

HUMAN TRAFFICKING AND IMMIGRANT RIGHTS

Updated April 2015¹

The United States is the “world’s leader by far as a destination for immigrants” with more than 40 million immigrants living in the nation.² The immigrant population is approximately 13 percent of the total U.S. population,³ but they represent more 16 percent of the labor force.⁴ Slightly more than half of the immigrant population is female, and 80 percent are between the ages of 18 and 64 years old (compared to 60 percent for the U.S.-born population).⁵ Of the nation’s more than 40 million immigrants, more than 11 million are undocumented, or about 3.5 percent of the U.S. population.⁶ They comprise more than five percent of the U.S. labor force.⁷

People come to the United States for a variety of reasons, including to flee violence and instability. They seek safety in the United States, and to work and support their families. These immigrants contribute to the economic stability of the United States by often taking jobs in the least desirable occupations and toiling in some of the most unforgiving work settings. However, current immigration laws fail to recognize the United States’ benefit from immigrant labor, and leave hard-working immigrant men, women, and children vulnerable to exploitation and, at worst, human trafficking. These laws are at odds with our country’s values of family unity, human dignity, and opportunities for progress.

Increased vulnerability of immigrant workers

Human trafficking often occurs in industries in which employment violations are widespread, such as agriculture, manufacturing, construction, hospitality, or private households (domestic workers). Agriculture, manufacturing, and construction are among the most dangerous occupations in the United States. Domestic workers operate in isolation, especially if they are live-in, often without other coworkers. Additionally, farmworkers and domestic workers are two categories that Congress did not

¹ Previous editions, September 2010 & January 2013.

² Pew Research Center, “A Nation of Immigrants: A Portrait of the 40 Million, Including 11 Million Unauthorized,” Jan. 29, 2013, <http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants/> (stating that the next largest destination for immigrants is Russia with 12.3 million).

³ Pew Research Center, “A Nation of Immigrants: A Portrait of the 40 Million, Including 11 Million Unauthorized,” Jan. 29, 2013, <http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants/>.

⁴ Bureau of Labor Statistics, “Labor Force Characteristics of Foreign-born Workers Summary,” May 22, 2014, <http://www.bls.gov/news.release/forbrn.nr0.htm>.

⁵ Migration Policy Institute, “Frequently Requested Statistics on Immigrants and Immigration in the United States,” <http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

⁶ Pew Research Center, “5 Facts About Illegal Immigration in the U.S.,” Nov. 18, 2014, <http://www.pewresearch.org/fact-tank/2014/11/18/5-facts-about-illegal-immigration-in-the-u-s/>.

⁷ Pew Research Center, “5 Facts About Illegal Immigration in the U.S.,” Nov. 18, 2014, <http://www.pewresearch.org/fact-tank/2014/11/18/5-facts-about-illegal-immigration-in-the-u-s/>.

provide the same types protections under the Fair Labor Standards Act as other workers. Both occupations were predominantly filled by African Americans at the time the federal employment law passed – historical vestiges of slavery. By the 1980s, the demographics of both industries had largely shifted to immigrants.

Immigrant workers are nearly twice as likely as U.S.-born workers to experience employment violations.⁸ Employment violations include the failure to pay minimum wage or overtime, not providing appropriate breaks, unlawful deductions, or illegal employer retaliation. High rates of employment violations tend to be concentrated among immigrant women compared to their male counterparts, and they are even more prevalent among undocumented immigrant women.⁹ Unaware of the legal protections afforded all workers regardless of immigration status, employers often try to take advantage by threatening to deport them or call law enforcement. In fact, according to one report, when workers complained about a workplace issue or attempted to organize, almost half of them experienced some form of illegal retaliation from their employer; more than 47 percent of workers had employers who threatened to fire workers or call immigration authorities.¹⁰ Immigrant workers are also especially vulnerable to discrimination, sexual harassment, and sexual exploitation because reporting mistreatment might result in disclosure of their lack of status, they may be limited English proficient, or because of their unfamiliarity with their rights under U.S. labor laws.

Enforcement of labor and employment law protections for all workers, including immigrants, will help stem the tide of human trafficking. Furthermore, access to legal immigration status for undocumented immigrants will decrease exploitation in the workplace; legal immigration status will allow workers more opportunities for alternative employment and the ability to walk away from abusive workplaces. 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.

Recommendations

1. **Promote economic security by protecting the rights of immigrant workers.** The government should have the resources to effectively enforce existing laws to protect immigrant workers, such as ensuring safe working conditions; preventing discrimination, sexual harassment, and sexual assault; eliminating wage theft and fraud; and barring 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.
2. **Create a path to legalization.** In order to ensure a workplace free of exploitation, all undocumented workers should have access to a direct path to legalization. Workers on temporary visas should have the option to apply for legal permanent residency. Creating such options for these immigrants help reduce the profound risks they face living in the shadows of American society—from exploitation to human trafficking. These immigrant workers contribute more than merely

⁸ Bernhardt, Annette et al., “Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities,” 2009, <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.

⁹ Bernhardt, Annette et al., “Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities,” 2009, <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.

¹⁰ Bernhardt, Annette et al., “Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities,” 2009, <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.

through the economy and their labor; they provide essential services and help maintain our vibrant, diverse society.

3. **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.
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.