suggest that worker surveys reflected 57,373 more construction jobs than were presented in contractors' payrolls submitted to the DUA in 2019. For more on how this was used to produce the specific estimates of how many of these were misclassified workers, see Appendix A.

¹⁰⁸ The estimated proportion in this section—and throughout the rest of the chapter—include all construction workers in the denominator, including the self-employed. This differs slightly from the discussion of DUA audits earlier in the chapter, as the authors wished to remain consistent with the approach featured in the 2004 Harvard Study and other state-specific studies using UI audits.

¹⁰⁹ We have heard numerous anecdotal reports—inside and outside of Massachusetts—about construction workers who are W-2 employees but who receive a considerable amount of compensation in cash that is unreported on income and tax documentation. While it could be argued that these workers should be counted as “misclassified” or otherwise employed via illegal means, we do not have any empirical data to inform us how often this occurs. As a result, this method treats anyone who receives a W-2 as a legitimate employee (i.e., not misclassified). This decision lends further support to the hypothesis that our estimates of worker misclassification may undercount the extent of the problem.

¹¹⁰ For more, see Cooke, Oliver, Deborah Figart, and John Froomjian. 2016. “The Underground Construction Economy in New Jersey”; Liu, Yvonne Yen, Daniel Flaming, and Patrick Burns. 2014. “Sinking Underground: The Growing Informal Economy in California Construction”; Canak, William, and Randall Adams. 2010. “Misclassified Construction Employees in Tennessee.”

¹¹¹ Of primary importance, research by Katherine Abraham (University of Maryland) has shown that a similar household survey to the ACS—the Current Population Survey—understates the number of jobs in the economy. In essence, some survey respondents simply failed to acknowledge that a household member works for money. For example, in a 2019 paper by Abraham and Ashley Amaya, it was shown that the CPS missed an estimated 21.9% of informal jobs (including 13.0% of informal work lasting more than four hours per week). Findings that household surveys such as the ACS undercounts the number of jobs has a direct effect on the current study; this conclusion would mean that the number of self-reported jobs unaccounted for by payroll records would be substantially larger than the projections in this paper. This would subsequently mean that the indirect method *underestimates* the gap between worker surveys and employer payroll records, thereby *undercounting* payroll fraud in the construction industry. This exact conclusion was offered directly to the authors by Abraham, as she reviewed the 2020 ICERES study when it was presented at the national 2021 Labor and Employment Relations Association (LERA) conference. However, while her research would support the decision to increase the estimates offered in this study, the authors choose not to make such an adjustment (a) in order to remain true to conservative assumptions in the face of statistical uncertainty, (b) the uncertainty of differences between the CPS and ACS, and (c) because Abraham’s findings are not construction-specific, meaning that the economy-wide average may not be perfectly applicable to construction. For more, see Abraham, Katherine, and Ashley Amaya. 2019. “Probing for Informal Work Activity,” *Journal of Official Statistics*, 35(3), 487-508; Abraham, Katherine, John C. Haltiwanger, Claire Hou, Kristin Sandusky, and James R. Speltzer. 2020. “Reconciling Survey and Administrative Measures of Self-Employment.”

¹¹² There are two studies using worker surveys that are particular compelling for this study. First, a 2017 study surveyed 1,435 construction workers—by far the largest sample in this type of study—and concluded that 32% of workers in six Southern cities were either misclassified or working off the books. Meanwhile, a forthcoming study by the Catholic Labor Network featured survey results from 79 construction workers on *commercial* construction sites in Washington, D.C.; the results showed that 47% were either misclassified or working off-the-books. For more, see Theodore, Nik, Bethany Boggess, Jackie Cornejo, and Emily Timm. 2017. “Build a Better South: Construction Working Conditions in the Southern U.S.”; Sinai, Clayton and Ernesto Galeas. Forthcoming. “The Underground Economy and Wage Theft in Washington, D.C.’s Commercial Construction Sector.” Catholic Labor Network.

¹¹³ The Massachusetts Department of Revenue has access to *all* 1099-MISC filings through its interface with the Internal Revenue Service, however the IRS maintains control over the federal database and did not grant the author’s access. This was unsurprising, as access to IRS records typically involves a long and lengthy application-and-review process. As such, the 1099-MISC data in this study capture only filings made directly to the DOR.

¹¹⁴ This outcome is not the fault of the DOR: research from the IRS shows income underreporting is far more common among non-W-2 employees on a national basis. For more, see: Internal Revenue Service. 2016. “Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010.” IRS Publication 1415; <https://www.irs.gov/pub/irs-soi/p1415.pdf>.

¹¹⁵ There are multiple reasons why Massachusetts residents may not file income taxes. First, residents making less than \$8,000 per year are not required to file; while this may account for some non-filers, it certainly does not represent the majority of cases. Between 2016 and 2019, DOR records reveal that there were 4,244 forms issued to Massachusetts residents for \$8,000 or more using Social Security Numbers that never appeared on a state tax return. In other words, a minimum of 17% of 1099-MISC forms were issued to Social Security Numbers that were not featured in state income tax filings with the DOR despite the dollar value automatically triggering the need for taxes to be filed. A second potential problem that may explain non-filing behavior is that some businesses list their identification type as a Social Security Number, but their tax filings appear in the corporate tax system of the DOR; in other words, they are counted as “non-filers” when SSNs are compared to personal income tax forms, but the entity may have legitimately filed its taxes. This would inflate the total number of non-filers among personal income tax records. Conversations with DOR representatives reflect that this does affect a decent number of businesses, however, not enough to dramatically alter the estimated non-filing percentage or the conclusion that there are thousands of Massachusetts construction workers who were issued 1099-MISC forms but who simply failed to file income tax returns with the Department of Revenue.

¹¹⁶ The authors do not have an exact figure for how many non-filers were done for legitimate reasons; as such, this study cannot accurately give a precise projection of the proportion of non-filers are due to tax fraud.

¹¹⁷ In many parts of the country, contractors have been discovered to fraudulently “rent” a workers compensation policy to be able to win a contract. In this scenario, a shell company purchases a cheap workers compensation insurance policy under the false pretenses that it is a small construction firm in a relatively safe sector (to lower the cost of the premiums). The owner of the shell company then “rents” their policy out to numerous contractors—both “legitimate” and off-the-book types—in order to allow them to secure work on projects (which often require proof of insurance). This means that the original policy may covers scores of workers across many different contractors, with the payments between the shell company owner and the contractors renting the coverage routed through check-cashing operations to avoid regulatory detection. In Florida, a task force of government agencies, insurance companies, construction unions, and employers estimated that the scheme could be defrauding the state close to \$1 billion annually. For more, see Ormiston, Russell, Dale Belman, Julie Brockman, and Matt Hinkel. 2020. “Rebuilding Residential Construction,” In P. Osterman (Ed.), *Creating Good Jobs: An Industry-Based Strategy*, MIT Press; “A Report by the Money Service Business Facilitated–Workers’ Compensation Fraud Work Group,” https://www.myfloridacfo.com/siteDocs/MoneyServiceBusiness/WC_MSBReport-Rec.pdf.

¹¹⁸ Results generated from the authors’ analysis of the 2017 through 2020 annual reports of the Workers’ Compensation Advisory Council. For more, see: <https://www.mass.gov/lists/workers-compensation-advisory-council-annual-reports>.

¹¹⁹ This number comes from the authors’ assessment of page 24 of “Using Massachusetts Workers’ Compensation Data to Identify Priorities for Preventing Occupational Injuries and Illnesses among Private Sector Workers,” a report published in 2019 by the Massachusetts Department of Industrial Accidents, the Massachusetts Department of Public Health and the Massachusetts Department of Labor Standards. For more, see: <https://www.mass.gov/doc/dph-dia-and-dls-release-new-study-on-utilization-of-workers-compensation-data/download>.

¹²⁰ These results are also consistent with the conclusion of the academic research that injury rates are substantially higher on job sites overseen by contractors who cut corners and are less committed to safety. The link between a workplace commitment to safety and lower injury rates in the construction industry is typically supported by studies showing that injury rates are far lower among union contractors than non-union contractors, despite the former working on inherently more dangerous projects. As an example, a 2021 study by the Ontario Construction Secretariat showed that unionization in construction was linked with a 31% decline in lost time allowed injury claims in Canada. For more, see Robson, Lynda, Victoria Landsman, Desiree Latour-Villamil, Hyunmi Lee, and Cameron Mustard. 2021. “Updating a Study on the Union Effect on Safety in the ICI Construction Sector,” Institute for Work and Health; Zullo, Rolland. 2011. “Right-to-Work Laws and Fatalities in Construction.” Ann Arbor, MI: Institute for Research on Labor, Employment, and the Economy, University of Michigan; Miller, Harry, Tara Hill, Kris Mason, and John Gaal. 2013. “An Analysis of Safety Culture & Safety Training: Comparing the Impact of Union, Non-Union, and Right-to-Work Construction Venues.” *Online Journal of Workforce Education and Development*, Vol. VI, No. 2; Weil, David. 1992. “Building safety: The Role of Construction Unions in the Enforcement of OSHA.” *Journal of Labor Research*, Vol. 13, Issue 1, pp. 121-132; Gillen, Marion, David Baltz, Margy Gassel, Luz Kirsch, and Diane Vaccaro. 2002. “Perceived Safety Climate, Job Demands, and Coworker Support among Union and Nonunion Injured Construction Workers.” *Journal of Safety Research*, Vol. 33, No. 1, pp. 33-51.

¹²¹ The starting point of the indirect method of estimating the prevalence of payroll fraud is the American Community Survey, a survey designed to ask workers about their employment situation. Unfortunately, the ACS—and all other Census household surveys—do not provide industry codes about workers’ employer beyond “construction.” Thus, while other data government sources feature subsector codes (e.g., drywall contractor) based on the North American Industrial Classification System (NAICS), Census worker surveys do not. This incongruity means that the indirect method cannot be estimated for subsectors of the construction industry.

¹²² The difference will also include workers who are employed by staffing agencies. While the 2019 OES indicates that there were 840 workers in construction occupations working legally for staffing agencies, the data does not offer enough detail to assign these 840 workers to specific trades.

¹²³ The authors' analysis of the ACS using data from IPUMS reflects overall construction industry employment levels in Massachusetts that are approximately 2% higher than what is represented on the Census's ACS web site (when comparing industry employment among state residents). It is unclear what is behind this minor inconsistency. However, this concern is at the statistical margin and is offset by the fact that second job holding in the national construction industry is about 2%; this would suggest that these authors' estimates may better approximate total industry employment given that the Census's web site only reflects the industry of a person's primary job. American Community Survey data extracted from ipums.org: Steven Ruggles, Sarah Flood, Ronald Goeken, Josiah Grover, Erin Meyer, Jose Pacas and Matthew Sobek. IPUMS USA: Version 10.0 [dataset]. Minneapolis, MN: IPUMS, 2020. Occupational Employment Statistics data extracted from: https://www.bls.gov/oes/2019/may/oes_research_estimates.htm.

¹²⁴ As an example, the authors proposed the conclusion that painters, carpenters and laborers are most affected by payroll fraud to a large group of union organizers who are on construction sites regularly. There was near-unanimous agreement that these three trades were the ones in which fraud is most prevalent. (Source: Author's notes from a conversation with NASRCC organizers, Boston, Mass., February 24, 2020).

¹²⁵ There are numerous reasons to be concerned about occupational comparisons between the American Community Survey (worker survey) and the Occupational Employment Statistics (employer survey). Worker surveys are notorious for occupational coding errors—meaning respondents are assigned an occupation in the survey that does not represent their true job duties—that make the outcomes less reliable. Further, there are temporal differences between surveys that may be generating some of the differences. The 2019 OES survey is actually the result of six panels of surveys ranging from 2016 through 2019 (November 2016, November and May 2017 and 2018, and May 2019). To adjust for this, we weight the annual ACS estimates to reflect the timing of the OES. Nevertheless, given that the ACS is an annual survey while the OES is taken at specific points in time, it is expected that there will be some error related to discrepancies in the timing of each survey. For more, see (among others): Mathiowetz, Nancy A. 1992. "Errors in Reports of Occupation," *The Public Opinion Quarterly*, 56(3), pp. 352-355; Kambourov, Gueorgui, and Iourii Manovskii. 2010. "A Cautionary Note on Using (March) CPS and PSID Data to Study Worker Mobility,"; and https://www.bls.gov/oes/current/oes_tec.htm. <https://www.sas.upenn.edu/~manovski/papers/CautionaryNote.pdf>.

¹²⁶ As another concern, the last row of Table A denotes that, in both the worker and employers' surveys, first-line construction supervisors are categorized without regard to trade. If some these individuals also work as tradespeople on the jobsite, their inclusion in the employment numbers would increase the size of the discrepancy among carpenters in Table A but may decrease the estimated proportion.

¹²⁷ While this may be the first known study of payroll fraud in the construction industry that has access to tax data, it is acknowledged that this analysis excludes the labor practices of corporations. While the authors have data on the number of returns and gross receipts among corporations by industry code, there is no method of identifying their usage of contract labor in tax returns. The authors were provided similar data on partnerships, however there were relatively few of them in many industry codes, to the point where individual firms could be identified. Further, questions about contract labor differ markedly on tax filings for partnerships compared to sole proprietorships; as such, the authors could not be sure that it was measuring the same outcomes as the questions on Schedule C for sole proprietorships. Given these issues, partnerships were excluded from the analysis. While these empirical issues limited this study's direct analysis to sole proprietorships, Appendix C offers some perspective on the broader trends in this data even if they are not directly connected to issues of payroll fraud.

¹²⁸ The 2019 Massachusetts Schedule C form can be accessed here: <https://www.mass.gov/doc/2019-schedule-c-massachusetts-profit-or-loss-from-business/download>.

¹²⁹ The initial focus on specialty trades contractors was to minimize concerns about firms playing different roles in the subcontracting chain (e.g., a comparison between a home builder vs. a drywall contractor). All specialty trades contractors have a similar industry code (their NAICS code starts with "238"). Table 5 only includes the results from industry codes featuring at least 100 companies. Finally, this analysis excludes thousands of firms who are identified in the category of "Other Specialty Trades Contractors," as the type of work included in this category is too varied to draw any conclusions about the results.

¹³⁰ It is expected that the values in Table 5 understate the amount of contract labor employed by sole proprietorships in Massachusetts, as it is expected that contractors who operate entirely on a cash-only basis (i.e., hiring contract labor) will not file tax returns. It is further expected that non filers are likely to be disproportionately featured in framing, drywall, and other contractor types featured in the “high contract labor usage” group; this effect would thus further exacerbate the disparity between the two groups of contractors in Table 5.

¹³¹ The proportion of wages paid by residential contractors within an employer category is the best available signal of the residential/nonresidential split within a subsector. The data comes from the 2019 Quarterly Census of Employment and Wages, available from the QCEW data viewer: https://data.bls.gov/cew/apps/data_views/data_views.htm. While the proportions are available for Massachusetts construction employers (instead of at the national level), there were some contractor categories that featured small values for the number of firms in the UI system in the state totals (e.g., nonresidential framing and nonresidential siding contractors). As a result, the authors chose to use national data so as better approximate the type of work performed. Nevertheless, the use of state vs. national values do not qualitatively change the conclusions offered.

¹³² Regression analyses connecting the contract-labor-to-wage ratio (y-variable) and the proportion of wages paid by residential contractors (x-variable) indicate that the correlation is statistically significant with greater than 99% confidence. Excluding siding contractors, the results suggest that a one percentage point increase in the proportion of wages paid by residential firms in a contractor category is linked to an expected 0.033 increase in the contract-labor-to-wage ratio ($p=0.0031$). Including siding contractors into the analysis raises the effect to 0.058 and the regression coefficient continues to be statistically significant with greater than 99% confidence ($p=0.0013$).

¹³³ For more, see: Belman, Dale, and Aaron Sojourner. 2019. “Economic Analysis of Incentives to Fraudulently Misclassify Employees in District of Columbia Construction,” Office of the Attorney General for the District of Columbia.

¹³⁴ These numbers are generated as follows. First, the DUA reported to the authors that the average construction employer paid 7.37% on the first \$15,000 of an employee’s wages into the state UI fund in 2019. Second, the Workers’ Compensation Rating and Inspection Bureau of Massachusetts reported publicly that construction employers paid an average of \$4.742 per \$100 payroll for workers compensation insurance coverage in 2019. Third, the authors’ analysis of the National Compensation Survey reflects that 2.4727% of employee wages in construction on a national basis are derived from overtime and premium pay (i.e., the “half” in “time-and-a-half”); the calculations offered assume that workers affected by payroll fraud have the same weekly work hours as regular employees. For more, see: https://www.wcribma.org/mass/IndustryInformation/RateFiling/2020/WCRIBMA_Filing/Filing_2020.pdf and <https://www.bls.gov/web/ecec/ececqrtn.pdf>.

¹³⁵ These estimates were generated by first calculating the economic costs on a per-worker basis then multiplying those values the total number of workers affected. This step may slightly overstate the costs for programs—such as the state UI system and FICA taxes—where social contributions phase out after a certain income level. In Massachusetts, this is likely to most affect UI contributions, which are only required on the first \$15,000 of an employee’s taxable wages. Since the average per-worker earnings of affected workers do not exceed \$15,000, it is assumed that the employer must pay UI contributions on every dollar earned by the employee. But it is likely that there is a wide distribution in the earnings of affected workers, meaning that UI contributions would not be collected for some employees once they reach that income threshold. However, since we have no information on the proportion of workers who exceed this threshold, we assume that all workers earn the industry average.

¹³⁶ This approach generally follows three steps: (1) making assumptions about what affected workers would have earned in the legitimate construction economy, (2) calculating the per-worker costs of wage and tax fraud and (3) multiplying the per-worker costs by the number of workers presumed to be affected. The use of assumptions—even ones carefully and conservatively selected—is recognized to introduce a nontrivial margin of error into the projections, an unsurprising outcome considering that we are tasked with assessing the costs of something that occurs largely in the shadows of the economy. A full overview of this approach and its application to Massachusetts is presented in Appendix D. For more, see: Belman, Dale, and Aaron Sojourner. 2019. “Economic Analysis of Incentives to Fraudulently Misclassify Employees in District of Columbia Construction,” Office of the Attorney General for the District of Columbia; Ormiston, Russell, Dale Belman, and Mark Erlich. 2020. “An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry.”

¹³⁷ This number (\$35,200) represents the 10th percentile of annual earnings in construction *occupations* among those legally employed by Massachusetts employers in 2019. There are numerous reasons supporting the use of the 10th percentile as a starting point in this analysis. First and foremost, it is recognized that construction workers most often affected by payroll fraud are in lower-skill, lower-paying jobs. Second, an analysis of the American Community Survey reveals that this number nearly matches the 25th percentile of earnings (\$35,000) of all construction-industry workers in Massachusetts in 2019, a number that includes misclassified independent contractors and off-the-books workers. Further, among construction workers in the four most affected trades identified in the main report—painters, carpenters, laborers, and roofers—this value (\$35,200) is between the 35th and 40th percentile of earnings in Massachusetts according to the ACS. Additionally, this value approximates the median earnings (\$35,000) of non-incorporated self-employed construction workers in the Commonwealth in 2019, who are often considered the group in national survey data that is most likely to feature misclassified independent contractors and off-the-books workers. Finally, our conversations with industry stakeholders suggests that hourly wage rates of \$17 to \$22 per hour are rather common for off-the-books workers (equating to \$34,000 to \$44,000 annually for an individual working 2,000 hours in a year).

¹³⁸ The use of the 25th percentile (\$44,960) of earnings among those legally employed in construction occupations in Massachusetts was also considered because (a) the 25th percentile has been the choice in other similar studies and (b) it recognizes that there are some high-skill, high-wage workers who also are employed off-the-books. However, we had concerns about only presenting the 25th percentile in Massachusetts because the state features the third-highest level of earnings in construction occupations at the 25th percentile in the United States (trailing only Alaska and Hawaii). Data for occupational earnings among Massachusetts employers for 2019 can be found at: <https://www.bls.gov/oes/tables.htm>.

¹³⁹ In a 2016 report, the IRS noted that only 1% of W-2 earnings were misreported on tax forms; in contract, the agency assessed that 64% of nonfarm proprietor income—which is subject to “little to no information reporting”—is underreported on tax forms. For more, see: Internal Revenue Service. 2016. “Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010.” IRS Publication 1415.

¹⁴⁰ The 1% starting point for the value of wage theft was loosely based on back-of-the-envelope calculations in analyzing worker surveys among construction workers in Texas. For more, see: Workers Defense Project. 2013. “Building a Better Texas: Construction Conditions in the Lone Star State”; Workers Defense Project. 2009. “Building Austin, Building Injustice.”

¹⁴¹ Among other issues, data limitations inhibit the empirical assessment of two critical *indirect* costs of payroll fraud: lost profitability by law-abiding employers and the potential decline in wages among workers in the legitimate sectors of the economy. To the authors’ knowledge, there has not been an academic study of either of these issues. Basic economic theory would strongly suggest that payroll fraud would be destructive to most entities in the legitimate construction sector, with the damage especially concentrated in trades most affected by fraud (e.g., carpenters, painters, laborers). This would include, but not be limited to, fewer work opportunities and lower wages amongst those in “legal” work situations. That said, the authors cannot rule out that a small number of entities in the law-abiding construction sector may experience some benefits (i.e., those in relatively protected trades benefitting from an increase in construction projects made possible by cheaper overall costs in other sectors).

¹⁴² As identified in Appendix B, the average 1099-MISC filed with the DOR between 2016 and 2019 was for \$20,146 in non-employee compensation. Given that this total also includes an unknown number of 1099-MISCs issued to businesses—and not individual workers—we suspect that this total is a bit larger than the average if the files were restricted to individual workers.

¹⁴³ Of most concern, a business that accidentally uses a 1099-MISC and a personal Social Security Number to secure a contract and then submits corporate (not personal) income taxes to the DOR would be considered a “non-filer” in this data. DOR representatives highlight that is not a rare occurrence, although we do not have data to confirm an exact proportion. Given that income generated by a business on a 1099-MISC is expected to be substantially larger than the earnings provided to an individual worker, we would anticipate that this problem affects the missing money much more than the number of 1099-MISCs issued.

¹⁴⁴ The authors also do not find it coincidental that the trades with the lowest dollar values of 1099-MISC forms (e.g., electrical contractors) often feature some of the lowest rates of payroll fraud as estimated earlier in this study. The data on 1099-MISC are too incomplete to make any conclusive statements, however. For more information 1099-MISC by trades, see Appendix B.

¹⁴⁵ As evidence, these findings are consistent with a 2016 IRS study that noted that a wide disparity in income underreporting rates between jobs featuring a W-2 and positions that do not. For more, see: Internal Revenue Service. 2016. "Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010." IRS Publication 1415; <https://www.irs.gov/pub/irs-soi/p1415.pdf>.

¹⁴⁶ The data features a description of the accident and the employer for all cases; however industry data is not included and occupational information is provided for most, but not all, cases. Further, occupation data is both ambiguous—"laborers" seem to be represented in many industries—and at times inconsistent (i.e., a listed occupation does not match the incident description). Further, additional ambiguity exists because some of the listed employers are listed as individuals; this could either be a boss' name or an off-the-books employer.

¹⁴⁷ At least a part of this money comes the DIA's issuance of fines related to Stop Work Orders (SWO) when the agency gets reports that a company does not have a valid workers' compensation insurance policy. In fiscal year 2019, the DIA issued 2,028 SWO; such an order has particular consequences in construction, as businesses issued a Stop Work Order are placed on the DIA Debarment List and are thus prevented from bidding on state or municipal funded contracts for three years. For more, see: <https://www.mass.gov/doc/fy-2019-annual-report/download>, <https://www.mass.gov/service-details/debarment-list-businesses-ineligible-to-bid-on-state-or-municipally-funded-contracts>.

¹⁴⁸ Joanne F. Goldstein, interview by author, May 3, 2021.

¹⁴⁹ "AG Healy Assesses Nearly \$3 Million in Penalties and Back Wages Against Construction Companies in 2019" <https://www.mass.gov/news/ag-healey-assesses-nearly-3-million-in-penalties-and-back-wages-against-construction-companies-in-2019>

¹⁵⁰ Bureau of Economic Analysis; data series SQGDP2; <https://www.bea.gov/data/gdp/gdp-state>

¹⁵¹ Massachusetts DUA

¹⁵² Tom Flynn, interview by author, June 23, 2020: 22.

¹⁵³ Interview by author July 6, 2020: 33

¹⁵⁴ Citation for Violation of Massachusetts Wage and Hours Laws, Alvarez Drywall, 4/16/2020.

¹⁵⁵ Citation for Violation of Massachusetts Wage and Hours Laws, Alvarez Drywall, 4/16/2020.

¹⁵⁶ Citation for Violation of Massachusetts Wage and Hours Laws, Combat Drywall, 4/16/2020.

¹⁵⁷ <https://www.mass.gov/doc/cue-annual-report-2018/download>

¹⁵⁸ <https://www.oag.state.va.us/media-center/news-releases/1969-march-3-2021-herring-creates-virginia-s-first-attorney-general-s-worker-protection-unit>

¹⁵⁹ <https://www.mass.gov/orgs/the-council-on-the-underground-economy-cue>

¹⁶⁰ Letter from Massachusetts Office of the Attorney General Secretary Rosalin Acosta, Executive office of Labor and Workforce Development, January 20, 2021. To date, there has not been a response according to Correspondence from Lauren Moran to Joanne Goldstein, chief of FLD, April 23, 2021.

¹⁶¹ Joann Goldstein, interview by author July 10, 2019, 33.

¹⁶² Contractor interview by author, July 14, 2020: 4.

¹⁶³ Contractor, interview by author, July 14, 2020: 17.

¹⁶⁴ David Weil, "Creating a Strategic Enforcement Approach to Address Wage Theft; One Academic's journey in Organization Change," *Journal of Industrial Relations*, April 20, 2018.

¹⁶⁵ <https://malegislature.gov/Bills/192/H1959>

¹⁶⁶ <https://malegislature.gov/Bills/192/S1179>

¹⁶⁷ J. T. Scott, interview by author, January 6, 2021.

¹⁶⁸ Janice Fine, "Enforcing Labor Standards in Partnership with Civil Society: Can Co-enforcement Succeed Where the State Alone Has Failed?" *Politics & Society*, 2017, Vol 45(3), 359-388.

¹⁶⁹ Cathy Shoen, interview by author, December 14, 2020: 11.

¹⁷⁰ The Epidemic of Wage Theft in Massachusetts, Labor Center Working Paper, <https://www.umass.edu/lrrc/research/working-papers-series/wage-theft>

¹⁷¹ Interview the author, July 2, 2020: 17.

¹⁷² Beth Healy and Megan Woolhouse, "In Building Boom, Immigrant Workers Face Exploitation," *Boston Globe*, September 17, 2016 <https://www.bostonglobe.com/business/2016/09/17/construction-boom-immigrant-workers-face-perils-exploitation/WmlvDkLB4bRE9jp71wca2M/story.html>

¹⁷³ Karl Flecker and Teresa Healy. *International Labor Migration: Re-regulating the Private Power of Labor Brokers*. Washington, DC: Solidarity Center, 2015.

¹⁷⁴ <https://www.mass.gov/service-details/temporary-workers>