

Immigrant Labor and Civil Rights in the United States

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Immigration has been the subject of intense political debate in the United States for decades. It is consistently a high policy priority for presidential administrations, a subject of endless stalled action from the U.S. Congress, and an issue that ultimately fuels mass anti-immigrant rhetoric such as the idea that immigrants take away domestic jobs. This paper addresses the intersection of immigration and labor in the U.S. and refutes such rhetoric as inaccurate and grossly misinformed. In reality, immigrant laborers, regardless of legal status, are indispensable contributors to the U.S. economy and endure arbitrary U.S. immigration laws and policies that enable repeated violations to their fundamental human rights.

I. Context and Guiding Questions

Immigrant laborers constitute a substantial demographic in the U.S. labor market. According to a 2022 report by the U.S. Bureau of Labor Statistics, immigrants make up about 18.1 percent of the U.S. civilian labor force.⁵¹⁸ That same year, over 500,000 various types of work visas were issued by the U.S. government to immigrants seeking work in the country.⁴⁶⁷ The same report indicates that, as of 2022, the U.S. labor force participation rate of foreign-born adults was higher than that of native-born adults: 65.9 percent of all workforce-eligible (16-years and older) foreign-born adults participate in the workforce, compared to just 61.5 percent of all workforce-eligible native-born adults.⁵¹⁹ Thus, analyzing the

⁵¹⁷ Brandeis University Undergraduate, Class of 2025.

⁵¹⁸ United States Department of Labor, *Foreign-Born Workers: Labor Force Characteristics 2022*, 1.

⁵¹⁹ United States Department of Labor, *Foreign-Born Workers: Labor Force Characteristics 2022*, 1.



nexus of immigration and labor is critical to providing a better understanding of the U.S. economy and its labor market. As will be discussed subsequently, the interplay of these fields is marked by inconsistent applications of legal protections for the fundamental human rights of immigrants.

Accordingly, this article seeks to answer the following questions:

1. How do immigrant laborers with and without legal status contribute to and interact differently with the U.S. economy?
2. What is the process for becoming an immigrant worker in the U.S.? How are immigrant laborers in the U.S. without legal status treated differently in the legal system and by employers as opposed to immigrant laborers who have legal status?
3. What implications do these differences have on the fundamental human rights entitled to every person within the jurisdiction of the U.S.?

To begin answering these questions, we first need a clearer understanding of the specific ways in which immigrants interact with the economy and labor market.

II. Interactions with the Economy

Immigrant workers in the U.S. are frequently the subject of harsh assertions about “stealing jobs” from native-born workers.⁵²⁰ A quote from a report by the American Civil Liberties Union (ACLU) encapsulates and addresses this assertion directly: “Contrary to popular belief, immigrants do not take away jobs from American workers. Instead, they create new jobs by forming new businesses, spending their incomes on American goods and services, paying taxes, and

⁵²⁰ American Civil Liberties Union, *Immigrants and the Economy*, 1-2.



raising the productivity of U.S. businesses.”⁵²¹ In the same report, the ACLU contextualizes the contributions of immigrants in terms of tax payments: each year, immigrants (with and without status) pay over \$90 billion in taxes and only receive \$5 billion in welfare benefits. Per person and household, immigrants receive significantly less in welfare benefits than U.S. Citizens while simultaneously paying their fair share and contributing substantially to the U.S. economy.⁵²²

There is also significant evidence to indicate that one of the only reasons the Social Security and Medicare programs continue to obtain the necessary funding to stay afloat is because of immigrant laborers. A 2018 report from the Social Security Administration articulated this, noting that: “increasing average annual total net immigration by 100,000 persons improves the long-range actuarial balance by about 0.08 percent of taxable payroll.”⁵²³ This 0.08 percent represents a substantial sum, especially when multiplied by the hundreds of thousands of immigrants who are issued work permits every year, plus undocumented workers. It is important to understand in the context of these contributions, which will be explained later in this paper, as it helps to show that immigrants are not reaping benefits or experiencing treatment that is proportional to their contributions to the economy.

Finally, the specific jobs that immigrants fill in the labor market provide additional context for understanding their treatment in the workplace and the crucial role they play in the U.S. economy. A 2015 report by the Panel of Experts from the National Academy of Sciences observed that “...immigrants appear to be taking low-skilled jobs that natives are either not

⁵²¹ American Civil Liberties Union, *Immigrants and the Economy*, 1-2.

⁵²² Sherman, *Immigrants Contribute Greatly to U.S. Economy, Despite Administration’s “Public Charge” Rule Rationale*, 2.

⁵²³ The Social Security Administration, *The 2018 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*, 181.



available or unwilling to take.”⁵²⁴ The vast majority of immigrant laborers (with and without status) in the U.S. are employed in low-skill positions and make up a substantial portion of the workforce in numerous industries. According to research conducted by the Center on Budget and Policy Priorities, industries with large percentages of immigrant workers include farming, fishing, and forestry (36 percent), grounds and maintenance (36 percent), textile and apparel manufacturing (29 percent), food manufacturing (27 percent), hotels (27 percent), and construction (24 percent).⁵²⁵ These industries, critical to the function of the U.S. economy, would undoubtedly collapse without the support and contributions of immigrant laborers.

III. The Process

The legal process for becoming an immigrant laborer in the U.S. depends largely on the individual’s immigration status, what their country of origin is, whether they have parents or a spouse with U.S. citizenship, whether they have obtained a job prior to arriving, and other factors. These specifics won’t be covered in this article. However, for the purposes of this article, it is important to understand that each individual seeking to obtain status and work in the U.S. is additionally subject to “grounds of inadmissibility,” or categorizations defined by the government that disqualify certain individuals from working in the U.S. entirely. These grounds of inadmissibility are often arbitrary and unfairly enforced, making the process to become immigrant laborers incredibly difficult in the first place for too many people..

⁵²⁴ National Academies Press, *The Integration of Immigrants into American Society*, 6.

⁵²⁵ United States Department of Labor, *Foreign-Born Workers: Labor Force Characteristics 2022*, 1.



One such ground of inadmissibility is the “public charge” rule, which was originally established in the late nineteenth century and has been continually modified to this day.⁴⁷² The rule gives the Department of Homeland Security (responsible for immigration enforcement) the ability to “determine that a noncitizen is likely at any time to become a public charge if the noncitizen is likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.”⁵²⁶ Many immigrants who come to the U.S., especially those fleeing persecution, natural disaster, and economic downturn, arrive with few resources and require aid. The nature of the public charge rule thus allows the government unfair and arbitrary enforcement power to turn away a large number of immigrants at their discretion. It is hard to imagine that this practice is fair, given that so many millions of Americans access welfare benefits from the government (including food and economic assistance) as a result of economic downturn, environmental disasters, and more—in other words, millions of Americans are public charges themselves. In fact, it is widely believed that Congress continues to implement the rule in order to actively discourage migrant workers from coming to the U.S. seeking employment, a clear violation of fundamental human rights and dignity.

Another example of the arbitrary policies immigrants encounter in the U.S. pertains to asylum seekers. Individuals seeking to be granted asylum in the U.S. (which, per the Immigration and Nationality Act, is granted to individuals fleeing from persecution based on one or more grounds of race, religion, nationality, political opinion, or membership in a particular social group) have one year from their time of entry into the U.S. to file their asylum application. Asylum

⁵²⁶ Federal Registrar, *Public Charge Ground of Inadmissibility*, 1.



applications are lengthy filings, often reaching hundreds or sometimes thousands of pages of detailed information, documents, and testimony about the individual's story. Such applications take time to file, and in the meantime, individuals applying for asylum are not legally permitted to work in the U.S.; in fact, they must wait until six months *after* their asylum application is filed to be eligible for an employment authorization document, according to the Immigration and Nationality Act. There seems to be no good reason for this rule. It is one of the many examples in which immigration laws make the legal process for becoming an immigrant laborer in the U.S. so needlessly difficult and arbitrary.

The above processes, of course, do not pertain to immigrants who are in the U.S. without lawful status, yet still seek to engage in employment opportunities to provide for themselves and their families. These individuals often work "under the table," meaning they work without benefits, proper pay, and often in dangerous working conditions.⁵²⁷ Many of the aforementioned low-skill industries in which immigrant laborers are employed involve more hazardous working conditions than an average office job environment. The nature of these positions combined with the already vulnerable legal state of the undocumented immigrant workers breeds conditions for unfair treatment and abuse on the part of their employers.

IV. U.S. Labor Law and Civil Rights

The U.S. Constitution applies to all people within the jurisdiction of the United States, regardless of legal immigration status. Crucially, its language consistently

⁵²⁷ Sherman, *Immigrants Contribute Greatly to U.S. Economy, Despite Administration's "Public Charge" Rule Rationale*, 2.



references “people” or “peoples” as opposed to “citizens.”⁵²⁸ While certain fundamental rights are established in the Constitution, the right to work is not one of them. However, despite the lack of a Constitutional “right to work,” laborer rights are still applicable to all workers, whether they are citizens, undocumented people, or permanent residents. According to the ACLU, “Federal labor and employment laws generally apply to all employees regardless of an individual’s immigration status.”⁵²⁹ A report from the University of Chicago clearly states that all immigrant laborers, regardless of legal status, share in the right to minimum wage and overtime pay, breaks and tips, and protections under health, safety, and anti-discrimination laws.⁵³⁰ Not only are all immigrants protected under the Constitution as having certain fundamental rights, they are also entitled to protections as laborers as a matter of statute.

Given the context that has thus far been established, many undocumented workers routinely face exploitation, dangerous working conditions, wage theft, and physical and emotional abuse.⁵³¹ The same report from the University of Chicago notes that 37 percent of undocumented immigrant laborers receive less than minimum wage and 76 percent of immigrant laborers experience wage theft.⁵³² In addition, the report reveals: “Immigrant workers experience 300 more workplace fatalities and 61,000 more workplace injuries

⁵²⁸ The National Archives, *The Constitution of the United States of America*.

⁵²⁹ American Civil Liberties Union, *How Do Labor Laws Apply to Immigrants?*, 1.

⁵³⁰ Garcia Quijano, *Workplace Discrimination and Undocumented First-Generation Latinx Immigrants*, 4.

⁵³¹ American Civil Liberties Union, *How Do Labor Laws Apply to Immigrants?*, 1.

⁵³² American Civil Liberties Union, *How Do Labor Laws Apply to Immigrants?*, 1.



annually than native-born workers...”⁵³³ This research empirically supports these claims. The vast majority of immigrant laborers work in low-skilled industries with more dangerous working conditions and experience high levels of exploitation.

Neither U.S. labor nor immigration laws prevent immigrants from serving as independent contractors, exposing them to even more possibilities of exploitation; this is especially true in cases of the many immigrant laborers who work in private residences.⁵³⁴ For example, the report from the University of Chicago goes on to confirm that many of the 22 percent of undocumented immigrants working in private homes, the majority of whom are women, experience exploitative and inhumane working conditions: “In addition to unregulated pay, they are often victims of physical and mental abuse, ranging from rape and verbal abuse to 12-hour work days with little to no breaks and no overtime pay.”⁵³⁵ Despite the fact that each person in the U.S. is entitled to fundamental rights and labor rights, current laws fail to protect immigrant workers equally, irrespective of their legal status, and, in fact, enable their ill-treatment.

This ill-treatment raises the question: if immigrant workers enjoy the same fundamental laborer rights as native-born people in the U.S., aren’t they entitled to legal remedies for that mistreatment? Technically, the answer is “yes”—but there’s a catch. Any undocumented immigrant who takes a case to court, especially pertaining to work-related

⁵³³ American Civil Liberties Union, *How Do Labor Laws Apply to Immigrants?*, 1.

⁵³⁴ American Civil Liberties Union, *How Do Labor Laws Apply to Immigrants?*, 1.

⁵³⁵ American Civil Liberties Union, *How Do Labor Laws Apply to Immigrants?*, 1.



rights, becomes vulnerable to deportation. According to the University of Chicago report:

“An undocumented worker bringing a dispute to court risks punishment if found to have used false documentation in obtaining work. For example, an undocumented worker unfairly terminated from a job is not actually entitled to back pay or reinstatement because such remedies would directly violate the IRCA. Anti-retaliation provisions make it unlawful for employers to use undocumented status to terminate employment in retaliation of a worker complaint. However, if employer retaliation does occur, Immigration and Customs Enforcement (ICE) can still follow up on a report and attempt to deport the undocumented worker.”⁵³⁶

Here exists an absurd and apparent legal paradox: immigrant workers can seek legal redress for workplace discrimination, yet they're exposed to serious legal repercussions if they dare to take action to obtain said redress. This treatment of immigrant workers, enshrined in law, unequivocally makes a mockery of American legal principles of fairness, consistency, and rationality.

V. Conclusions and Recommendations:

In what follows, this article proposes some policy solutions which address the issues pertaining to violations of fundamental human rights and dignity throughout this article. To start, there must be a substantive effort by government leaders to curb rhetoric and ideology that mischaracterizes immigrants and their contributions to the economy. Especially

⁵³⁶ American Civil Liberties Union, *How Do Labor Laws Apply to Immigrants?*, 1.



in the U.S., where major decisions are made by representative bodies composed of elected officials, shaping public opinion is a critical component of influencing policy outcomes. The executive branch plays an immensely important role in the shaping of public opinion and must be strategic about employing methods for both 1) acting to influence public opinion on particular issues and 2) exercising executive power to achieve policy outcomes. This, in turn, may lay the groundwork for eliminating arbitrary policies like unreasonable limits on work permit applications and rules like the “public charge” rule in the name of fundamental human rights and dignity.

An excellent example of this proposal in action is the Obama Administration’s implementation of Deferred Action for Childhood Arrivals (DACA). According to the Migration Policy Institute, roughly one-third of the over 11 million noncitizens currently in the U.S. were brought here as children (commonly known as “Dreamers”).⁵³⁷ The issuance of DACA by the executive branch provided work permits and temporary protection from deportation for these young immigrants. In a 2012 speech to the American public following DACA’s implementation, President Obama seized the opportunity to provide a compassionate perspective on the immigration debate:

“These are young people who study in our schools, they play in our neighborhoods, they’re friends with our kids, they pledge allegiance to our flag. They are Americans in their heart, in their minds, in every single way but one: on paper. They were brought to this country by their parents -- sometimes even as infants -- and often have no idea that they’re undocumented until

⁵³⁷ Migration Policy Institute, *Profile of the Unauthorized Population - US*, 1-2.



they apply for a job or a driver's license, or a college scholarship."⁵³⁸

Although much of DACA was ultimately struck down by a federal court in Texas, its implementation provides a key example of how the executive branch may take action to address policy issues. Such actions are crucial in the face of an increasingly polarized Congress and effective in working to reshape public opinion. Presidential administrations have the ability to create fairer conditions for immigrants and vouch for their rights. This is crucial for implementing effective immigration policy in the face of a deadlocked legislature and increases in anti-immigrant rhetoric.⁵³⁹

Additionally, the federal government must ensure that labor laws are being equally enforced across the U.S. with the intent to protect all workers, regardless of status, in the name of safety, fairness, and equality. Special attention must be paid to workers in low-skill industries because, as mentioned previously, these laborers are the most susceptible to exploitation and abuse. Moreover, this is especially true for independent contractors who, for example, work in private homes and are at even greater risk of experiencing mistreatment.⁵⁴⁰ Ensuring that labor law protections are enforced and apply equally to all people is not just humanly decent, but it is enshrined in the law and entitled to each and every person within the jurisdiction of the U.S. Constitution.

Lastly, immigrants must have equal access to fair legal processes and legal remedies. Arbitrary policies like unreasonable limits on work permit applications and rules like

⁵³⁸ White House Office of the Press Secretary, *Remarks by the President on Immigration*, all.

⁵³⁹ United States Department of Labor, *Foreign-Born Workers: Labor Force Characteristics 2022*, 1.

⁵⁴⁰ White House Office of the Press Secretary, *Remarks by the President on Immigration*, all.



the “public charge” rule must cease. They are violations of fundamental human rights and dignity. Immigrants should not feel the need to refrain from seeking legal relief because they are worried about the threat of deportation. Hence, another proposal, stemming from the interest of fundamental rights and dignity, is that all courts in the U.S. should adopt an amnesty rule that legally protects personal information from agencies like ICE when individuals bring suits, as is their legal right. Upholding policies that place a burden on an individual’s right to seek legal remedies is entirely against American values. Finally, the same rights of citizens should unquestionably apply to immigrants in terms of receiving back pay when unfairly terminated from a job.

The assertion that immigrant workers are “taking our jobs” is an ignorant mischaracterization that not only invalidates the vital contributions of immigrants to the U.S. economy, but also their lived experiences as human beings seeking a better life. Immigrants are an essential cornerstone of the livelihoods of all people in the U.S., especially in a country built by, for, and of immigrants. Upon examination, it is apparent that U.S. immigration laws and policies not only make the legal process of obtaining work unnecessarily difficult, but also don’t adequately protect immigrants. Rather, these laws actively discourage immigrants from seeking legal relief, essentially depriving them of their fundamental rights. The federal government must ensure laws and policies are consistent with upholding the equal treatment of all people in the U.S., regardless of status.



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