

## Immigrant Women in A Broken Immigration System: An Agenda for Change

(February 25, 2010)

Approximately 4.1 million undocumented immigrant women live in the U.S.<sup>1</sup> Immigrant women arrive in the U.S. as willing workforce participants seeking opportunities to provide for themselves and their families and capable of making critical contributions to American society. Enhanced access to legal immigration status will greatly improve the lives of immigrant women and their families, while benefiting our communities. Legal immigration status improves immigrant women's employment and educational opportunities, access to health care, ability to raise their children, success in child custody proceedings, and security by removing barriers to the justice system and safety net protections.

Undocumented male *and* female workers suffer from a system that benefits from their labor, yet denies them legal status and associated rights. Seemingly gender-neutral immigration laws have a particularly harmful impact on immigrant women. Immigrant women are a majority of workers in the informal economy. They are childcare workers, elder and home health care providers, domestic workers and, increasingly, they are small business owners. They are also hotel and office cleaners, farm and factory workers. Participation in these informal and often hidden job sectors, together with lack of immigration status and language proficiency, often results in low or unpaid wages, little or no employee benefits or job security, unsafe working conditions, and enhanced vulnerability to discrimination, sexual harassment, sexual exploitation and mistreatment.<sup>2</sup> With reduced access to labor and employment law protection, employers have a perverse incentive to employ undocumented workers as such workers may more freely be subjected to exploitive or dangerous working conditions

There is a heightened reticence among immigrant women to seek protection from law enforcement, access to social services or 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 and immigration enforcement.<sup>3</sup> The resulting detention and deportation can separate immigrant women from their children and families. Indeed, thousands of immigrant parents are separated from their U.S. children when they are detained by immigration officials.<sup>4</sup> Local authorities regularly take custody of children, place them in foster care, and unlawfully terminate the parental rights of undocumented immigrant women who, frequently, lack the language skills and legal representation necessary to assert their rights.

### Fixing the System with an Eye on the Status and Circumstances of Women:

**Create a path to legalization that equitably values women's work:** Avenues for legalization that value work must recognize and 'count' the range of immigrant women's work in the informal economy such as domestic work, child care, and home health care. Part-time and contract work as well as work for multiple employers must count toward legalization. Legalization fee structures must ensure incentives for immigrant families to apply for legal immigration status for all eligible family members; high fees may limit the number of applications a family can afford, resulting in applications only being filed by and for male heads-of-household.<sup>5</sup> Fees must be on a sliding scale so that they are not cost-prohibitive for low-wage women workers.

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<sup>1</sup>JEFFREY S. PASSEL & D'VERA Cohn, *A Portrait of Undocumented Immigrants in the United States* 4 (Pew Hispanic Center April 14, 2009).

<sup>2</sup> Seventy-seven percent of Latina immigrant workers report that sexual harassment is a major problem at work. Southern Poverty Law Center, "Life for Low Income Latinos in the South," (April 2009).

<sup>3</sup> Immigration status significantly affects the willingness of immigrant women to call the police for help. Nawal Ammar, et al. *Calls to police and police response: a case study of Latina immigrant women in the USA*, Vol. 7. No. 4 Int'l J. of Police Science & Management 230, 235 (2005).

<sup>4</sup> Department of Homeland Security, Office of the Inspector General (January 2009); [http://serrano.house.gov/media/PDFs/dhs\\_study\\_parent\\_removals.pdf](http://serrano.house.gov/media/PDFs/dhs_study_parent_removals.pdf)

<sup>5</sup> Maria Shriver and the Center for American Progress, *The Shriver Report: A Woman's Nation Changes Everything* (Oct.16,2009)(Women are nearly half of all U.S. workers and mothers are the primary breadwinners or co-breadwinners in nearly two-thirds of American families. This is a dramatic shift from just a generation ago - in 1967 women made up only one-third of all workers - and a permanent cultural change.)

**Promote family reunification and reduce family visa backlogs:** Social constraints and lack of access to capital generally result in immigrant women disproportionately immigrating through family-based immigration as compared to men. However, long backlogs and bureaucratic delays exacerbate immigrant women's vulnerability, heightening women's dependency on partners and increasing the likelihood of exploitation by family members and employers. Measures to promote family reunification and reduce backlogs will thus particularly benefit immigrant women.

**Improve personal security and autonomy by expanding access to independent immigration status:** Immigrant women's economic security is enhanced when they can independently obtain legal immigration status. Men were 3.1 times more likely to enter as a principal visa holder for an employment-based visa, while women were 1.6 times more likely to enter as dependent visa holders.<sup>6</sup> Independent immigration status can also facilitate personal security and physical safety. When women attain legal status based upon a family relationship, other family members gain control over whether she ever attains legal status. This dynamic can jeopardize women's autonomy and safety.<sup>7</sup> Immigration reform must create avenues through which more immigrant women can directly file family based visa applications on their own behalf.

**Promote economic security by protecting the rights of immigrant women workers:** Immigrant women, as well as men, 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. Immigration reform should ensure rights, redress, and justice for immigrant women workers who are particularly vulnerable to these forms of workplace abuse and should provide avenues to legalization for women working in the underground and informal economy. It must also help women who have employment visas that are valid only if they work for a particular employer. Immigrant women need portable legal status that does not tie them to specific employers to ensure autonomy and the ability to escape abusive situations in the workplace or at home.

**Ensure access to a fair justice system for all immigrants:** Language access for limited English proficient (LEP) immigrant women is essential in the civil and criminal justice and health care systems, particularly when many immigrants are regularly confronted with the threat of termination of parental rights, violation of statutory rights, foreclosures, criminal charges, and other complex matters.

**Ensure access to affordable healthcare for lawfully present immigrants:** Immigrant families should have access to preventive health care and to medical treatment. Currently, many working and lawfully present immigrant women cannot access Medicaid, the State Children's Health Insurance Program (SCHIP), and other federal benefits.<sup>8</sup> Employment related health coverage should cover all employees equally regardless of status.<sup>9</sup>

**Formalize access to federal and state funded public safety net benefits for lawfully present immigrants:** End the 5-year bar to accessing federal means-tested benefits so that lawfully present immigrants are not barred from access to welfare, child care, food stamps, and health care following the lead of the 22 states that have provided access to some or all of these important benefits and services under state law.

**Expand access to protection and services for immigrant women victims:** Expand the scope of services available to immigrant victims and their children. Assure that immigrant women who are victims of violence are screened and provided with early access to benefits and social services, the ability to work legally, and the immigration status for which they may be eligible. Protect immigrant women who are victims of violence from detention and deportation.

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<sup>6</sup> Kelly Jeffreys, *Characteristics of Family-Sponsored Legal Permanent Residents: 2004*. Washington, DC: Office of Immigration Statistics, Department of Homeland Security, October 2005, "Table 1: Demographic Characteristics of All LPRs and Family-Sponsored Principal LPRs": Fiscal Year 2004

<sup>7</sup> When foreign born women are dependent upon their citizen husbands to attain legal immigration status the domestic abuse rate for these women reaches 59.5%. Giselle Aguilar Hass, Nawal Ammar, and Leslye Orloff, "Battered Immigrants and U.S. Citizen Spouses," available at: <http://www.legalmomentum.org/assets/pdfs/wwwbatteredimmigrantsanduscspouses.pdf>

<sup>8</sup> The Henry J. Kaiser Family Foundation, *Summary: Five Basic Facts on Immigrants and Their Health Care 1* (March 2008).

<sup>9</sup> Of children living in mixed status 25% are uninsured. JEFFREY S. PASSEL & D'VERA Cohn, *A Portrait of Undocumented Immigrants in the United States 5* (Pew Hispanic Center April 14, 2009).