

HUMAN TRAFFICKING AND IMMIGRANT RIGHTS

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Approximately 11 million undocumented immigrants live in the United States. People come to the United States for a variety of reasons, including to work or to be reunited with their family. They are often fleeing instability, violence, or hunger, or they are simply in search of economic opportunity and safety. With increased globalization and economic instability as a backdrop, many of the most vulnerable individuals risk unsafe migration and family separation to work in the United States. As a consequence, viable work options are often limited to the least desirable occupations, toiling in some of the most unforgiving work settings. Current immigration laws fail to recognize the United States' economic need and benefit from immigrant labor, and are at odds with our country's values of family unity, human dignity, and opportunities for progress. These laws serve to increase vulnerability of migrants to trafficking and labor exploitation.

Trafficking in persons is a complicated issue since trafficked persons often do not fit into neat, discrete categories of eligibility. Rather, human trafficking exists at one end of a spectrum of labor exploitation. Workers may live in substandard and horrific conditions, receive lesser wages, and work with little protection. Yet, even these workers who have a minimal amount of worker autonomy and are in exploitative conditions may not fit squarely within the definition of a victim of a severe form of trafficking.

Barriers to accessing immigration remedies for trafficked persons

Trafficked persons are eligible for immigration relief in the United States based on several criteria. However, in practice, there is great variance in the interpretation of the definition of human trafficking and many actual victims find themselves unable to access immigration relief. Increased local enforcement of immigration laws is at odds with efforts to train local law enforcement agencies to identify human trafficking cases. There is a heightened resistance among exploited immigrants to seek protection from law enforcement, to access social services and health care, or to seek assistance related to exploitation or violations of legal rights. Any effort to reach out for help brings a risk of disclosure of their lack of status and related immigration enforcement measures. The resulting detention, even if minimal, reinforces the exploitative employer's threats of law enforcement and the immigration system. Long-term detention further exploits workers, who often experience post-traumatic stress disorder as a result of worker exploitation and desperately needed services unavailable to them while they are in detention. Furthermore, many migrants vary in their trust of law enforcement, often due to their fear and experience of law enforcement in their home country. This reality prevents many immigrant victims from reporting crime to law enforcement and seeking immigration relief that they are eligible for by law.

Increased vulnerability of workers that lack immigration protections

While many of these workers contribute to American society in jobs most U.S. citizens would never choose, their health and safety is often compromised by the lack of immigration protections. Knowing that workers have no path to legal status, employers take advantage by threatening to deport them or to call law enforcement. They exploit working conditions knowing that workers most likely do not understand their rights and the applicable laws, may not speak the language, and therefore, would not speak out and risk retaliation. For many, deportation returns a person to persecution, harm, and a lack of economic opportunities to provide for a family in their home country. By not creating a path to legalization we are condoning these worker abuses and sustaining an exploitative power dynamic that the worker cannot escape. Undocumented workers suffer from a system that benefits from their labor, yet denies them legal status and associated rights. Participation in the labor sector, coupled with a lack of immigration status and limited English proficiency, often results in low or unpaid wages, little or no employee benefits or job security, unsafe working conditions, heightened vulnerability to discrimination, sexual harassment, sexual exploitation, and other forms of mistreatment. Employers have a perverse incentive to employ undocumented workers as long as this population has reduced access to labor and employment law protection. The most exploitative employers will take advantage of the current system because they know they believe they can pay undocumented workers less and more readily subject them to exploitive or dangerous working conditions. In this way, the current laws hurt undocumented and documented workers alike.

Access to legal immigration status will potentially decrease exploitation in the workplace. It will also benefit the greater American society by improving working conditions, creating environments where victims and witnesses feel safe to report crimes, and promoting respect for human dignity and civil liberties. Legal immigration status will allow workers mobility and the ability to walk away from poor and exploitative workplaces. It will also allow them access to education and health services, and to defend their civil employment rights.

Recommendations

1. **Create a path to legalization.** In order to ensure a workplace free of exploitation, all workers, including temporary workers, should have access to a direct path to legalization. Without a direct path to legalization regardless of eligibility for crime victim protections, workers will continue to be vulnerable and work with the threat of deportation and law enforcement looming.
2. **Promote family reunification and reduce family visa backlogs.** Trafficked persons and exploited workers face serious safety risks to their family members if they report their exploitation. The current family immigration system is too backlogged to ensure that family members can be swiftly brought to the United States and protected from retaliation in their home country. Long backlogs also increase the vulnerability of family members who may elect to enter unlawfully rather than wait more than 20 years.
3. **Promote economic security by protecting the rights of immigrant workers.** Immigrant workers should be protected by U.S. laws that ensure safe working conditions; prevent discrimination, sexual harassment, and sexual assault; eliminate wage theft and fraud; and bar exploitation and human trafficking. Temporary workers in particular experience worker exploitation as a result of failed federal policies that capitalize on their temporary work without providing the protections, including portability, needed to work safely in the United States.

4. **Expand access to protection and services for immigrant workers.** First responders, often due to lack of training and awareness, fail to identify exploited immigrants. They should screen for victimization and provide victims and other vulnerable workers with early access to benefits and social services, and immigration status.
5. **Reevaluate immigration enforcement schemes.** Local enforcement of immigration laws can lead to racial profiling and a chilling effect among the most exploited immigrants. Law enforcement agencies should conduct mandatory screening for victimization and immigration eligibility, particularly focused on relief available to people who are currently undocumented. Enforcement agencies should exercise prosecutorial discretion in cases where immigrants are eligible for humanitarian relief and reprioritize enforcement for the most violent and dangerous immigrants.