

WOMEN IMMIGRANTS IN THE UNITED STATES

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Woodrow Wilson
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WOMEN IMMIGRANTS IN THE UNITED STATES

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EXECUTIVE SUMMARY*

MAIA JACHIMOWICZ AND DEBORAH W. MEYERS
Migration Policy Institute

On September 9, 2002, the Woodrow Wilson International Center for Scholars and the Migration Policy Institute convened a conference of scholars, policy-makers, judges, and advocates to discuss the particular social and legal issues facing the understudied, yet ever-growing, number of women immigrants to the United States and to consider possible policy proposals. Although women accounted for over half of the 9.1 million legal immigrants to the United States during the 1990s, and female immigration is expected to increase steadily over time, most scholars and policy-makers have paid too little attention to this population. Conference participants emphasized the need to address the following topics, which are summarized below and examined in greater depth in the essays.

POPULATION GROWTH AND DIVERSITY

Two-thirds of today's female immigrants originate in Asia, Latin America, the Caribbean, and the Middle East. They migrate to this country for many of the same reasons as men: to seek economic opportunities, to reunify their families, or to escape persecution. They arrive with family members and on their own, as high-skilled workers, refugees and asylees, undocumented workers, and as dependents of male immigrants. They are more likely than male immigrants to be married and to stay in this country permanently, and they generally are younger than the native-born population.

* The conference could not have taken place without the fine organizational work of Susan Nugent, the Division's Program Assistant. She and U.S. Studies intern Aidan Smith also provided invaluable editorial assistance. As with all of the Division's publications, the credit for publication design goes to Derek Lawlor of the Center's Outreach and Communications Department.

While women immigrants are remarkably diverse in their countries of origin, socioeconomic status, educational background, and legal status, most immigrant women face common challenges that differ from those of men. These include unique fears about physical safety and potential victimization; barriers in access to health benefits, housing, social services, and education; limited legal protections; exploitative employment situations; and multiple family and work responsibilities.

CONFLICTING DEMANDS

Many immigrant women participate in the labor market, and as their economic contributions frequently are essential for the survival or upward mobility of their families, they bear the triple burden of work, family care, and sending remittances to their home countries. Moreover, women immigrants are expected to integrate their families into the United States while maintaining the cultures of their countries of origin. These responsibilities are difficult to reconcile in unfamiliar school, health care, and social service systems, especially when combined with limited English proficiency, unfamiliarity with the host society, poverty, and social isolation. Additionally, their roles as wage earners may impact family dynamics, challenging and redefining traditional gender roles.

POOR HEALTH CARE SERVICES

Women immigrants suffer from gender inequities in the health care system. Health care providers unfamiliar with their languages and cultures and the pressures they face may minimize or misunderstand their symptoms. In addition, they may be dependent on male family members for access to health care. Quality of care, culturally appropriate services, and preventative approaches are frequently inadequate. Too little attention is currently being paid to planning for this growing and eventually aging population.

DOMESTIC VIOLENCE

The traditional problems of domestic violence are exacerbated for female immigrants when spouses control the immigration status of their family members, trapping battered immigrant women in violent homes because

Executive Summary

of fear of deportation if they complain to authorities. Despite new mechanisms such as visas for battered women and victims of trafficking, legal reforms are needed to improve justice system procedures and training, as well as access to immigration relief, legal services, and public benefits.

HOUSING DISCRIMINATION

The general paucity of affordable housing is exacerbated for immigrant women (and men) by a lack of eligibility due to immigration status. This is worsened for immigrant women by a combination of sex and ethnic discrimination in initial rental and occupancy terms and sexual harassment by housing managers and employees.

EMPLOYMENT CHALLENGES

Female immigrants are concentrated in particular occupations, both highly-trained professions such as science and nursing and, more frequently, poorly-paid domestic and service work. Both citizenship status and gender impact immigrants' wages and working conditions. In insecure environments, employers may exploit workers' immigration status to limit their ability to organize or file complaints. Women immigrants, who are disproportionately the lowest paid workers in the U.S. workforce, face the additional burdens of sexual abuse and trafficking.

LIMITED REFUGEE AND ASYLEE PROTECTIONS

Many women and girls who were forced to flee their countries of origin have faced gender-specific forms of persecution: rape, sexual violence, forced sterilization, genital mutilation, domestic violence, indentured slavery, forced marriage, and prostitution. Upon arrival in the United States, they frequently face harsh detention conditions, sexual and verbal abuse, limited access to counsel, and poor health care. There is a need to reexamine the country's standards for refugee detention facilities, its use of expedited removal (allowing immigration officers at ports of entry to remove summarily those persons who attempt entry without proper documentation), and alternatives to detention, as well as to enhance gender sensitive training to ensure fair treatment.

JUDICIAL LIMITATIONS

Immigration courts are understaffed and overloaded. They lack guidance in cases involving battered immigrant women, and in particular, they lack mechanisms for ascertaining abuse of immigrant women and, even more importantly, for protecting them.

POST-9/11 IMMIGRATION LEGISLATION

While federal legislation enacted since September 11, 2001 has not focused on immigrant women, some laws may affect them disproportionately. The involvement of local law enforcement in immigration prosecution, for example, may dissuade battered immigrant women from reporting abuse if doing so could result in their deportation or that of a family member.

With an increasing number of female immigrants in the United States and their growing role in the labor market and in integrating their families, society is ill-served if it has insufficient knowledge about their problems and, worse yet, if it imposes policy-related barriers that impede their abilities to achieve acceptable standards of living and possibilities for integration and upward mobility. Conference participants agreed that additional research and policy changes should be considered to improve the adverse circumstances facing this unique population.

PANEL ONE

DEMOGRAPHICS AND HISTORY

TODAY'S IMMIGRANT WOMEN IN HISTORICAL PERSPECTIVE

DONNA R. GABACCIA

WHY HISTORICAL PERSPECTIVE?

Historians pride themselves on their grasp of the particular and believe that every period of time is in many respects unique. Yet they also generally insist there is nothing completely new under the sun. With our focus on immigrant women in today's United States, what insights can we derive from an historical perspective on the present?

One form of historical perspective provides a genealogy of the present: history can show us the origins of that which exists in the present. Scholars, activists and reformers may want to trace today's problems back to their historical roots in order to eradicate those problems as completely and effectively as possible. Individual immigrants and ethnic societies, by contrast, are more likely to turn to history as genealogy in order to celebrate their own progress and accomplishments. The problems of immigrant women, and the policies that might address those problems, are but one focus to adopt in analyzing the place, experience, and prospects of immigrant women in the United States. We must also be aware that in the past a focus on newcomers' problems often became a focus on newcomers *as* problems, obscuring the fact that many immigrants' problems originate with natives and not with the newcomers at all.

A second, and even more common, form of historical perspective provides comparisons of past and present, identifying and explaining similarities and differences, continuities and change over time. This is certainly the most common reason for including historians in discussions dominated by activists, reformers and policy-makers. All these groups want something quite specific from history as they focus on strategies for change: they want to know what policies worked and what problems disappeared or have been eliminated. When history points us toward similarities between past and present, it also provides a sense of reassurance about our ability to cope with contemporary problems. Perhaps we breathe a sigh of

relief as we recognize that others have found their way through similar problems in the past, which suggests that we, too, will survive and overcome the problems of the present. Where history points to difference, however, activists and policy-makers may become worried. Will a policy that solved past problems automatically produce the same results in the different conditions of the present?

I would like to introduce yet another use of history and of historical perspective: to “denaturalize” the present and to problematize the very discussion of immigrant women and their problems. In other words, the way we view and talk about immigrant women inevitably reflects contemporary values. Any such discussion is contingent; it is influenced by the world in which we live, and that is a world that cannot be exactly like any other period of time in the past even though it is also the product of that past. My goal is not so much to compare immigrant women, past and present, as it is to focus on relationships between immigrant women and the experts who study them and who attempt to write sensible policy to address their problems.

A CHRONOLOGY OF IMMIGRATION

Immigration historians disagree about the value of comparing past and present and about how far back in time we should reach to provide historical perspective. Should we begin by understanding the colonial empires of Spain, France, and Britain prior to the formation of the United States? Does it make sense to consider African slaves and European indentured servants in the eighteenth century or women and children in the nineteenth century as immigrants, even though none exercised much individual choice over their migrations?

Today’s immigrants are best compared to the immigrants who entered the United States between 1830 and 1930. While some historians treat this century-long migration as a single movement of Europeans, most insist it encompassed two distinctive migrations. The first, from 1830 to 1890, transplanted families from northern and western Europe and British Canada to farming districts in the interior or “frontier” districts of a rapidly expanding United States. The second was a movement, mainly of men, from Europe’s southern and eastern peripheries, Asia, and Mexico, along with families from French Canada. This movement began

in the 1830s but intensified with the rapid growth, construction and operation of the country's urban industries and agribusiness after 1880. Historians once termed these the "old" and the "new" immigrants; now we more often call them "settlers" and "labor migrants."

Comparisons of either group to today's immigrants are somewhat problematic. Although there were refugees in both groups of earlier immigrants, they were not officially recognized as such, making it difficult to differentiate politically and economically motivated migrants as we can today. Today's migrations resemble the "old," "settler" migrations in their gender balance and rates of naturalization. In their work, distribution, and cultural distance from mainstream Americans, however, they more closely resemble the "new," "labor" migrations.

The past and present were separated by a period of more than thirty years (1930-1965) of very low immigration. Immigration declined during these years as new public policies imposed sharp numerical restrictions through racial exclusions of Asians and small, discriminatory national quotas for southern and eastern Europeans. The decline also reflected the sudden and unexpected reversal of a half-century of globalization by such phenomena as depression, decolonization, and war (two "hot" wars and one "cold" war). It was during these three decades that gender ratios among immigrants became more balanced, in part because of provisions for family reunification within otherwise restrictive laws.

"Today's" immigrants began entering the United States under a law passed in 1965 to complement domestic civil rights legislation. Two-thirds of today's immigrant women are from Asia, Latin America, the Caribbean and the Middle East; a minority are from Europe. While many are low-level wage earners, housewives or girls, a large minority are well-educated, prosperous and cosmopolitan women from the elites of their decolonized homelands. Immigrants also enter a transformed country. The United States has lost manufacturing jobs to other parts of the world and has revised its policies to eliminate officially sanctioned racism. It remains internally conflicted, however, over the balance between toleration of cultural diversity and expectations of national solidarity. New communication and transportation technologies may also make it easier than in the past to maintain transnational ties, although these were already an important element of immigrant life in 1900.

Since my goal is to compare the experts of the past and present, my choice for providing historical perspective on our conference is somewhat simplified. Before about 1880, there were no obvious “experts” who studied immigrant women, or who claimed much expertise on their lives or problems. Thus the years around the turn of the century remain the best for comparing immigrant women, their problems, and the experts who study them with their present counterparts.

A CONFERENCE ON IMMIGRANT WOMEN IN 1900

By the onset of war in Europe in 1914, almost fifteen percent of the population of the United States was foreign-born (and an equal proportion were the children of foreigners); these proportions are slightly higher than today. Although the migrations of the turn-of-the-century era were also male-dominated, men far more often left the United States, leaving stable immigrant populations (especially in large cities) much less skewed than immigration figures would suggest. What would a conference on immigrant women have looked like had it been held one hundred years ago, when migration into the United States (mainly from southern and eastern Europe, but with significant numbers from the Caribbean, Mexico, and Asia as well) was climbing to its still-unsurpassed historical peak just before World War I?

Our Subject: Women or Gender?

Small, local and regional meetings focused on immigrant women did occur in 1900. We would have felt both uncomfortable and oddly at home attending them. The organizers of a conference in 1900 would have had no difficulties defining the subject of their conference. They were interested in immigrant women, whom they saw as biologically, socially, and culturally distinctive from immigrant men. Today, by contrast, we ponder whether we should focus on women as a group, or on gender as a constitutive organizer of all human life, thought, and behavior.

Many scholars object to a direct focus on women apart from men because it misses what men and women share, relegates women to a separate scholarly ghetto, ignores their intimately intertwined relations with men, and thus fails to capture the reality of women’s lives. They prefer to study gender, and their gender analyses may tackle language or the con-

struction of social categories. They may treat gender as a variable shaping income or education, particular workplace policies, or migrant populations, or of particular ethnic, racial, religious or nationality groups.

Nevertheless, many contemporary feminists and specialists on immigrant women, much like the experts of 1900, continue to see the special advantages of woman-centered analyses. Who could deny that the migration, adjustment to life in the United States, incorporation, assimilation and cultural changes of immigrant women differ in critical ways from those of men? This basic assumption shares much with the woman-centered approach that would have dominated a conference held a century ago.

Conference Location

A conference on immigrant women in 1900 might have taken place in New York, Chicago, Cincinnati, San Antonio, Tampa, or San Francisco but probably not in Washington, D.C. The federal government was still quite small in 1900 and its responsibilities were considerably more limited. Its involvement with immigration was limited almost entirely to issues related to trans-Atlantic and trans-Pacific gate-keeping and exclusion, to processing and categorizing immigrants admitted at entry points like Ellis and Angel Islands, and to naturalizing as citizens those white male immigrants who applied for citizenship. (Women's citizenship still followed that of their husbands or fathers.) Washington, D.C. was not an important center of immigrant life: along with most other southern cities, its newcomers were often African Americans from nearby rural areas.

Organizers and Experts

The organizers of a conference in 1900 would have been exclusively female. Most would have been leaders of a sizeable female network of well-educated social welfare workers (think of Jane Addams), who, as the first generation of college-educated American women, were recreating themselves as female professionals and specialists on city life, industrial work, education, health, sanitation, housing, poverty, domestic life, maternity, and child welfare. Few of these experts in 1900 worked for the government or in universities. Most were women who chose to remain unmarried in order to pursue "social housekeeping" and "maternalism" as a form of political and community activism. Funding for the conference

would have been private, as was most support for welfare work. Men and women philanthropists, settlement houses, and the women experts themselves would have funded it.

Immigrant Participants

In 1900, few if any immigrants – male or female – would have been in attendance, and only a few of the experts would have had immigrant parents or grandparents. The gulf between natives and newcomers, between immigrant working class and “old stock” American elite, and between “experts” and “clients,” was enormous. Few experts even considered the possibility that women immigrants could speak for themselves. Then as now, reformers and experts on “welfare” – health, education, family life – would have formed the largest group of experts present. Today, however, many more of our experts come from the legal arena and from academia. Labor organizations and ethnic voluntary associations are also better represented today than would have been the case in 1900. The leaders of labor and ethnic organizations then were almost exclusively men, as were the leaders of mainstream organized labor. Their relations with the American women active in social welfare were minimal and strained. It is difficult to imagine a female labor activist or immigrant woman such as “Mother” Mary Harris Jones or the second-generation “Wobbly” (Industrial Workers of the World) activist Elizabeth Gurley Flynn representing immigrant women at a 1900 conference. Jones and Flynn shared with many immigrant men, and many immigrant voluntary associations, a hostile view of middle-class female social welfare activists as meddling, patronizing, controlling and fundamentally ignorant of the poor. The distrust was mutual, reflecting both class resentments and difficulties of communication. Few welfare workers spoke the languages of southern and eastern Europe, Mexico, or Asia, and few adult women from these countries spoke English. Immigrants often assumed that welfare workers represented the interests of the wealthy, not the poor. Immigrant men and women could not easily accept unmarried women professionals as experts on motherhood or family life. For their part, social welfare activists typically portrayed immigrant men as exploiters of immigrant women, while they more often portrayed immigrant women as victims than as potential allies.

While rarely admitted as experts, immigrant women would have appeared in other roles at a conference in 1900. Had the conference been

held at Hull House, the experts almost certainly would have visited the Hull House Museum, which focused on “immigrant gifts” (mainly women’s folk arts) or been entertained by a program of folk songs and dances by immigrant children. While older immigrant women would have cooked and served the meals and cleaned conference participants’ rooms, conference food probably would have been the New England style cookery that female home economists had declared nutritionally superior, not immigrants’ culinary “gifts.”

The presence of immigrant women at today’s conference reflects more than our era’s preference for cultural pluralism and diversity. It also reflects the fact that among today’s immigrant women, a sizeable minority are either women who arrived in the United States as exceptionally well-educated and English-speaking professionals or who remained in the United States after professional training in this country as foreign students.

It is easy to see how paternalistic (or, rather, “maternalistic”) the experts of 1900 were. To what extent, however, would we want to claim that relations between experts and their immigrant women clients are fundamentally more egalitarian today? How would our conference be different if the balance of voices, of experts and clients, were reversed? Are strategies and solutions that emerge from immigrant communities or from immigrant experts necessarily superior to those that emerge from experts of other backgrounds? To what extent do class differences between immigrant experts and their clients reproduce the distant and often distrustful relations of immigrant women and the American experts of the past?

Conference Agenda

Our imaginary 1900 conference would have focused on problems of immigrant women with the ultimate goal of problem-solving. This is unsurprising: conference organizers would have identified and known quite a lot about some of the problems of immigrant women through their work in schools, hospitals, orphanages, health departments, libraries, settlement houses, and charity organizations. The experts’ focus on immigrant women’s problems is also understandable when we remember that it was often through services to remedy particular crises (whether unemployment, family violence, or illness) that experts established contacts with immigrant women. Certainly many of the problems

we identify today are similar to those of the past. Our own association of immigrant women with problems of education, health, housing, and social services has deep historical roots. We have not eliminated problems in these arenas, even after a century of concern and attention to them. Still, we cannot assume that experts in 1900 knew much about or had access to the private arenas of immigrants' families and homes. As women, the welfare workers also had surprisingly little direct contact with immigrant men, or with their workplaces, family roles or leisure time activities. We could not even confidently predict that immigrant women's lists of problems or reforms would have overlapped much with the experts'. Do today's experts, so heavily concentrated in the academy, represent immigrant women, their problems, or their hopes for change, more effectively?

The 1900 conference would have had a clear agenda for change and reform. Most experts on immigrant women in 1900 were self-conscious reformers who regarded themselves as "progressives," committed to expanding local, state, and federal government funding for social welfare services. Only then could wage earners, women, and children survive and flourish in a volatile if also rapidly developing and increasingly wealthy industrial economy. Only then could immigrants successfully adjust to bewildering new life circumstances in American cities or take advantage of the economic and civic opportunities the country offered. Of course, arguments like these can be seen as self-serving, for the expansion of welfare services and governmental funding also expanded wage-earning opportunities for employment by well-educated women professionals. Are we less self-serving in our hopes for change?

While some experts at the 1900 conference would have seen immigrant women themselves as a problem, and even advocated reducing their numbers through more restrictive immigration policies, most discussion would have focused on how to "protect" women and to guarantee that women of the many "immigrant races" present in the United States would be successfully "Americanized." No one would have celebrated the United States as a "nation of immigrants," however; that phrase came into use only in mid-century after immigration had been restricted. Today, experts rarely see immigrant women as problems and more frequently speak of "empowering" than of "protecting" them.

Immigrant Women: Protection or Emancipation?

Focused on problems, and searching for solutions, a 1900 conference on immigrant women almost certainly would have discussed the white slave trade, factory work, and the “girl problem,” along with proposals for protecting immigrant women from exploitation at work and at home.

In 1900 a significant problem associated with immigrant women was the “white slave trade,” which we today call “trafficking in women.” With limited evidence, female reformers believed foreign procurers preyed on women during migration; with even less evidence, they insisted (wrongly) that foreign-born women predominated among urban prostitutes. With men far outnumbering women among migrants, the experts’ fears were not completely irrational. Women experts demanded protection for women while they were in transit and at immigrant processing stations, and they wanted native women included among immigration inspectors. Today’s conference shares some of these concerns.

But protection could have negative consequences. Prostitutes, along with “those likely to become a public charge” because of an inability to support themselves, were among the first immigrant groups to be denied admission to the United States. Because inspectors viewed women traveling alone with suspicion, rates of women’s detention and exclusion from Ellis Island exceeded those of men. “Vice raids” were almost exclusively limited to immigrant neighborhoods.

Welfare workers’ view of immigrants’ factory work as a problem also made sense in a country where foreign-born women were more likely than natives to work in factories before, during, and after marriage, and where whole industries (notably textiles, garments, canning, and cigars) were dominated by the foreign-born and their daughters. Conditions in all these workplaces, most notoriously the garment “sweat shops,” were abominable. Supervision was abusive, sexual harassment was common, wages were low, and opportunities for advancement were few. But while immigrant women often regarded unionization, collective bargaining and strikes as the best solutions, experts in 1900 would have argued instead for protective legislation. Again, the benefits of protection proved to be mixed. Forcing employers to provide toilet facilities and proper ventilation and preventing them from locking in their workers had clear benefits. Limits on women’s working hours and guarantees of a minimum wage for women workers, however, could diminish women’s incomes or lead to

their replacement by male workers, themselves without workplace protection. Settlement houses sometimes provided day nurseries for the children of working mothers but their main goal was to allow mothers to devote full attention to their children. Housing codes prohibiting home industrial work or the keeping of paying guests in tenements eliminated the few ways that married women could earn money at home. Immigrants' evasion of protective laws often transformed female wage earners into law-breakers. Today, consideration of labor activism is accorded a more central place - although we, too, remain focused on law, rather than direct action.

Welfare workers in 1900 also focused special attention on the problems of girls - a group that we would today term the 1.5 or second generation. Many believed that to solve the "girl problem" they had to protect girls from their own fathers, mothers, and families. Laws limiting legal occupancy and zoning laws aimed to protect immigrant girls from the sexual dangers of living in houses with many "boarders" - men who paid for a bed, laundry, and meals in a family's home. Welfare workers also argued for limiting girls' access to urban entertainment such as dance halls, amusement parks, and theaters, fearing their enticement into sexual immorality via the new commercial culture that was generating a youth culture and female independence in courtship. Experts advocated the creation of family courts that could mediate or even intervene when immigrant children misbehaved, and they helped to create and staff homes for "delinquent" girls whose most common form of rebellion was "precocious" sexual activity.

Welfare workers believed that solving the "girl problem" required education as much as protection. Girls, even more than boys, had to be weaned from immigrants' communalist or familist values, for these subordinated the young to the needs of the family group as parents (typically mothers even more than fathers) defined them. Middle-class, professional, trained, "old stock" American women hoped education could emancipate foreign-born females. They taught them English, of course: settlement house programs, public schools and immigrant voluntary associations competed to provide language instruction in 1900. They also provided vocational education in the form of public school training in sewing or industrial skills. But most women experts believed that the solution to the problems of factory work was to encourage immigrants to

become servants, as work under the supervision of native women would Americanize them and their future families.

Like many other reformers, the welfare workers viewed immigrant women's ignorance and subordination to men as primary causes of foreign women's problems and saw low-wage immigrant men as inadequate breadwinners who forced wives and daughters to carry unnecessary wage-earning burdens. Reformers proclaimed that the "Americanization" and emancipation through individualism of immigrant women required their domesticity. Teaching foreign girls and women how to organize and run an American family and household became the central focus of the educational programs they pioneered. The most ubiquitous form of vocational education advocated for immigrants by welfare workers in 1900 was not preparation for domestic service or factory work but intensive instruction in American domesticity. Welfare workers could not easily reach married immigrants: settlement house mothers' clubs attracted few neighborhood women. Instead, home economics courses, first proposed and then taught in settlements, became mandatory for all female junior high school students in urban public schools. These courses taught girls how to cook, clean, shop, and care for children in the "American way." They introduced girls to American understandings of proper family roles and to American standards of cleanliness, household equipment, and decoration. Even Americanization courses for adult immigrants, which purported to prepare women for citizenship, focused on domestic tasks and the proper equipment and maintenance of an American home. In every arena, girls and mothers alike learned that the focus of an adult woman's life was to be motherhood, not wage-earning, and that the home was to be a private sanctuary to which only close family members - not neighbors, not male boarders - had access. The female welfare workers - unmarried, well-educated, and career-oriented - did not present themselves as the model of American womanhood immigrant women should emulate (although certainly some immigrant girls saw them as precisely that).

Clearly, issues of domesticity, education for domesticity, and concerns about immigrant women's sexuality, fertility, and morality had much greater salience for the experts of 1900 than they do in 2002. The experts in 1900 were also far more concerned with the problems of girls of the second generation. Have the changing roles of American women, and

especially their increased commitment to wage-earning and professional development, on the one hand, and a more open female sexuality on the other, changed the relations of experts and immigrant women clients? Might our own desires to “empower” immigrant women not also reflect a peculiarly American insistence upon female emancipation, however defined, as a necessary consequence of women’s immigration to the United States?

Neither at today’s conference nor at one in 1900 would religious beliefs and practices or the culturally diverse forms of female morality and womanhood associated with religious faith have received much attention as a problem. This may well reflect a deeply rooted American respect for the sanctity of religion as an element of private life. It may also, however, reflect the contemporary fear that it is in private arenas such as religion that cultural differences generate conflicts rather than providing opportunities for the celebration of the cultural diversity we now espouse.

Today’s strategies for change are fundamentally different from those of the past and reflect the very different, and more restrictive, immigration policies that have characterized the United States since the 1920s. Experts in 1900 would have been interested in legal solutions to immigrant women’s problems, but their focus was on creating a welfare state and securing legislation to protect women already residing safely within the United States. We, by contrast, are more concerned with legal issues for women at the point of entry. A session on refugees, asylum and detention would have had no counterpart in 1900, when these were not yet recognized legal categories; similarly, there would have been no focus on law and policy related to entry and access to legal residency status rather than on the legal issues faced by immigrants once they are living in this country. Only a woman such as Donaldina Cameron, who worked with women of the already-restricted migrations from Asia, might have insisted on a discussion of detention in 1900.¹ Today’s greater concern with laws governing entry reflects the fundamental reorientation of U.S. immigration policies toward restriction that began in the 1880s, intensified in the 1920s, and survived reform and revision of immigration policy in 1965. For immigrant women and men today the largest challenge of their lives, by far, is the work and money it requires to become an immigrant, rather than the older and more familiar problems of living as an alien immigrant in the United States.

Race and Nationality: Women's Problems or Problem Women?

Race would have been as much a concern at a conference in 1900 as at one in 2002. Social welfare workers regularly talked about racial differences among immigrant women and offered racial explanations for their behavior. It is clear that experts in 1900 meant something quite different by race than what we mean today, however, for the immigrant women clients in 1900 were overwhelmingly of European origin. Experts on immigrant women regarded national (or what we would today call "ethnic") groups to be separate races. Race was not defined exclusively by skin color but signified a biologically reproducing group with a shared culture or religion. By such standards, immigrant men were both white (and, unlike immigrants from Asia, eligible for naturalization) and members of "European races" or "white races," some of them (e.g., Jews, Italians, Mexicans) stigmatized as "swarthy," "greasers," "dagos," or "the Chinese of Europe."

Because understandings of race in 1900 focused on the biological reproduction of culture, a conference on immigrant women could scarcely have avoided the issue of immigrant women's high fertility. The number of children born to foreign-born women was probably the most widely researched dimension of their lives in the early twentieth century, largely because, as eugenicists claimed, it "weakened" the American "Anglo-Saxon" race, threatening future "mongrelization." Just as white Americans today sometimes fear the "browning of America" through immigration, many Americans in 1900 worried about the "suicide" of the "Anglo-Saxon race."

Social welfare experts worked hard to teach American standards of sanitation and child care to immigrant mothers in the hope of reducing high infant mortality rates, but this does not mean that they applauded large families among immigrant women. Female welfare workers were nonetheless more silent about the burdens for women of large families than one might have predicted, given their general authority on immigrant women and their commitment to problem-solving. In all likelihood, their insistence that domesticity was the only proper role for immigrant women, along with their own choices such as their avoidance of marriage and motherhood, robbed them of authority in debates about race, fertility and immigration restriction. Few women welfare experts would ultimately be called before Congress, for example, as it debated

immigration restriction in the decade after World War I. Perhaps this was because nativists seeking to restrict immigration saw the female experts, as much as the more fertile immigrant women they hoped to educate and transform, as causing the “problem” of race suicide.

Today’s world and conferences are clearly somewhat different. Today’s experts, immigrant and long-time American alike, have adopted the life choices of the poorer minority and immigrant women of the past. Unlike the experts of the past, they combine wage earning with marriage and motherhood. Few experts on immigrant women point to high fertility among foreign women as a problem. Fewer still worry about the impact on the nation of its changing skin color. Even those social conservatives who might worry privately about racial transformation or who criticize the consequences of feminism rarely portray today’s experts as the cause of either problem.

NOTES

1. Donaldina Cameron (1869–1968) was a missionary in San Francisco in the early 1900s. Her main goal was the rescue of Asian girls and women brought into the United States and forced to work as domestics or prostitutes.

A SHORT BIBLIOGRAPHY ON IMMIGRANT WOMEN, 1830–1930

- Cohen, Miriam. *Workshop to Office: Two Generations of Italian Women in New York City, 1900-1950*. Cornell University Press, 1993.
- Diner, Hasia. *Erin’s Daughters in America: Irish Immigrant Women in the Nineteenth Century*. Johns Hopkins University Press, 1983.
- Enstad, Nan. *Ladies of Labor, Girls of Adventure: Working Women, Popular Culture, and Labor Politics at the Turn of the Twentieth Century*. Columbia University Press, 1999.
- Gabaccia, Donna R. *From the Other Side: Women, Gender, and Immigrant Life in the U.S., 1820-1990*. Indiana University Press, 1994.
- Glenn, Evelyn Nakano. *Issei, Nisei, War Bride: Three Generations of Japanese American Women in Domestic Service*. Temple University Press, 1986.
- Glenn, Susan. *Daughters of the Shtetl: Life and Labor in the Immigrant Generation*. Cornell University Press, 1990.
- Harzig, Christiane et al. *Peasant Maids, City Women: From the European Countryside to Urban America*. Cornell University Press, 1997.

Today's Immigrant Women in Historical Perspective

- Kasaba-Friedman, Kathy. *Memories of Migration: Gender, Ethnicity, and Work in the Lives of Jewish and Italian Women in New York, 1870-1924*. State University of New York, 1996.
- Neidle, Cecyle. *America's Immigrant Women*. Twayne Publishers, 1975.
- Nolan, Janet. *Ourselves Alone: Women's Emigration from Ireland, 1885-1920*. University Press of Kentucky, 1989.
- Pascoe, Peggy. *Relations of Rescue: The Search for Female Moral Authority in the American West, 1874-1939*. Oxford University Press, 1990.
- Peffer, George Anthony. *If They Don't Bring Their Women Here: Chinese Female Immigration Before Exclusion*. University of Illinois Press, 1999.
- Pickle, Linda Schelbitzki. *Contented Among Strangers: Rural German-Speaking Women and Their Families in the Nineteenth-Century Midwest*. University of Illinois Press, 1996.
- Ruiz, Vicki. *From Out of the Shadows: Mexican Women in Twentieth-Century America*. Oxford University Press, 1998.
- Seller, Maxine. *Immigrant Women*. State University of New York Press, 1994.
- Weatherford, Doris. *Foreign and Female: Immigrant Women in America, 1840-1930*. Facts on File, 1995.
- Yung, Judy. *Unbound Feet: A Social History of Chinese Women in San Francisco*. University of California Press, 1995.

CONTEMPORARY FEMALE IMMIGRATION TO THE UNITED STATES: A DEMOGRAPHIC PROFILE¹

MIN ZHOU

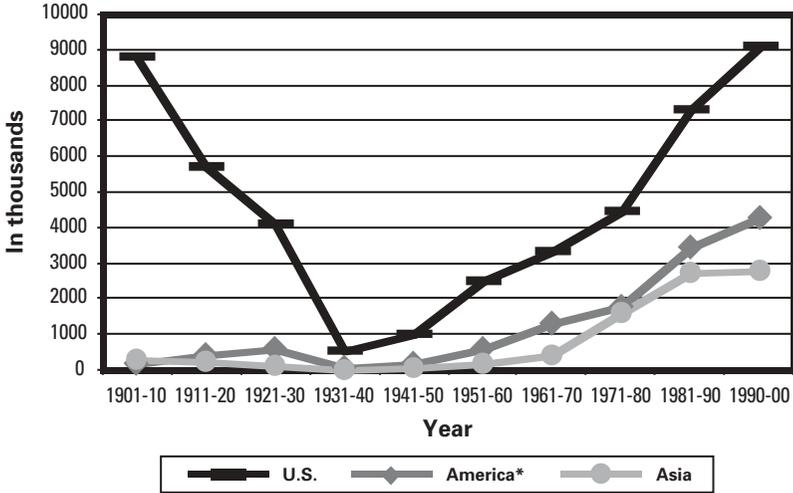
After a long hiatus of restricted immigration, the United States once again opened its doors in the 1970s and has since received millions of immigrants. Between 1971 and 2000, the country admitted 20.9 million legal immigrants, including 2.2 million formerly unauthorized aliens and 1.3 million special agricultural workers who were granted permanent resident status under the provisions of the Immigration Reform and Control Act (IRCA) of 1986.² The extraordinary inflow has been characterized by an increase in the share of female immigrants. In the 1990s, 9.1 million immigrants, over half of whom were women, gained legal entry into the United States as permanent residents. This essay describes the general trends of contemporary immigration and the socio-economic characteristics of the U.S. foreign-born population with a focus on women, and highlights some of the important implications of female migration for immigrant settlement and adaptation.

GENERAL TRENDS OF CONTEMPORARY IMMIGRATION

Contemporary immigration has exceeded mass immigration at the turn of the twentieth century. The United States admitted 20.9 million immigrants between 1971 and 2000, as opposed to 18.7 million between 1901 and 1930. The number peaked at 9.1 million in the last decade of the twentieth century, compared with the earlier peak of 8.8 million in the first decade. Its composition shifted from predominantly European immigrants to those of predominantly non-European origin. Figures 1 and 2 trace the historical trend of U.S. immigration over the span of 100 years. They demonstrate, first, that U.S. immigration peaked in the first decade and declined rapidly in succeeding decades to its lowest point in the 1930s, picking up speed again immediately after World War II and accelerating exponentially after the 1970s. Second, the figures indicate that immigration in the first half of the century was dominated by immigrants

**Figure 1: Immigration to the United States: 1900-2000
(in thousands)³**

* Excluding Canada



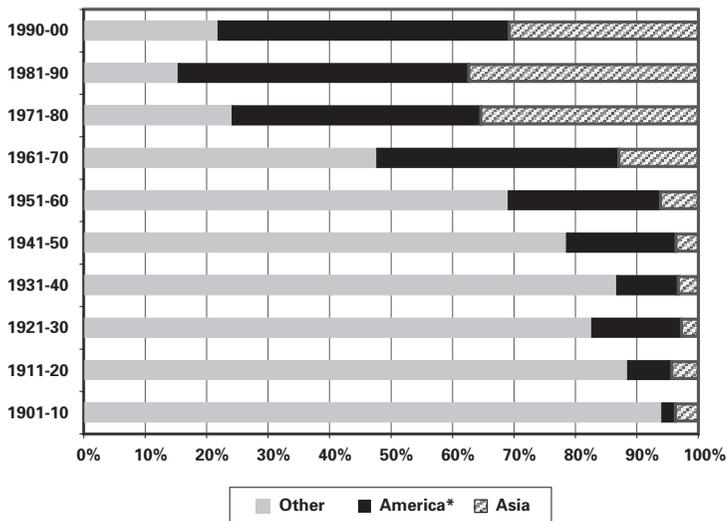
from Europe (more than 80 percent) while the contemporary era is dominated by those from Latin America and Asia (more than two-thirds).

Several features of contemporary immigration are noteworthy in the context of an historical perspective. First and foremost, contemporary immigrants are extremely diverse in national origin. Since the 1980s, more than 85 percent of the immigrants admitted to the United States have come from Asia and Latin America. Only ten percent are from Europe, compared with more than 90 percent at the earlier peak. Mexico, the Philippines, China, and India have consistently remained on the list of the top sending countries in the past two decades. Mexico alone has accounted for more than one-fifth of the total legal admissions and has been the number one sending country since 1960.

The composition of contemporary immigration has had a lasting effect on the growth and composition of the general U.S. population. During the past thirty years, immigration accounted for more than a third of total population growth. Asian- and Latin-origin populations grew particularly fast both in absolute and in relative terms. Some groups - Salvadorans, Guatemalans, Ecuadorians, Dominicans, Haitians, Jamaicans, Columbians, Chinese, Filipinos, Asian Indians, Koreans, Vietnamese,

Figure 2: Immigration to the United States by Region: 1900-2000⁴

*Excluding Canada



Cambodians, and Laotians – grew at spectacular rates, mainly as a result of immigration and the natural growth among the immigrant population. While only about a third of Mexican Americans are foreign-born, all other newer Latin or Central American, Caribbean, and Asian subgroups in the United States have grown very quickly through immigration and their members are predominantly foreign-born.

Second, despite a phenomenal increase in the size of immigrant influx, the rate of contemporary immigration relative to the total U.S. population is much lower than that of the earlier period. This is because the U.S. population more than tripled during the course of the twentieth century.⁵ As of 2000, the foreign-born population represented 10.4 percent of the total U.S. population, compared with nearly a quarter at the turn of the twentieth century. The relatively low rate of contemporary immigration implies a more modest overall impact on the U.S. population today than in the past.

However, such an impact is disproportionately localized in areas of high immigration, since today’s newcomers are highly concentrated not simply in states or urban areas that traditionally have attracted most immigrants but also in states or urban areas in the West, the Southwest, and the Southeast. Since 1971, the top five states of immigrant intended resi-

dence, accounting for almost two out of every three newly admitted immigrants, have been California, New York, Florida, Texas, and New Jersey. California has been the leading state of immigrant destination since 1976. In 1995, the five leading urban areas of high immigrant concentration were New York, Los Angeles-Long Beach, Chicago, Miami-Hialeah, and Orange County.⁶ In contrast, the turn-of-the-century European immigrants were highly concentrated along the Northeastern seaboard and the Midwest. For them, the top five most preferred state destinations were New York, Pennsylvania, Illinois, Massachusetts, and New Jersey, and the top most preferred immigrant urban destinations were New York, Chicago, Philadelphia, St. Louis, and Boston.⁷

In 2000, the foreign-born population was geographically more concentrated than the native population, and more likely to live in central cities of metropolitan areas. For example, 48 percent of the foreign-born from Asia and 59 percent of the foreign-born from Central America lived in the West (mostly in California), and 46 percent of the foreign-born from the Caribbean or South America lived in the Northeast (mostly in New York). Almost half of the foreign-born population, compared with only 27 percent of the native population, lived in central cities.

Third, contemporary immigrants are more likely than their earlier counterparts to stay in the United States permanently. The rate of contemporary emigration is considerably lower today than in the past. During the period of 1901-1920, an estimated 36 out of every 100 immigrants returned to their homelands. In contrast, between 1971 and 1990, less than a quarter returned.⁸

Fourth, female immigration has become an increasingly prominent feature of contemporary immigration. Since 1993, the share of women as a proportion of total immigration has varied from 53 percent to 55 percent, which is much higher than in the past. Table 1 shows the steadily increasing share of female immigrants admitted to the United States in 1985, 1990, 1995 and 2000. By 2000, close to 60 percent of immigrants from Mexico, China, the Philippines and Vietnam were female. As in the past, female immigrants today are more likely to be married than are male immigrants. What is different, however, is that today's female migrants are more diverse in type, including not only family-sponsor migrants but also independent labor migrants, refugees and asylees, as well as undocumented migrants.

Table 1: The Share of Women as a Proportion of Total U.S. Immigration⁹

Year	1985	1990	1995	2000
All Countries	49.8	46.7	53.7	55.4
Soviet Union/Russia	55.6	51.5	53.7	58.0
Mexico	41.0	42.2	56.9	59.5
El Salvador	53.5	49.2	53.4	54.1
Guatemala	53.1	48.7	53.7	51.9
Cuba	45.1	44.8	48.2	47.2
Dominican Republic	51.6	49.5	52.5	53.7
Haiti	47.0	53.2	52.3	56.4
Jamaica	52.2	52.4	53.2	54.0
China	52.0	51.0	54.9	59.8
India	50.0	49.7	53.0	50.7
Korea	57.1	55.2	56.3	56.0
Philippines	58.3	59.5	58.3	60.8
Vietnam	40.6	51.9	50.9	60.1

Fifth, today's immigrants are much younger than the native population. As of 2000, 79 percent of the foreign-born were in the 18–64 age group, compared with 60 percent of the native population; and 44 percent of the foreign-born, but only 29 percent of the native-born, were in the 25–44 age group.¹⁰ Table 2 shows the age and sex composition of the most recent immigrants admitted to the United States during the past ten years. About two-thirds of the recent immigrants were aged 15 to 44. Sixty-two percent of women immigrants were aged 15 to 44, compared with 44 percent of the total U.S. population. The particularly young age structure of the foreign-born population suggests that these immigrants are active and productive in the economy as well as in human reproduction, child rearing, and other aspects of family life. Immigrant families tend to be larger than native families, with 27 percent of immigrant families in 2000 consisting of five or more people, compared with 13 percent of native families.¹¹

Table 2: Age and Sex of Immigrants Admitted to the United States, 1991-2000¹²

Age Group	All		Female		Total U.S.	
	Immigrants	Percent	Immigrants	Percent	Population	Percent
Total	9,095,417	100.0	4,493,986	100.0	281,421,806	100.0
Under 14 years	1,581,807	17.4	782,456	17.4	60,253,373	21.4
15-24 years	1,932,130	21.2	897,594	20.0	39,183,891	13.9
25-44 years	3,950,032	43.4	1,907,380	42.4	85,040,251	30.2
45-59 years	1,044,324	11.5	555,376	12.4	51,147,189	18.2
60 years and over	587,124	6.5	351,180	7.8	45,797,102	16.3

Sixth, contemporary immigration includes a much larger number of undocumented immigrants than did that of the early twentieth century. The U.S. Census Bureau recently estimated that approximately 8.7 million undocumented immigrants lived in the United States as of 2000 (44 percent were Mexican, 24 percent other Latin American, 16 percent Asian, 13 percent European, and 3 percent from other regions), and 46 percent of the undocumented immigrants were female. Recent U.S. immigration policies aimed at curtailing undocumented immigration have led to more permanent settlement among undocumented immigrants. This is especially true of Mexicans, who moved back and forth seasonally in the past but now find it more difficult to do so. This has significant implications for family formation and family-related issues of immigrant adaptation.

Seventh, compared with earlier immigration, today's inflows include a much more visible proportion of refugees and asylees.¹³ Since the 1960s, annual admission of refugees has averaged 68,000, compared with the average annual admission of 47,000 over the fifteen-year span immediately after World War II. The admission of refugees today implies a much-enlarged base for later immigration through family reunification.¹⁴

Eighth, the all-time high presence of non-immigrants arriving in the United States temporarily each year also has broad implications for potential immigration, both legal and illegal. Statistics from the Immigration and Naturalization Service show that 22.6 million non-immigrant visas were issued in 1995. 17.6 million (78 percent) of those entering the

United States were tourists on short visits for business or pleasure; the rest, on long-term non-immigrant visas, included 395,000 foreign students along with their spouses and children, 243,000 temporary workers or trainees along with their immediate relatives, and a smaller number of traders and investors. The groups of long-term non-immigrants contain a significant pool of potential immigrants. The majority of those who initially entered as students can seek employment in the United States after the completion of their studies, which increases the possibility of a later move to permanent resident status. Among those who entered as tourists, the great majority will depart on time. However, some of those who might qualify for family-sponsored immigration – a relatively small proportion but quantitatively a large number – may overstay their visas and wait in the United States to have their status adjusted. In 2000, 52 percent of the legal immigrants admitted had their non-immigrant visas adjusted here in that manner. More than 40 percent of the total undocumented immigrant population consisted of these “non-immigrant overstays.”¹⁵

DIVERSE SOCIOECONOMIC CHARACTERISTICS OF CONTEMPORARY IMMIGRATION

Contemporary immigrants also differ from turn-of-the-century European immigrants in their diverse socioeconomic backgrounds. The image of the poor, uneducated, and unskilled “huddled masses” used to depict the turn-of-the-century arrivals no longer applies to today’s newcomers. As of 1990, for example, more than 60 percent of foreign-born persons from India aged 25 years or older reported having attained college degrees, three times the proportion of average Americans. This was quite different in the case of those from El Salvador and Mexico, less than five percent of whom had such degrees. Among employed workers (aged 16 years or older), more than 45 percent of foreign-born persons from India held jobs in managerial or professional occupations, more than twice the proportion of average American workers; however, fewer than seven percent of those from El Salvador, Guatemala, and Mexico reported having such jobs. Immigrants from India reported a median household income of \$48,000, compared with \$30,000 for average American households; those from the Dominican Republic and the Soviet Union reported a median household income below \$20,000. Poverty rates varied, ranging from a

low of five percent for Indians and Filipinos to a high of 33 percent for Dominicans and an extremely high rate of over 40 percent for Cambodians and 60 percent for Hmongs, compared with about ten percent for all American families.¹⁶

On average, the foreign-born population is less well-educated than the native population. Sixty-seven percent of foreign-born adults (aged 25 and over) had completed high school, compared with 87 percent of the native-born, and one-fifth of the foreign-born adults had less than a ninth-grade education, compared with one-twentieth of the native-born. There was, however, no significant difference in college education between the foreign-born and native-born. Economic disadvantages such as unemployment, low wages, and poverty are largely due to the lack of education and marketable skills among a sizeable segment of the documented foreign-born population and among undocumented immigrants.

The socioeconomic characteristics of immigrant women are also diverse. As in the past, many immigrant women arrived in the United States through the family reunification program, and their education and skills are generally lower than those of their male counterparts. However, today's immigration includes a significant number of highly skilled, employer-sponsored female immigrant workers.

Table 3 shows that immigrant women from Mexico are on average young and have high fertility rates and low levels of education. They are less likely to be in the labor force or in unskilled, labor-intensive occupations than those from Jamaica, the Philippines, India and China. Those from Jamaica tend to be educated but are less likely to attain college degrees. Immigrant women from the Philippines and India have exceptionally high levels of education and are concentrated in professional and technical occupations. Those from China are more bifurcated in their levels of education and occupational status, with 44 percent having no high school education but nearly 40 percent having at least some college education.

Immigrant women are highly concentrated in certain occupations. Female immigrants from Jamaica and the Philippines are disproportionately nurses and medical professionals, while those from India are disproportionately engineers and scientists and those from Mexico and Central America work disproportionately in domestic work or menial factory jobs.¹⁷

Table 3: Socioeconomic Characteristics of the Foreign-Born by Sex and Selected Origins, 1990¹⁸

	All Male	All Female	Mexican Female	Jamaican Female	Filipino Female	Indian Female	Chinese Female
Total	48.9	51.1	44.9	55.1	56.3	45.1	50.4
Median age	35.3	39.3	29.4	36.8	39	35.9	45.1
Currently married	61.7	58.3	57.1	40.7	63.9	76.7	68.9
Fertility (child ever born per 1,000)							
Aged 15-24	—	385	1,177	823	842	384	521
Aged 25-34	—	1,466	2,349	1,583	1,358	1,200	930
Aged 35-44	—	2,254	3,521	2,384	2,064	2,037	1,920
Education (25 and over)							
Less than high school	40.0	42.4	75.7	29.7	18.7	18.2	44.4
High school graduate	16.9	22.1	12.0	27.5	13.8	12.0	16.7
Some college	18.7	18.9	9.2	27.4	22.4	14.6	14.5
College degrees	24.5	16.6	3.1	15.4	45.1	55.1	24.4
In the labor force (16 and over)	76.9	52.3	50.0	75	73.2	59.9	53.8
Unemployed	7.1	8.6	15.3	7	4.4	7.4	5.7
Occupation							
Managerial and Professional	22.3	22.0	7.7	25.2	31.2	38.5	23.4
Technical	25.3	34.7	22.7	36.8	39.1	40.3	29.5
Service	18.1	23.2	30.1	33.4	17.7	9.5	18.2
Farming	3.8	1.3	5.5	0.1	0.8	0.4	0.2
Precision production	12.0	4.1	5.5	1.1	3.4	2.7	4.3
Operators and laborers	18.5	14.7	28.6	3.4	7.9	8.6	24.4

IMPLICATIONS FOR IMMIGRANT SETTLEMENT AND ADAPTATION

International female migration is no longer invisible in the contemporary world. Patterns of female immigration to the United States since the 1970s necessarily impact our understanding of immigrant settlement and adaptation.

First, the increased number of women in migrant influx points to a trend toward permanent settlement. Unlike traditional male labor migration, in which the sojourning pattern was typical, the arrival of women, who are more likely to stay permanently, has a significant impact on family formation, child rearing, and community building.

Second, as gendered migration reshapes settlement, it also redefines gender roles and family relations. Many immigrant women participate actively in the labor market, and their work role and economic contribution to household or family life are not just secondary but essential for survival or mobility. This change may be viewed as a liberating experience for women but may also create tension and new issues in gender relations. Many immigrant women find themselves caught up in conflicting obligations as they struggle to function simultaneously as wage workers, wives, and daughters while negotiating patriarchy and the gendered hierarchy in their new homeland.

Third, many immigrant women lack connections to social support networks and institutions in the mainstream society due to the constraints, such as poor English proficiency, unfamiliarity with the host society, and social isolation, to which all immigrants are subject. They are nonetheless primarily responsible for managing household affairs, raising children, and rebuilding social networks in addition to earning wages. Issues related to health care, child care, and the care of the elderly, as well as childbearing and prenatal care, have become particularly urgent.

Fourth, like their male counterparts, immigrant women have maintained close links to their countries of origins. Once settled in the United States, many of them have to support their families back in their home countries by sending remittances on a regular basis, thus thinning the limited resources available for settlement and mobility. They themselves may also become future sponsors for migrating family members, creating a key link in the chain of family migration.

In sum, female immigration in the twenty-first century is expected to

increase steadily over time. As migrant women become increasingly visible in the workplace, in the community, and on the home front, they will shape the processes of settlement and mobility for years to come.¹⁹

NOTES

1. I thank Chiaki Inutake for her research assistance.
2. Immigration Reform and Control Act, Pub. L. 99-603 (1986).
3. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 2000* (Government Printing Office, 2000).
4. Op. cit.
5. James P. Smith and Barry Edmonston, eds., *The New Americans: Economic, Demographic and Fiscal Effects of Immigration* (National Academy Press, 1997).
6. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1995* (Government Printing Office, 1997).
7. Roger Waldinger and Mehdi Bozorgmehr, "The Making of a Multicultural Metropolis," in Waldinger and Bozorgmehr, eds., *Ethnic Los Angeles* (Russell Sage Foundation, 1996), pp. 3-37.
8. Waldinger and Bozorgmehr, op. cit.; Robert Warren and Ellen Percy Kraly, *The Elusive Exodus: Emigration from the United States* (Population Reference Bureau, Population Trends and Public Policy Occasional Paper #8, 1985).
9. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 2000* (Government Printing Office, 2000).
10. Census Bureau, "The Foreign-Born Population in the United States: Population Characteristics," March 2000, P20-534 (2001).
11. Op. cit.
12. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 2000* (Government Printing Office, 2000), and Census Bureau, op. cit.
13. Refugees and asylees are people with well-founded fears of persecution on the basis of race, religion, membership in a social group, political opinion, or national origin. Refugees are those seeking protection from outside the United States while asylees are those seeking protection once already in the United States.
14. Min Zhou, "Contemporary Immigration and the Dynamics of Race and Ethnicity," in Neil Smelser, William Julius Wilson, and Faith Mitchell,

eds., *America Becoming: Racial Trends and Their Consequences* (Commission on Behavioral and Social Sciences and Education, National Research Council, National Academy Press, 2001), I:198-240.

15. Zhou, "Contemporary Immigration," *op. cit.*

16. *Op. cit.*

17. Nancy Foner, *New Immigrants in New York*, 2d edition (Columbia University Press, 2001); Pierrette Hondagneu-Sotelo, *Domestica: Immigrant Workers Cleaning and Caring in the Shadows of Affluence* (University of California Press, 2001); Min Zhou, *Chinatown: The Socioeconomic Potential of an Urban Enclave* (Temple University Press, 1992).

18. Census Bureau, *1990 Census of the Population: The Foreign Born Population in the United States* (Government Printing Office, 1993).

19. In addition to the works cited in the footnotes, see Paul M. Ong, Lucie Cheng, and Leslie Evans, "Migration of Highly Educated Asians and Global Dynamics," 5 *Asian and Pacific Migration Journal* 1-19 (1992); Commission on Civil Rights, *The Economic Status of Americans of Asian Descent: An Exploratory Investigation* (Clearinghouse Publications, 1988); Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s* (Government Printing Office, 1992).

COMMENTS ON DEMOGRAPHICS AND HISTORY PRESENTATIONS

NANCY FONER

Min Zhou has provided a clear and succinct profile of today's female immigration. Indeed, she makes clear that one of its distinctive features is the very high percentage of women, who outnumber men in most groups coming to the United States.

There are many reasons for this, but two stand out. The first is U.S. immigration law's emphasis on family reunification, which favors the admission of spouses and children. The second is the demand for certain kinds of workers, such as nurses, which makes it easier for some professional immigrant women to obtain visas. Women are also more likely to come on their own today, rather than following in the footsteps of men as they did a hundred years ago. Among the reasons for this phenomenon are the structure of U.S. immigration law, changing gender roles, and economic opportunities for women.

It is worth emphasizing something noted by both Min Zhou and Donna Gabaccia: today's immigrant women (and men) include more professionals and highly-educated people from their home country's middle- and upper-middle-classes than in the past. This has profound implications for their experiences here, particularly for groups such as Filipinos and Indians in which the number of professional and well-educated women is significant.

Donna Gabaccia has provided a fascinating and ingenious way of thinking about the historical context by asking how a conference similar to this one might have looked a hundred years ago. It led me to consider the ways in which scholars have been rethinking and reevaluating research on contemporary immigrant women, so that a conference of scholars focusing on immigrant women in the late 1970s or early 1980s might have looked very different than one today.

The first phase of writing about contemporary immigrant women in the United States waxed lyrical about the benefits of wage work for these women, emphasizing how earning a regular wage for the first time, or a

higher wage that enabled a woman to make a larger contribution to the family economy, brought greater independence and autonomy. The studies stressed how wage work gave migrant women more authority in the household and greater self-esteem, and how it led them to be more assertive in relations with their spouses. The research also emphasized how women, because they experienced such gains in the United States, were more oriented toward remaining here than were men.

We are now well into a second phase of research that has revisited these issues from a different perspective. It has become clear that wage labor is not necessarily emancipatory: it may bring burdens as well as benefits. Immigrant women's jobs are often poorly paid and offer little hope for advancement. Migrant women must deal with the double day – work at home after a long day of work outside the home – because the household division of labor remains far from equal. Women's increased financial independence may lead to greater discord with spouses, for men may resent women's new demands on them. While many immigrant women feel that the advantages of work outweigh the drawbacks, others are working only because they have to, not because they want to.

Now, too, scholars are less interested in whether women intend to leave or stay in the United States than in the kinds of transnational ties they maintain with their countries of origin while they live in this country. Scholars are asking a host of new questions: Do links to the home country reinforce premigration gender ideologies and norms? Do they lead women (and men) to question these ideologies and norms? What are the implications of transnational mothering, when women leave or send children to the home country to be raised while they work in the United States?

These are just some of the questions that await further study.

DISCUSSION

LESLYE ORLOFF: You spoke about immigrant women, particularly in the Asian communities you studied in Los Angeles, who have greater economic means because of their education and income levels, and who are able to help other immigrant women get information. Is it only better-educated immigrant women who help women in the community? Do second generation immigrants also help, or are they actually hostile to newer arrivals?

MIN ZHOU: The proportion of second generation immigrants who serve the immigrant community is very low. Among those who do so, most work in the nonprofit sector, and women seem to outnumber men. Immigrants provide help not only through the nonprofit sector but also through ethnic businesses. One way working-class immigrants gain access to the middle class is through their coethnic employers, because they share the language; another is through interaction with suburban middle-class coethnics who regularly return to the ethnic community to shop and obtain ethnic-specific services.

I did ethnographic research in an inexpensive restaurant run by Sino-Vietnamese (ethnic Chinese from Vietnam) in Los Angeles' Chinatown. The Chinese families coming in were a mix of working-class and middle-class. When the waiters or waitresses or even the boss saw a Chinese family with a college-bound child, they asked for information and took notes. That kind of contact is very important. The Latino families who ate there, however, did not experience the same kind of interaction because of the language barrier.

NANCY FONER: Women's participation through ethnic neighborhood and immigrant community organizations was probably lower in the past than it is today, in part because of the class backgrounds of the immigrants themselves.

QUESTION: Can you discuss African immigrants to the United States?

MIN ZHOU: Immigration from Africa is highly selective and constitutes less than eight percent of the total inflow. Most of the African immigrants are well-educated. Perhaps 40 percent of them are women.

NANCY FONER: African immigrants are a relatively new group and the limited existing research about them is focused on specific popula-

tions. Anthropologist Paul Stoller has written a book about West African traders in New York, most of them men, and discusses in it the phenomenon of transnational families. Many of the men who have left wives and children behind come from cultures where polygamy is a custom, and they sometimes maintain two families - one in the United States and another in West Africa.¹

COMMENT: In 2000, the Census Bureau subcontracted with an organization that targeted black audiences and, more specifically, black immigrant audiences. It found that while that group is not huge, it is growing, and there are specific African countries such as Nigeria and Senegal from which immigrants are more likely to come than others.

QUESTION: I am curious about why there are some countries from which the number of women immigrants grew dramatically between 1985 and 2000 and some countries for which the numbers stayed steady. For example, why has the proportion of Mexican and Chinese women immigrants grown more than the proportion of Filipina and Indian women?

MIN ZHOU: Mexico is an example of a country from which the proportion has grown substantially. In 1985 many of the legal Mexican immigrants were men. They came here first and started working, and they are now sending for their wives. The growing trend for Chinese is explained by that group's immigration history. Chinese make up one of the oldest immigrant groups, and there were a lot of men in the Chinese community before 1970. When the new immigration law was put in place in 1965, more women than men began to join their families. But that trend did not start until the late 1980s for other immigrant groups from Asia. Many of the contemporary Filipino and Indian immigrants are professionals. Among these immigrants are a lot of nurses, mostly women, who come first and then send for their husbands.

QUESTION: Can you tell us a bit about immigrant women in New York City and, specifically, the West Indian or Caribbean populations there?

NANCY FONER: The West Indian and Caribbean populations in New York are interesting in light of the discussion of female-first immigration. There is a great difference, for example, between West Indian and Dominican immigrants in New York. Although there is a high percentage of females from the Dominican Republic, there is pressure on Dominican women not to come first or on their own. Among immigrants from

Jamaica, however, there is a very long tradition of female out-migration and nothing is seen as wrong with a woman coming first to establish herself and then sending for her spouse and her children.

Another difference between Dominican and Jamaican women is in their work patterns. Dominican women have much lower labor force participation rates than Jamaican women or West Indian women. There is pressure on Dominican women to withdraw from the labor force when their families start doing well, as a way to symbolize their household's respectability and elevated status. Jamaican women or West Indian women, in my experience, would not dream of doing this. One explanation is cultural differences in their countries of origin; another, that women have a much higher labor force participation rate in Jamaica than they do in the Dominican Republic.

QUESTION: We've talked about immigrants in the major cities—New York, Los Angeles, and Washington—but have you looked at the gender populations in emerging destinations or gateways such as North Carolina? Are the pioneers men or are they women? What are the differences between emerging gateways and the more traditional ones?

MIN ZHOU: In North Carolina, the proportion of immigrants, especially from Mexico and Central America, has increased tremendously. In places like Iowa, there has also been a drastic increase in the number of Mexican immigrants, both male and female. Women work in the meat-packing plants, for example. Some of these workers were pushed out from California and moved eastward. Some scholars suggest that this is due to the unintended impact of Proposition 187 and the overall anti-immigrant atmosphere in California.² Another explanation is that the legalization of formerly undocumented immigrants under the Immigration Reform and Control Act (IRCA) of 1986 makes them more mobile, so they have been moving to other places in substantial numbers since the late 1980s.

NOTES

1. Paul Stoller, *Money Has No Smell: the Africanization of New York City* (University of Chicago Press, 2002).

2. In November 1994, Californians passed Proposition 187 (the “Illegal Aliens” measure), an initiative that denied many health and social services, including public education, to illegal aliens and their children. It was struck down by a federal district court.

PANEL TWO

HOUSING AND SOCIAL SERVICES

IMMIGRANT WOMEN AND THEIR HEALTH

AFAF I. MELEIS

About 28 million immigrants live in the United States, roughly 30 percent more than a decade ago. I am deeply concerned about the kind of health care we provide for them, but I am most concerned about immigrant women and the fact that we are not prepared to give them the high-quality, culturally-appropriate health care services they will require as they age. We have only minimally-targeted programs to keep them healthy and vitally productive and even fewer health-promoting programs for them. Older first generation immigrant women will also lack the dedicated care given by family members that they might have received in their native countries.

The experiences of immigrant women are different from those of other women in the health care system. Their responses to illness and health are misinterpreted, and they face inequities and disparities in care. Research indicates that immigrants tend to be healthier than their counterparts when they first arrive but that in time, their health status suffers. Not surprisingly, they tend to respond far better to health care providers who speak their native language than to health care providers who do not. In Sweden, for example, outcomes such as better self-care and fewer accidents and errors are attributed to a match in language between health care provider and patient. When caregivers cannot provide culturally-competent care, disappointed clients feel they are not receiving the quality of care to which they are entitled. Outcomes related to these unmet expectations can also manifest themselves in illness episodes. We have not acknowledged the current, unique needs of the various immigrant populations, let alone the needs they will face as they age.

There are a number of reasons that immigrant women experience greater health risks than their non-immigrant women and immigrant men counterparts. What follows is a discussion of a few of the reasons and a proposal for a framework within which to address immigrant women's health issues. These issues must be considered in terms of immigrant

women's gender, culture, country of origin, and their transition to life in the United States. Each of these factors increases their vulnerability and their at-risk behaviors.

Women immigrants have suffered gender inequality in the way they are viewed by the health care system, in the way their communication of their illnesses and symptoms is received, and in the lack of science to guide health care professionals in providing them with quality care. They are dismissed as hysterical females, their symptoms are minimized, and their reports are undervalued. They suffer from the same normative illnesses, delays in diagnosis, and mistreatment as do their counterparts who are not immigrants. In addition, immigrant women rarely have their own access to health insurance. Many women immigrants who have not been educated in this country or are burdened by family responsibilities work at jobs, such as domestic work or care for the elderly, that are least desirable to those born in the United States. Others work for family businesses such as restaurants and dry cleaners. Insurance for these women is uncertain, as such businesses rarely provide them with either short- or long-term health care benefits. Immigrant and refugee women therefore tend to be dependent on males in their families not only for legalization of their status in the United States but for health benefits as well. While women may stay in abusive relationships because they lack independence, because of gender inequities, and because lack of societal support makes it difficult for them to leave, this situation is intensified for refugee and immigrant women.

We face three major challenges in health care for immigrant women: 1) we do not have a comprehensive framework to guide their care; 2) the care we do provide is culturally incongruent; and 3) we have very limited long-term care planning for what may become major health care problems in the future. In discussing the first issue, I would like to demonstrate how a framework could work in planning and implementing care both at the policy level and at the practice level. Caring for any client is predicated upon communication: uncovering health and illness responses, interpreting those responses, and planning and implementing a course of treatment or prevention. Such processes cannot be effective for immigrant women unless they address issues of diversity, gender equity, transitions, culture, and immigrant women's marginality within their own communities and the society at large. There are many stereotypes about immigrant women: they are a drain on society; they are all the same; if they wear tra-

ditional clothes, they must be uneducated and unproductive. Overcoming these stereotypes by acknowledging and respecting diversity is a first step.

Health care for women must be predicated upon the realization that women have been disenfranchised in our health care system. Women tend to use it more for others than for themselves, and our understanding of immigrant women's health care responses is very limited. They experience pain in their own context, for example, and describe it in their own language, in terms of fire, distress, fatigue, etc. They may not be able to speak of a one-to-ten level of pain intensity or of the smiling or frowning faces of pain that we often use to assess patients. Immigrant women's responses may reflect more of their mental pain in not having a permanent legal or citizenship status than the organic, physical pain they are experiencing.

The loss of home and family endured during the transition of refugees and immigrants, as well as other traumatic events such as rape and abuse, may exacerbate existing health conditions. A post-traumatic stress syndrome may also underlie an illness condition. Constant communication with one's native country through email, phone, fax, and frequent travel between native and new land may result in diagnoses and treatments received from the native country as well as this country. It is therefore imperative to assess carefully the initial transition and the frequency and nature of current contact with other countries.

Identifying the explanatory framework for health and illness within which women communicate and interpret their symptoms is vital for understanding responses and treatment modalities. Health care providers must know the culture of origin, review research related to this population in the United States, ask probing questions, and show genuine interest in uncovering meaning. Most immigrant women, expected to be both the preservers of cultural norms from the native country and the integrators of their families in the new society, face conflicting expectations and demands. Fellow immigrants from their native countries want them to heed traditional values and norms while the larger American society expects them to integrate completely. Many of these women feel marginalized in one or more of the communities to which they belong, because of dress, food, and the holidays they celebrate. They may be marginalized as well by gender oppression within their own community or society at large. The multiple and conflicting demands on their time tend to over-

load them, which in turn is a barrier to integration. Stigmatism leads to disapproval and rejection. The extent to which stigmatism affects their health and illness experiences is not well documented, but may cause delay in seeking care and interfere with effective intervention.

Our health care systems are notorious for inadequate language interpretation and are severely limited in providing symbolic interpretation. In addition, we do a poor job of orienting newcomers to our health care system.

FUTURE PLANNING

Immigrant women tend to come to the United States as young adults, and we will soon be faced with the graying of first-generation immigrants. While these women value care for the elderly, their children are facing both the demands for care of their elderly parents and the demands of their own lives in their adopted society. Knowledge about the potential health care needs of healthy or unhealthy elderly immigrant women is minimal. Knowledge about their adult children's needs as informal caregivers and about the skills they need to develop to sustain self-care, to promote health, and to prevent and/or deal with debilitating cognitive and physical impairment is nonexistent. We will soon face a crisis in the care of elderly immigrant women similar to the one that the Institute of Medicine addresses in its report on racially and ethnically unequal health care treatment.¹ We desperately need to address and prevent this crisis by utilizing a comprehensive framework, designing culturally-competent programs, and planning adequately for the future.

NOTES

1. Brian D. Smedley, Adrienne Y. Stith, and Alan R. Nelson, eds., *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care* (Committee on Understanding and Eliminating Racial and Ethnic Disparities in Health Care, Board on Health Sciences Policy, Institute of Medicine, National Academy Press, 2002).

REFERENCES

- J.M. Hall, Afaf I. Meleis, and P.E. Stevens, "Marginalization: A Guiding Concept for Valuing Diversity In Nursing Knowledge Development." 16 *Advances in Nursing Science* 23-41 (1994).
- M. Hattar-Pollara and Afaf I. Meleis, "Parenting Adolescents: The Experiences of Jordanian Immigrant Women in California." 16 *Health Care for Women International* 195-211 (1995).
- M. Hattar-Pollara and Afaf I. Meleis, "Stress of Immigration and the Daily Lived Experience of Jordanian Immigrant Women." 17 *Western Journal of Nursing Research* 521-539 (1995).
- M. Hattar-Pollara, Afaf I. Meleis, and H. Nagib, "A Study of the Spousal Role of Egyptian Women in Clerical Jobs." 21 *Health Care for Women International* 305-317 (2000).
- E. Im and Afaf I. Meleis, "Meaning of Menopause: Low-Income Korean Immigrant Women." 22 *Western Journal of Nursing Research* 84-102 (2000).
- E. Im, Afaf I. Meleis, and K. Lee, "Symptom Experience of Low-Income Korean Immigrant Women During Menopausal Transition." 29 *Women and Health* 53-67 (1999).
- P. S. Jones, K. B. Jaceldo, J. R. Lee, X. E. Zhang, and Afaf I. Meleis, "Role Integration and Perceived Health in Asian American Women Caregivers." 24 *Research in Nursing and Health* 133-144 (2001).
- Afaf I. Meleis, "Between Two Cultures: Identity, Roles, and Health." 12 *Health Care For Women International* 365-378 (1991).
- Afaf I. Meleis, "Women's Work, Health and Quality of Life: It Is Time We Redefine Women's Work." 33 *Women and Health* 83-103 (2001).
- Afaf I. Meleis, J. Lipson, and A. Dallafar, "The Reluctant Immigrant: Immigration Experiences Among Middle Eastern Groups in Northern California," in D. Baxter and R. Krulfeld, eds., *Selected Papers on Refugees and Immigrants*, Vol. V (American Anthropological Association, 1998) 214-230.
- Afaf I. Meleis, J. G. Lipson, M. Muecke, G. Smith, *Immigrant Women and their Health: An Olive Paper* (Center for Nursing Press, Sigma Theta Tau, 1998).

WOMEN IMMIGRANTS AND DOMESTIC VIOLENCE

LESLYE ORLOFF

Violence against women is not limited by borders, culture, class, education, socioeconomic level or immigration status. A recent survey cosponsored by the National Institute of Justice and the Centers for Disease Control and Prevention found that approximately 4.8 million intimate partner rapes and physical assaults are perpetrated against women annually. For women and their children who have immigrated to the United States, the dangers faced in abusive relationships are often more acute.¹

Historically, these dangers have been aggravated by immigration laws. Immigrant women face pressure not only to assimilate culturally but to maintain cultural traditions as well. They face language barriers, economic insecurity, and discrimination due to gender, race or ethnicity. Additionally, the problems of domestic violence are “terribly exacerbated in marriages where one spouse is not a citizen and the non-citizen’s legal status depends on his or her marriage to the abuser.”² The battered immigrant’s ability to obtain or maintain lawful immigration status may depend on her relationship to her citizen or lawful permanent resident spouse and his willingness to file an immigrant relative petition on her behalf.

The same dynamic occurs any time immigration law gives an abusive spouse total control over the immigration status of his spouse and children. This can occur when a person has received legal permission, in the form of an immigrant or non-immigrant visa, to live and work in the United States. His spouse and children are then awarded derivative immigration status so that they can join him. Examples of persons whose spouses and children can be awarded derivative visas include diplomats, those who work for religious or international organizations, students, and people who receive visas related to their work. When immigration law gives spouses control over the immigration status of their family members, it forces many battered immigrant women to remain trapped and isolated in violent homes, afraid to turn to anyone for help. They fear continued abuse if they stay and deportation if they attempt to leave.³

A survey among Latina immigrants in the Washington, D.C. area found that 21.7 percent of the battered immigrant women survey participants listed fear of being reported to immigration officials as their primary reason for remaining in an abusive relationship. Researchers also found that immigrant women experiencing physical and/or sexual abuse were victims of their abusers' threats - threats of deportation, threats of refusal to file immigration papers, and threats to call the Immigration and Naturalization Service (INS) - at over ten times the rate experienced by psychologically abused women. Among immigrant Latinas who reported being married, or previously married, the physical and sexual abuse rate was higher (59.5 percent) than for the general population of immigrant women surveyed (49.8 percent). A large proportion of married or formerly married physically and/or sexually abused immigrant women had a citizen or legal permanent resident spouse or former spouse who could have filed legal immigration papers for them (47.8 percent). However, 72.3 percent of physically and sexually abused women reported that their abusive citizen or lawful permanent resident spouse who could file immigration papers for them never did. Abusers use constant threats to deport spouses and children as powerful tools to prevent battered immigrant women from seeking help and to keep them in violent relationships.⁴

Immigration law historically gave male citizens and lawful permanent residents control over the immigration status of their immigrant wives and children. Early United States immigration laws incorporated the concept of coverture, which was "a legislative enactment of the common law theory that the husband is the head of the household." Under it, "the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband, under whose wing, protection, and cover, she performs everything."⁵ Coverture was so much a part of United States law that from 1907 through 1922, when a female U.S. citizen married a man from another country, she lost her U.S. citizenship. If the husband was a U.S. citizen, the law required him either to file an immigration petition for his wife or to accompany her when she applied for immigration status. Female citizens or lawful permanent residents could not, however, file petitions for their male immigrant spouses.⁶

Although subsequent legislation, particularly the Immigration and Nationality Act of 1952, changed the statutory language to make the immigration laws gender-neutral and gave women the same ability to

confer legal immigration status on a spouse that men had, the impact of the spousal sponsorship laws is still rooted in the coverture mentality. Since the power of sponsorship and autonomous action lies with the citizen or lawful permanent resident spouse, and because the majority of immigrant spouses and victims of domestic violence are women, the ramifications of spousal sponsorship are most serious for immigrant women.⁷ With the passage first of the Violence Against Women Act of 1994 (VAWA 1994) and later of the Violence Against Women Act of 2000 (VAWA 2000), Congress sought to provide direct access to legal immigration status for immigrant victims of domestic violence, thus enabling them to seek protection from ongoing abuse and to cooperate in the criminal prosecutions of their abusers. VAWA 1994 enabled battered immigrants to attain lawful permanent residence (green cards) without the knowledge or cooperation of their abusive spouse or parent. It created two forms of relief, VAWA self-petitions and VAWA cancellation of removal (formerly called “suspension of deportation”). These provisions ensure an immigrant victim of domestic violence access to lawful immigration status without having to depend on the cooperation or participation of her batterer, and without the abuser’s knowledge that she has filed for immigration relief on her own.⁸

Although VAWA 1994 helped many battered immigrants, legislative protections for immigrant victims of domestic violence and sexual assault remained incomplete. Subsequent immigration laws effectively barred access to VAWA protection for many battered immigrants, and implementation problems continued to plague the VAWA process. As a result, many immigrant victims of domestic violence remained trapped in violent relationships. Immigrant victims of sexual assault remained without any immigration protection. In response, through the bipartisan efforts of sympathetic members of Congress working collaboratively with the advocacy community, President Clinton signed into law the Battered Immigrant Women Protection Act as a part of the Violence Against Women Act of 2000.⁹ It restored and expanded access to a variety of legal protections for battered immigrants by addressing residual immigration law obstacles preventing battered immigrants from freeing themselves from abusive relationships.

Significantly, VAWA 2000 for the first time offered options for the protection of legal immigration status to many battered immigrant women

and children whose abusers were not their U.S. citizen or lawful permanent resident spouse or parent. These same provisions offered help to victims of sexual abuse. The statute created a new non-immigrant visa (U-visa) for a limited group of immigrant crime victims who suffer substantial physical or emotional injury as a result of being subjected to specific crimes committed against them in the United States. To obtain the visa, a law enforcement official (police officer, prosecutor, judge, Equal Employment Opportunity Commission or other federal or state official) investigating or prosecuting criminal activity must certify that the applicant has been helpful, is being helpful or is likely to be helpful to an investigation or prosecution of criminal activity. U-visa recipients are granted work authorization, but not public benefits.

Recognizing that women's economic dependence on their abusive partners is one of the primary reasons that battered women remain in violent relationships, Congress extended access in 1996 to the public benefits safety net for VAWA-eligible immigrant victims of domestic violence and their children. Battered women in the United States typically make 2.4 to 5 attempts to leave their abusers before they ultimately succeed. Economic dependence is a critical factor in determining the fate of a woman who leaves an abusive relationship. Those with greater economic dependence experience greater severity of abuse as compared to employed battered women. Like all battered women, 67.1 percent of battered immigrant women report lack of access to money as the one of the largest barriers to leaving an abusive relationship.¹⁰

For battered immigrants who qualify to apply for immigration benefits as VAWA self-petitioners or as applicants for suspension or cancellation of removal, the road to economic self-sufficiency is more complicated. A VAWA-eligible battered immigrant cannot obtain legal permission from the INS to work in the United States until her VAWA immigration case is approved. Approval can take up to six months or longer in light of the INS case backlogs that have developed after September 11, 2001. In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress granted battered immigrant VAWA applicants access to the public benefits safety net shortly after filing their application with the INS.¹¹ This was because immigrant victims who were to be protected by VAWA could not successfully attain safety without economic sustenance apart from dependence upon their abusers. They were given limited access to

welfare benefits, and many were given access to public and assisted housing, post-secondary educational loans, the Women, Infants, and Children program, Temporary Assistance for Needy Families (TANF), Medicaid, school lunch programs and other federally funded public benefits. All battered immigrants were also guaranteed access, without regard to immigration status, to domestic violence services, shelter, transitional housing for up to two years, food banks, emergency medical services and a broad range of other federally and state funded community based programs offering services necessary to protect life and safety.

FUTURE CHALLENGES

Although there has been much progress in securing legislative protections for battered immigrant women and children in the United States, the legal options for immigrant victims are far from complete. Legal reforms are still needed to improve their access to both immigration relief and welfare benefits. A variety of implementation problems prevent them from receiving the immigration benefits and the welfare access Congress sought to provide. Additionally, the rise in anti-immigrant sentiment since September 11, 2001 has created new problems at the state level for immigrant victims of domestic violence who turn to the family courts and the police for help. Some of the outstanding issues can be summarized as follows.

Access to Legal Services: Immigrant victims of domestic violence were given special access to legal assistance in a broad variety of domestic violence related cases in 1998 when Congress allowed Legal Services Corporation (LSC) funded programs to use non-LSC funds to represent battered immigrants in any legal matter related to the domestic violence.¹² However, the law enables only immigrant victims of domestic violence abused by their spouses or parents to benefit from this assistance, leaving those abused by boyfriends or other family members without access to representation. This should be changed to allow any LSC funded program to use non-LSC dollars to represent any battered immigrant victim of domestic violence without regard to her relationship to her abuser, so long as that relationship is covered by the state's domestic violence laws.

Improved Access to Public Benefits: Although Congress granted access to public benefits to immigrant victims of domestic violence who were eli-

gible under VAWA, it created a five-year bar to benefits access that applied to immigrants who first entered the United States after August 22, 1996. This left battered immigrants who qualify for VAWA but who first entered after that date with a five-year bar from some of the most important federal benefits programs offering relief to battered women and their children, including TANF, Medicaid, and food stamps. Additionally, welfare access for battered immigrant victims is limited to those who qualify for relief as VAWA self-petitioners, suspension or cancellation applicants. Battered immigrants who qualify for relief under the new crime victim visas have no access to federal public benefits. The law should be changed to grant immediate access to federal public benefits to any battered immigrant who has filed an application that sets out *prima facie* eligibility for relief with the INS under a family based visa application, VAWA or the new U-visa protections. Further, in many states, implementation problems block access to public benefits for many battered immigrant women. These problems include welfare agencies that turn away immigrant victims or refuse applications because of assumptions about applicants' immigration status based on their ethnicity or assumed country of origin.

Family Court and Justice System Issues: Across the country advocates and attorneys working with immigrant victims of domestic violence have seen a broad range of problems with battered immigrants' access to family court and justice system protection that appear to be related to a backlash against immigrants occurring in many communities. These problems include judges in protection order cases calling the INS and turning in immigrant victims rather than granting them protection orders against their abusers. In other cases judges may refuse to grant protection orders to VAWA-eligible battered immigrants, stating that they believe the victims are only seeking protection orders so as to obtain immigration relief. This approach fails to recognize that any battered immigrant who is eligible for self-petition could have had legal immigration status through her spouse if he had not been using lack of legal immigration status as a tool of power and control. In still other cases an abuser convinces a judge that because the abused mother lacks legal immigration status, the abuser should be awarded custody of children despite the fact of his abuse. In some communities police called to a domestic violence case will ask questions about the immigration status of the victim and will turn that information over to the INS. Similarly, prosecutors will deport rather than

prosecute immigrant abusers. This approach has the effect in many instances of increasing danger to the victim when the abuser returns to this country after his deportation or when he forces her to follow him back to the home country.

These problems provide continuing challenges to advocates, attorneys, government agencies and legislators who wish to help immigrant victims of domestic violence. Some can be resolved by further federal legislative or administrative legal reforms. Others, like the problems of welfare access to legally authorized benefits, require training, education, advocacy and perhaps litigation at the state level. Still others require training personnel in the justice system about the legal rights of immigrant victims of domestic violence and about the role anti-immigrant policies can play in undermining community policing and the criminal justice system's approach to domestic violence, including holding abusers accountable for their actions. Changes in these practices and policies are needed if battered immigrant women and children are to have access to the same protections against domestic violence as all other domestic violence victims in the United States.

NOTES

1. Patricia Tjaden and Nancy Thoennes, *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey* (National Institute of Justice and Centers for Disease Control and Prevention, NCJ 181867, 2000), p. iii; Leslye E. Orloff and Nancy Kelly, "A Look at the Violence Against Women Act & Gender-Related Political Asylum," *1 Violence Against Women* 380 (1995).

2. H.R. Rep. No. 103-395, at 26-27 (1993). In this essay, victims of domestic violence will be referred to as "she" and perpetrators of domestic violence will be referred to as "he." Government and academic studies consistently find that the majority of domestic violence victims are female and that batterers are overwhelmingly male. See Callie Marie Rennison and Sarah Welchans, *Bureau of Justice Statistics Special Report: Intimate Partner Violence*, (Department of Justice, 2000) (reporting that 85 percent of victimizations by intimate partners in 1998 were committed against women); *Bureau of Justice Statistics Selected Findings: Violence Between Intimates* (U.S. Department of Justice, 1994), pp. 2-3; Mary P. Kosset et al., *Male Violence Against Women at Home, at Work and in the Community*, xiv-xv (American Psychological Association, 1994); Russel P. Dobash, "The Myth of Sexual Symmetry in Marital Violence," *39 Social Problems* (1992), pp. 71, 74-75.

3. Immigration and Nationality Act, Pub. L. 82-414 (1952), at § 203(d), 8 U.S.C. § 1153(d) (1999) provides that the status of the spouse and children “derives” from the person with the visa. Fear of abuse: 146 Cong. Rec. S10, 195 (daily ed. Oct. 11, 2000) (providing a section-by-section summary of the Battered Immigrant Women Protection Act of 2000).

4. 146th Cong. Rec. S10,192 (daily ed. Oct. 11, 2000) (statement of the joint managers).

5. William Blackstone, *Commentaries on the Laws of England* (First edition, 1765; G. W. Childs, 1862), p. 441. Also incorporated into common law was the husband’s right of ‘chastisement’ to restrain his wife from ‘misbehavior,’ thus creating an environment in which spousal abuse was condoned or even encouraged.

6. The Act of March 2, 1907, Chap. 2534, 34 Stat. 1228 (1907), provided that “any American woman who marries a foreigner shall take the nationality of her husband.” Section 7 of the Act of September 22, 1922, 8 U.S.C. § 9, commonly referred to as the Cable Act, repealed a portion of the law of 1907 through which American women lost citizenship upon marriage and provided that women would not cease to be citizens upon marriage unless they formally renounced citizenship. However, the Cable Act did not automatically restore citizenship already lost by women upon marriage between 1907 and 1922. *In re Watson’s Repatriation* 42 F. Supp. 163 (E.D. Ill. 1941); Marian L. Smith, “Any Woman Who is Now or May Hereinafter be Married . . . : Women and Naturalization, ca. 1802-1940,” *Prologue: Quarterly of the National Archives and Records Administration*, available at <http://www.archives.gov/publications/prologue/>. Husband as citizen: Act of May 26, 1924, Pub. L. No. 139, § 4(a) (1924). Female citizens or lawful permanent residents: Janet M. Calvo, “Spouse-Based Immigration Laws: The Legacies of Coverture,” 28 *San Diego Law Review* 583 (1991), pp. 596-597.

7. Immigration and Nationality Act, op. cit., at §§ 101(a)(27), 204, 205 (codified as amended in scattered sections of 8 U.S.C.); see Leslye E. Orloff and Janice V. Kaguyutan, “Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses,” 10 *American University Journal of Gender, Social Policy & Law* (2001); Calvo, op. cit., p. 598. According to congressional reports, three to four million women in the United States are abused by their husbands each year, a figure far higher than the number of men abused by their wives. S. Rep. No. 101-545, at 30 (1990); H.R. Rep. No. 103-395, at 26 (1993).

8. The Violence Against Women Act of 1994, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-386; The Violence Against Women Act of 2000, Title V of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386. VAWA cancellation

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of removal is available as an option to help battered immigrants who are brought before immigration judges for deportation. *Also see* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. 104-208 (1996).

9. Ann Moline, “Bipartisan Women Made Anti-Violence Act Happen,” *Women’s Enews*, December 18, 2000. The new legal protections for battered immigrants went into effect October 28, 2000 and certain provisions were given retroactive effect.

10. Remaining in violent relationships: Debra S. Kalmuss and Murray A. Strauss, “Wife’s Marital Dependency and Wife Abuse,” in Murray A. Strauss, Richard J. Gelles, and Christine Smith, eds., *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8145 Families* (Transaction Publishers, 1990), pp. 369-371. Attempts to leave: Lewis Okun, “Termination or Resumption of Cohabitation of Women in Battering Relationships: A Statistical Study,” in Gerard T. Hotaling et al., eds., *Coping With Family Violence: Research and Policy Perspectives* (Sage Press, 1988), pp. 107, 113. Economic dependence: Michael J. Strube and Linda S. Barbour, “The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment,” 45 *Journal of Marriage and the Family* (1983), pp. 785, 790-92; Mary Ann Dutton et al., “Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas,” 7 *Georgetown Journal on Poverty Law and Privacy* (2000), pp. 245, 271.

11. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208.

12. Section 502(a)(2)(C) of the FY1997 Omnibus Consolidated Appropriations Bill (the “Kennedy Amendment”).

WOMEN IMMIGRANTS AND HOUSING

MARISA J. DEMEO

Immigrant women's access to decent housing is affected primarily by immigrant eligibility criteria for subsidized or public housing, by fair housing standards, and by problems with migrant housing.

ELIGIBILITY FOR SUBSIDIZED/PUBLIC HOUSING

Background

There are several types of subsidized housing. What follows is a discussion of two of the major federal programs, public housing and Section VIII vouchers, as well as of shelters and transitional housing as they relate to victims of domestic violence.

Public housing was created to provide affordable and safe rental housing for eligible low-income families, the elderly, and persons with disabilities. It takes many forms, from scattered single-family houses to high-rise apartments. There are approximately 1.3 million households living in public housing units, managed by approximately 3,300 Housing Agencies (HAs). The U.S. Department of Housing and Urban Development (HUD) provides federal funding to local HAs that in turn manage the housing for low-income residents at affordable rents.

The Section VIII housing choice voucher program is the federal government's primary mechanism for helping very low-income families, the elderly, and the disabled in the private housing market. Since the program provides housing assistance on behalf of the family or individual, participants are able to find their own housing from a range of single-family homes, townhouses and apartments.

Housing choice vouchers are administered locally by public housing agencies (PHAs). HUD provides the PHAs with federal funds to administer the voucher program. A family that receives a housing voucher must find housing from an owner who will agree to rent under the federal program. The PHA then pays a housing subsidy directly to the landlord on behalf of the participating family, which is responsible for paying the difference between the rent

charged by the landlord and the amount subsidized by the program. In certain situations, a family can use its voucher to purchase a modest home.

Eligibility Issues for Immigrants

While low-income people have a great need for affordable housing, the severe shortage of subsidized or public housing creates a barrier to access for both citizens and non-citizens.

Immigrants face barriers in the form of laws that limit access to subsidized housing. In order to qualify for publicly assisted housing, individuals' immigration status must be verified. Federal statute limits federal housing assistance under HUD programs to immigrants who are permanent residents, asylees, immigrants granted temporary residence, or who fall into a few other minor categories.¹ The approximately eight million undocumented immigrants currently living in the United States, generally the poorest of all immigrants, are barred from receiving any kind of individual public assistance from the federal government.

Federal law outlines the verification procedures for determining whether an immigrant is eligible.² The primary system for verification is the INS' Systematic Alien Verification for Entitlements (SAVE) system. The secondary method is through a cumbersome, time-consuming process whereby the individual sends the proper forms to the INS and waits for the INS to do a manual search of its records. While an individual cannot receive a benefit directly from HUD until his or her status is verified, a public housing agency can provide the benefit prior to verifying eligibility.³ Unfortunately, some jurisdictions, including the Washington, D.C. Housing Authority, do not exercise this option.

Even when immigrants are eligible, they are sometimes wrongly turned away. In one example, a Salvadoran woman living in Washington, D.C. was a beneficiary of the Temporary Protected Status (TPS) program. The TPS program was scheduled to expire recently, and her authorization papers were to expire with it. The President renewed the program for twelve months. The Department of Justice notice made it clear, however, that new authorization papers would not be received immediately, so it automatically extended the papers that beneficiaries were holding for another year. A landlord nevertheless turned the TPS beneficiary away until an advocate intervened.

Immigrant access to subsidized housing is limited by both clear prohibitions and additional procedural barriers. A similar restriction exists for

U.S. Department of Agriculture (USDA) rural housing programs, discussed below in the section on migrant farmworkers. Many states have also adopted similar restrictions.

Battered immigrant women have been granted specific federal exceptions to the restrictions. Both the welfare and immigration reform laws of 1996 granted “qualified alien” battered immigrant women access to public or assisted housing.⁴ Further, the immigrant restrictions apply only when the benefit goes directly to the individual, household or family unit. Federal money that goes instead as a block grant to a state, which then provides money to a shelter, is not classified as a federal benefit subject to the immigrant restrictions. Consequently, immigrant access to shelters or other transitional housing that is run either by the state or a local provider, even though federal funds are involved, is not subject to the immigrant restrictions.

FAIR HOUSING ISSUES

Title VIII of the Civil Rights Act of 1968 is the primary federal law protecting individuals against discrimination in housing. The statute makes it unlawful to discriminate on the basis of race, color, sex, familial status, national origin or handicap. The term “familial status” includes households that have children under the age of eighteen, women who are pregnant, and families trying to obtain legal custody of children under eighteen. The law contains a broad prohibition on discriminating through refusal to sell, rent, or negotiate for sale or rental, or acts that “otherwise make unavailable or deny” dwellings. The law further prohibits the expression of preferences and discrimination in the terms, conditions, privileges, services or facilities.⁵

Immigrants nonetheless continue to experience discrimination in trying to access housing. Women immigrants face additional discrimination based on sex, including sexual harassment by housing managers and employees and *quid pro quo* discrimination in the initial rental, continued occupancy and terms and conditions of tenancy.

Another common housing problem women immigrants face stems from the combination of national origin and familial status discrimination. Municipalities may discriminate with ordinances or the selective enforcement of ordinances restricting the number of individuals who can live in a house, in a room, or in a specific number of square feet of housing. The Department of Justice has challenged these types of ordinances in cases such as those below:

- *United States v. City of Wildwood* (D. N.J.)⁶
The City of Wildwood, a New Jersey beach resort town, enacted an occupancy ordinance limiting the number of persons who could occupy a residential dwelling based on the size of the dwelling. Portions of the ordinance were so restrictive that they allowed only one person per bedroom in a unit. The Department of Justice sued, claiming that the enforcement scheme was targeted against publicly-subsidized families with children, many of whom were Hispanic. At the same time, the town managed to design the ordinance to exclude groups that were predominantly white by excluding owner-occupied apartments and seasonal rentals. The United States was able to settle the case successfully.
- *United States v. Town of Cicero* (N.D. Ill.)⁷
The Department also sued the town of Cicero, Illinois for violating the Fair Housing Act by enacting, and then selectively enforcing, an ordinance restricting occupancy of some three-bedroom dwellings to as few as two persons. The government’s case alleged that the town had not enforced the ordinance against current residents, the majority of whom were white, but only against new purchasers of property, the majority of whom were Latino. The case was successfully settled.
- *United States v. City of Waukegan* (N.D. Ill.)⁸
The Department of Justice alleged that a Waukegan, Illinois housing ordinance discriminated against Latinos because it limited the number of persons related by blood or marriage who could live together in the same dwelling. It defined “family” so that only parents, their children, and no more than two additional relatives could live in a single-family unit, regardless of its size. The Latino population had been growing in the town when the ordinance was enacted. The United States alleged that the city enacted the ordinance because it thought that the Latinos moving into the community often lived in extended families and that the ordinance would slow the growth of the Latino community. The case was also settled successfully.

MIGRANT HOUSING

Background

A U.S. Department of Labor report to Congress in December 2000, which analyzed data from 1989 to 1998, revealed a number of trends in

the agricultural labor market.⁹ First, the number of workers in this market who were immigrants, particularly undocumented immigrants, grew dramatically during this period. In 1989, only eight percent of the farm labor workforce was undocumented, compared with 51.5 percent in 1998. In the 1989-90 work year, 43 percent of crop workers were U.S. citizens, compared to 22 percent a decade later. The category of legalized Special Agricultural Workers was 37 percent of the workforce in 1989 but only 15 percent of the workforce in 1998.

Second, migrant workers became an increasingly large percentage of the work force during this period. Thirty-two percent of the workforce migrated for work in 1989-90 compared to 56 percent in 1998. Immigrant status and migrancy factors both affect workers' access to housing.

Third, the agricultural labor force became increasingly male during the 1990s. Twenty-eight percent of crop workers were women in 1989-90, compared to twenty percent in 1997-98.

Farm workers are worse off today than they were a decade ago. They are currently able to find work fewer weeks during the year, they make less money in real terms, their earnings are farther below the poverty level, and they are less likely than other low-wage earners to use public assistance programs. Overall, the median personal income of agricultural farm workers has remained steady over the past ten years, hovering between \$5,000 and \$7,250, with family income remaining steady at between \$7,500 and \$10,000.

Access to Housing for Migrant Farm Workers

Migrant farm workers experience particular barriers to decent housing in addition to the discrimination faced by all immigrants. In Washington State, for example, the state had approved the temporary use of tents for migrant farm workers in short-season crops such as cherries (1995-1998). When the state board of health increased the standards that growers had to meet in using the tents, the growers closed their migrant camps. As a result, during migrant season, workers and their families lived in some of the worst housing conditions in the country, many living along riverbanks. Even where migrant workers are provided with some form of housing, it is extremely overcrowded, with many workers living twelve to fifteen people in a mobile home. Conditions are far below livable standards.

The Migrant and Seasonal Agricultural Protection Act (MSPA), which was passed in 1983, is designed to provide migrant and seasonal farm

workers with protections in the areas of wages, working conditions and work-related conditions.¹⁰ The MSPA does not require that housing be provided for farm workers. (If housing is provided by an employer, however, the housing must meet certain safety and health standards.)

Migrant farm workers' access to housing is further restricted by government disinvestment in housing subsidy programs, lack of effective migrant housing programs serving seasonal needs, and "not in my backyard" opposition to proposed farm worker housing developments.

The USDA's Rural Development Division, through its Rural Housing Service, runs a Farm Labor Housing Loan and Grant program (Section 514 loans and Section 516 grants), which provides capital financing for domestic farm labor housing development. According to the USDA, the Rural Housing Service is the only entity providing funding for this use. The loans are provided to farmers, associations of farmers, family farm corporations, Indian tribes, nonprofit entities, public agencies, and associations of farm workers. The program is consistently underfunded and cannot meet the needs for housing. Tenant eligibility is limited to domestic farm laborers who receive a substantial portion of their income from farm labor and are citizens or people legally admitted for permanent residence. This excludes both immigrants on temporary visas and undocumented immigrants. States and localities fail to make up the difference needed to fund the building and repair of migrant housing.

NOTES

1. 42 U.S.C. § 1436a.
2. 24 C.F.R. §§ 5.500 et seq.
3. 42 U.S.C. § 1436a(i).
4. 8 U.S.C. § 1621.
5. Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, codified at 42 U.S.C. §§ 3601 et seq.
6. *United States v. City of Wildwood*, C.A. No. 94CV1126 (JEI).
7. *United States v. Town of Cicero*, 786 F.2d 331, 336 (7th Cir. 1986).
8. *United States v. City of Waukegan*, C.A. No. 96C4996 (N.D. Ill.).
9. Department of Labor Report to Congress, "The Agricultural Labor Market – Status and Recommendations" (December 2000).
10. Migrant and Seasonal Agricultural Protection Act, Pub. L. 97-470 (1983); C.F.R. Section 1910.142.

DISCUSSION

PHILIPPA STRUM: The language barrier obviously affects immigrant women's access to health care, education, help for domestic violence and so on. Do you have any ideas about how we as a polity should fashion policies to address this problem, considering the great diversity of the immigrant population? Can we teach health care professionals all the languages they need to know? How should we attack the problem of a teacher walking into a classroom in which almost all of the children have English only as a second language, but they may have many different first languages?

AFAF I. MELEIS: In the health care system, we tend to utilize daughters and sons as translators without understanding that there are family secrets that some cultures frown on sharing with daughters and sons. Sometimes we mistakenly enlist another member of the family, like a woman's husband. I remember a story about a woman in labor in San Francisco General Hospital whose husband was acting as a translator. The midwife said to the woman, "Stop pushing, stop pushing; you're going to rupture the membrane." The husband, thinking that made no sense, told his wife, "Push, push, so we can get this over with." We are not aware of the issues surrounding who translates: whether it is a male or a female translating, for example, or whether it is a son or someone else who has a stake in an inheritance.

A patient's story changes depending on who is present and who is translating, even when the person is a family member. I have talked with many women who say, "I can't talk in front of my sister-in-law," although the staff has assumed there will be no problem because it is another woman who is helping her. Translators must understand not only language but the significance of immigrants' extended families and the significance of cultural interpretation as well.

A second problem is that we have hired translators on the basis of their language skills without considering their cultural proficiency. They translate literally but without transmitting the true meaning. That is a very serious problem for the health care system.

Australia has excellent policies regarding translators. It has identified health care professionals who can translate, for example, and has then educated them in cultural issues. The solution is more complicated than simply hiring a translator for every language. One thing we must do is recruit people from different cultural heritages as health care professionals.

LESLYE ORLOFF: From a policy perspective, much of the translation problem is really about budgeting. Millions of dollars in federal grants, for example, go to programs that provide domestic violence services and other services such as health care. We could condition receipt of these funds on having translators who are both bilingual and bicultural, but it will be difficult to get that requirement legislated.

At the least, police departments, shelters, and other services should budget for trained bilingual staff. There are many other useful techniques such as creating partnerships between university language departments and domestic violence or health care programs. Ultimately, however, those are not the solution. Even if a service provider is able to address the largest minority populations in its community through creative mechanisms, it will never be able to address a woman who speaks a language other than that of the largest minority populations, and who is therefore isolated.

AFAF I. MELEIS: I have another policy suggestion. I sometimes have to call on a nurse or a janitor or a physician to translate and though it is not part of their work, they often do it gratis. We should recognize and value it as an important part of their work.

MARISA J. DEMEO: One legal requirement that currently exists is Title VI. The last year that Clinton was in office, he strengthened Title VI by issuing Executive Order 13166, which President Bush has also promised to enforce.¹ The order requires providers who receive federal funds to make sure that they are not discriminating on the basis of national origin. One thing they must do, therefore, is make their services accessible to people who have limited English skills. Of course, that does not solve the problem of how to deal with a very small minority population that speaks its own language, but it at least ensures that grantees who receive federal funds will provide these services to larger populations with limited English proficiency.

LESLYE ORLOFF: There is another challenge that does not lend itself to a legislative solution. Sometimes, mainstream domestic violence pro-

grams that serve predominantly white, middle-class and working poor communities decide to represent immigrants. They hire a local college student who speaks Spanish, for example, instead of someone who is actually from the immigrant community. What they fail to understand is the importance of biculturalism as well as bilingualism.

ERIC MOE, LEGAL SERVICES OF NORTHERN VIRGINIA: At Legal Services of Northern Virginia, where I am the language access coordinator, we have several different approaches. First, we have a number of volunteers to whom we give training. We sometimes send them to legal-oriented training as well.

Second, we have liaisons with other community service organizations that provide services to immigrant communities in their native languages.

Third, we have identified all the lawyers, paralegals and *pro bono* volunteers on our staff who speak other languages and we put that information in a computer database. Together, we can meet a lot of our language needs.

Fourth, we have a web site, www.legalaidhelp.org, with information on housing and domestic violence, much of which is translated into other languages. Almost everything is currently in Spanish. We have information on housing in Korean, Chinese, Vietnamese, Japanese and Somali as well. We have information about domestic violence in Spanish and we are trying to get it translated into Vietnamese.

JOY MUTANU ZAREMBKA: When dealing with people who are trafficked, we have found that having a male interpreter or doctor may be problematic even if he has a bicultural background. We find that women cannot talk to men from their home countries about being beaten, raped, or sexually assaulted.

Although victims of rape and sexual assault will disclose to women more openly than they will to men, there are some populations in which women will disclose to somebody from another culture more quickly than they will to somebody from their own. It is unwise to make assumptions about which way these dynamics will work.

AFAF I. MELEIS: My colleague Juliene Lipson, at the University of California-San Francisco School of Nursing, and I have studied Middle Eastern immigrants together. Because I am an insider and she is an outsider, we have interviewed the same family and gotten completely different stories. Both were important and rich stories, but they represented

different versions of the same incident because of the insider/outsider distinction.

JEAN BRUGGEMAN, BOAT PEOPLE SOS: Many immigrants are from professional backgrounds, but when they come to the United States they cannot transfer their education or experience. As a policy matter, we need to re-examine what we require of immigrants in order for them to continue at their professional level. We have worked with immigrants, who were lawyers in their home country but are cleaning hotel rooms here in the United States, for whom our legal services are culturally and linguistically inadequate. We must address those barriers to transition.

LESLYE ORLOFF: Domestic violence or legal service providers have experience working with low-income women, but there are also large numbers of professional immigrant women who have economic and other problems. Reaching that group of women is another challenge.

TIANA MURILLO, NATIONAL IMMIGRATION LAW CENTER: Could you elaborate on how victims of domestic abuse, when they use the U.S. system as a recourse, are seen to be challenging their cultures and alienating themselves from cultural support?

LESLYE ORLOFF: Immigrant women are expected by U.S. society to acculturate themselves and help their children and their families acculturate, but they are also expected by those within their own culture to preserve that cultural community within the United States.

For many immigrant women, the only real support system consists of other family members. The women are subject to certain religious or cultural expectations about keeping the family together. When an immigrant battered woman gets a protection order and separates from her husband or calls the police for help, she is seen as a traitor to her cultural community because she is showing the outside world that abuse exists in her immigrant community. To be successful in obtaining help, she has to find an alternative support system.

A Latina immigrant client of mine, for example, spoke virtually no English but was married to an American who had been her translator throughout their relationship of about ten years. Unlike the experiences of some of my other Latina immigrant clients, she went to a shelter and blossomed. For the first time she heard English but was not afraid to speak, and so she began communicating with other women and found an alternative support system that enabled her to leave her husband. Other

Latina clients of mine, though, have been so alienated by the shelter experience that they return to their abusive relationships.

DEBORAH W. MEYERS: Are there particular health care problems that immigrant women face, and if so, how do you go about addressing them?

AFAF I. MELEIS: We do not do a good job of developing healthful lifestyle programs that are congruent with the cultural heritage of immigrant women. Dietary habits, the level of activity, and the overwhelming burdens faced by immigrant women prevent them from maintaining a healthful lifestyle. As health care professionals, we find it difficult to integrate our own wisdom about going to the gym, exercising, and doing aerobic dance with their experiences, or to use language and interpretation and meaning that fit their lifestyles.

Breast self-examination is another health care topic that we have to address in a culturally sensitive manner because of mores about touching one's body. Some immigrants believe that doing a breast self-exam actually causes breast cancer. To address this problem, we have developed breast self-exam programs and instructions related to preventive mammograms that fit within the different cultural frameworks of immigrant women.

DEBORAH W. MEYERS: What is the role of immigrant women as health care providers?

AFAF I. MELEIS: Immigrant women health care providers face the same gender inequity experienced by other professional women, but it is exacerbated by heritage. Like other professional women, immigrant professional women face conflicting expectations and demands on their time. Because of their fear of being stereotyped because they are immigrants, they are less ready to express and describe those problems, and they lack a support network. While work is an opportunity to become a bit more integrated in society, it is also a double-edged sword that adds to the second shift of taking care of their families and the third shift of taking care of their relatives in their countries of origin. Work is therefore more isolating for professional women who are immigrants than for non-professional women immigrants.

There is another set of issues surrounding immigrant women nurses in particular. We are bringing in nurses from other countries because of this country's current nursing shortage. This has led to a lot of media discussion about the "brain drain," primarily to the effect that we in the United States are preventing those women from taking care of people in their

own countries. Instead of thinking about it from an ethnocentric point of view, however, we should consider how the new knowledge, information, experience, and money they can earn here empower these women when they return to their countries.

QUESTION: I am interested in the cultural gap between the immigrant woman care recipient, who lives in the United States but retains her cultural identity, and the service provider, who is integrated into the American culture. How can programs be developed to take this cultural gap into account?

LESLYE ORLOFF: A brief story will show how well-intentioned mainstream programs can go wrong, and how creative work on the grassroots level can help fill that gap. The Iowa Coalition Against Domestic Violence hired an attorney from Spain to do outreach to Latino immigrant populations in Iowa. The first thing she did was train all the service providers in the state about battered immigrant's legal rights and how to provide culturally sensitive services. She used very creative approaches like providing little cards with transliterations of "I need help" in Spanish. She then discovered, however, that none of the immigrant victims were seeking the services of the trained service providers. The attorney was faced with the cultural gap you talked about. The question became how to bridge that gap.

The Coalition began organizing in the immigrant community, bringing women together to talk about their concerns and problems. They did this whether or not the women were abused, because they understood that women talk to other women and that it was less important for them to get to each individual battered woman than it was to reach community women as a group. They then helped women community leaders develop a relationship with the service providers. Theirs was a true collaboration. The trained immigrant women leaders became the bridge between service providers and immigrant women victims.

AFAF I. MELEIS: We should address the cultural gap through the educational system by developing culturally sensitive curricula for schools of medicine, nursing, dentistry and other health care professions. We should also develop bilingualism at the elementary school level. Research shows that when individuals learn another language, they start seeing other people's perspectives, and yet we do not raise our children to speak other languages. We are far behind Malaysia, Europe, the Middle East, and South America in that respect.

Discussion

Incidentally, when the caregiver is a professional immigrant woman, we should not assume that she is integrated into the society and the community. If she works a second and third shift in order to make enough money to send to her family in her own country, she does not have time to get integrated anywhere.

MARLEINE BASTIEN: I come from Haiti, where domestic violence is part of the culture. When I first came to this country in 1981 we started doing radio spots about domestic violence and as a result we received death threats.

The Haitian attitude is reflected in two stories we know about. The police, called on a domestic violence complaint, went to the house where the man was abusing his wife. The man came out and when the police asked him, “What’s going on?” he answered, “I don’t know what’s going on. You come here knocking on my door. I’m beating my wife and you’re asking me what’s going on. You need to tell me what’s going on.”

The police were called on another such complaint. The man involved refused to come out of his house, so the police called the SWAT team. When the husband looked through the window and saw all of those people, he finally emerged and exclaimed, “I can’t believe this. All of you came out here because I’m beating my wife?” He could not imagine that something as ordinary as a wife-beating could provoke such a reaction.

Domestic violence service providers in Miami could not understand why Haitian women would not go to shelters even when the shelters were staffed by Haitian women. Instead, the victims would turn to friends and family members and ask to stay with them, where they felt secure. We need to find alternatives to shelters, and find out from the women themselves how to help them find secure environments.

MARYSUE HEILEMANN: We must think not only about women who come here as adult immigrants, but also about women who come to America as girls and observe domestic violence as they grow up. My own research with Mexican-American women has shown that the incidence of domestic violence is actually higher among girls who came to the United States in their childhood years than it is for women who emigrated as adults.

LESLYE ORLOFF: The system that was created to work for battered women generally doesn’t always fit immigrant women. The real question is, how do we provide services to immigrant women who may be unwill-

Discussion

ing to follow what we as service providers have determined to be the traditional pattern for battered women? Part of the answer lies in training police and judges to understand patterns of abuse and help-seeking that are different than the traditional ones. Instead of going to a shelter, an immigrant woman may choose to get a protection order that protects her from her abuser and go to a friend's house, or continue to live with her abuser but get an order that says he can't hit her. Either of these might be appropriate for immigrant victims. The key here is listening to the women themselves.

MARYSUE HEILEMANN: We need to ask women not only what works for them but what the strengths are that help them cope, and then incorporate that into the advice we provide.

NOTES

1. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000).

PANEL THREE

EMPLOYMENT AND LABOR

WOMEN IMMIGRANTS IN THE U.S. LABOR MARKET: SECOND-RATE JOBS IN THE FIRST WORLD

SARAH GAMMAGE

The process of migration and displacement is both wrenching and transformative. Migration can precipitate profound shifts in economic, social and political activities, changing the role that women play as providers and caregivers and constructing new identities for women and men in both the sending and receiving communities. Much of the economic analysis of migration, however, fails to distinguish or explore any gendered patterns in migration and, with few exceptions, tends to concentrate largely on the experience of male immigrants.

Gender nonetheless plays a dominant role in determining who migrates and when, under what circumstances and with what resources.¹ Gender is also likely to shape the fortunes of immigrants in the host country, determining how rapidly immigrants are incorporated into labor markets, what types of labor markets they seek out or are eligible for, the types of visas and protective status they enjoy and whether they experience any mobility to higher-paying, higher status employment.²

Migration is primarily characterized by two flows: that of the documented and that of the undocumented. Many immigrants seeking employment in countries where wages are higher do so through legal channels, obtaining guest worker or temporary worker permits. For example, in the United States, legal provisions such as the H-1B visa program allow 195,000 immigrants with college educations to enter the U.S. annually to gain employment, mostly in the high-tech industry. Such workers may stay as long as six years, and they sometimes gain permanent legal residence. A similar program provides H-1C visas to foreign nurses seeking employment in health care services in the United States.³ According to PUMS⁴ data from 1990, nearly one third of the engineers, mathematical and computer scientists and natural scientists employed in the high technology industries of Silicon Valley were born outside of the

United States.⁵ Similar programs exist throughout the developed and the developing world to enable foreign workers to seek and retain employment in host countries. A substantial number of ethnic Japanese Brazilians, for example, are employed by subcontractors in Japan; India reports 140,000 scientists working abroad;⁶ and many South Asian and Filipina⁷ women work as domestics in the Gulf States and Europe.

Any analysis of immigrants in the labor force is complicated by their heterogeneity: their age, sex, legal status and education greatly influence their labor market opportunities and outcomes. Often these characteristics differ by region and country of migration, or by the period in which they arrived. Immigrants from wealthier developing countries and those obtaining refugee status or asylum may have more education and, therefore, greater labor market opportunities. Immigrants from poorer countries who have immigrated without documents are typically confined to secondary labor markets, where they find only low-paying jobs and insecure and often unregulated employment that is usually without benefits such as pensions and health insurance. In order to explore the outcomes for immigrants in the labor market in the United States, we must rely primarily on the Current Population Survey (CPS) and on diverse micro-datasets from a variety of sources over the last decade.⁸

Table 1 provides an overview of certain characteristics of immigrants to the United States from selected countries in Latin America, Asia and Europe, drawn from the March 2000 CPS. The data reveal that poverty rates for the foreign-born from Latin America and the Caribbean exceed those for immigrants from Asia and Europe. Immigrants from the Dominican Republic, Mexico and Ecuador are the poorest among those coming from Latin America and the Caribbean. A greater proportion of Dominicans, Mexicans and Central Americans from El Salvador and Guatemala are clustered at the lower end of the income distribution with incomes less than 200 percent of the poverty threshold. Immigrants from Latin America, and in particular, from Mexico, El Salvador and the Dominican Republic, are most likely to have less than twelve years of education. Similarly, immigrants from El Salvador, Mexico and Guatemala constitute the greatest percentage of individuals without access to health insurance.

Table 1. Poverty Rates for Natives and Immigrants⁹

Selected Countries	Percent in Poverty	Percentage with income 200 percent of the Poverty Threshold	Percentage of Persons 21 and older with less than 12 years of Schooling	Percentage Without Health Insurance
Latin America & Caribbean				
Colombia	11.7	38.2	20.6	32.4
Cuba	18.4	46.6	29.9	24.2
Dominican Republic	32.5	63.0	50.3	38.0
Ecuador	20.3	35.6	34.4	42.0
El Salvador	15.7	57.9	63.5	57.4
Guatemala	17.9	51.5	49.1	50.2
Haiti	16.4	47.0	32.7	36.9
Jamaica	16.5	32.1	19.3	27.3
Mexico	25.8	62.1	65.5	52.6
Peru	10.7	42.1	20.5	41.5
Asia				
China/Taiwan/ Hong Kong	14.2	30.1	14.1	30.4
India	9.4	15.3	9.2	16.1
Korea	10.0	29.0	10.2	34.3
Philippines	6.0	16.8	12.6	15.4
Vietnam	18.8	31.9	29.0	27.1
Europe				
Poland	4.1	25.2	14.0	20.9
Russia	14.9	34.9	18.3	15.3
United Kingdom	5.2	17.4	5.9	10.8
All Immigrants	16.8	41.4	33.1	33.4
All Natives	11.2	28.8	13.2	13.5

UNDOCUMENTED IMMIGRANT WORKERS IN THE UNITED STATES

“My life here, it’s not that it’s so great... But at least when you work, you can earn enough for a decent life and your children can go to school,” an undocumented female Mexican immigrant was quoted as saying in the *New York Times*, August 2002.¹⁰

Many characteristics privilege one set of workers over another. Being white, male and well-educated accords workers a premium in the labor market. Sex and race differentials in labor market outcomes are persistent, with women and persons of color typically earning less than their white male counterparts.¹¹

Migration adds another dimension to the contours of privilege and opportunity. Whether immigrants are documented or undocumented and whether they migrate voluntarily or are trafficked¹² greatly affects their opportunities and the terms and conditions of their employment in the labor market. Being undocumented increases vulnerability in the labor market regardless of other characteristics and confines most undocumented immigrants to informal sector, low-paying, low-skilled and insecure employment.¹³ Various studies have shown that the coincidence of characteristics such as low levels of human capital, undocumented status and lack of access to dense social networks conspire to depress wages among recent immigrants.¹⁴ Despite similarities in the experience of immigrant workers who are documented and those without documents or legal papers, they continue to be differentiated by gender.¹⁵

Data on immigrants, their earnings and their legal status are scarce, and few current figures broken down by gender exist. Isolated datasets exist for particular populations of immigrants, but they tend to be partial and often difficult to compare. Estimates are that approximately 8.7 million undocumented immigrants live in the United States.¹⁶ Passel found in his study of the undocumented population in 1995 that 58 percent of all undocumented ‘aliens’ had entered the United States since 1990 - with Mexico and Central America accounting for over half of all undocumented immigrants. Interestingly, very few estimates of undocumented immigrants provide a gender breakdown. Marcelli estimates that in Los Angeles County in 1990, 47 percent of all undocumented Salvadorans, 43 percent of undocumented Guatemalans and 34 percent of all undocumented Mexicans were women.¹⁷

Mehta *et al.* report from their study of undocumented immigrants in the Chicago area that “undocumented immigrants seek work at extremely high rates (91 percent), and most do not experience unemployment rates that are significantly different than the Chicago metro area average.”¹⁸ These findings indicate that undocumented Latin-American women experience unemployment rates that approach twenty percent, five times higher than the average unemployment rate for the remainder of the undocumented workforce. Factors that significantly increase the likelihood of unemployment include “the combined effect of undocumented status, being female and being Latin-American in origin; the lack of dependent care; and obtaining work through temporary staffing agencies.”¹⁹

Table 2. Citizenship Status and Poverty²¹

CITIZENSHIP STATUS			
	Native	Naturalized	Not a Citizen
Males			
Total			
Below Poverty level	9.8	7.6	19.4
Above Poverty level	90.2	92.4	80.6
Under 18 years of age			
Below Poverty level	7.3	6.5	17.8
Above Poverty level	92.7	93.5	82.2
65 years and over			
Below Poverty level	6.3	10.1	18.1
Above Poverty level	93.7	89.9	81.9
Females			
Total			
Below Poverty level	12.6	10.5	23.3
Above Poverty level	87.4	89.5	76.7
Under 18 years of age			
Below Poverty level	16.7	12.7	33.7
Above Poverty level	83.3	87.3	66.3
65 years and over			
Below Poverty level	11.5	12.5	20.3
Above Poverty level	88.5	87.5	79.7

Mehta *et al.* found in their Chicago sample that undocumented women workers from Latin America faced significant wage penalties and barriers to obtaining better jobs.²⁰ Overall, these authors found that the median hourly wage for undocumented workers in Chicago was \$7.00 an hour, while immigrants with legal status earned \$9.00. Approximately ten percent of undocumented immigrants reported that they were paid less than the federal minimum wage (\$5.15) in their current job. There was a disproportionate number of women among sub-minimum wage workers.

Table 2 reveals that citizenship status greatly affects poverty rates for both men and women. While not all individuals who are non-citizens are necessarily undocumented, it may be assumed that a significant number of non-citizens do not possess a legal right to work in the United States. Although these data are an imperfect measure of whether an individual possesses legal documents for residence in the United States, they do indicate that lack of citizen status predisposes both men and women to poverty. Whether they are natives, naturalized citizens or non-citizens, women experience higher poverty rates than men. Female children (age eighteen and under) without citizenship have the highest poverty rate of all groups.

Powers and Seltzer explore the circumstances of undocumented men and women using the 1989 Legalized Population Survey.²² They found persistent gender wage differentials before and after immigrants became documented (see Table 3). Among the sample of undocumented immigrants, both men and women improved their earnings and their occupational status between their first jobs and the jobs they held at the time of application for status under IRCA.²³ “The overwhelming differences,” they note, “were by gender, with women starting at lower status jobs than men and experiencing much less mobility than men.”²⁴ In particular, large percentages of undocumented women become locked into household service jobs where no mobility is possible, a finding that is borne out by research undertaken by Repak and Menjivar.²⁵ CPS data from March 2000 indicate that 32.2 percent of all female non-citizens are employed in service jobs as compared to 15.5 percent of male non-citizens.²⁶ Large numbers of undocumented non-citizens are employed in janitorial, cleaning, home-care provision, and restaurant jobs.²⁷ CPS data for March 2000 reveal that almost twenty percent of women immigrants in service occupations were employed in private households while less than six percent of natives in the service sector were employed in private households.

It is likely that the majority of these women do not possess documents that entitle them to work.²⁸

Repak found that approximately 71 percent of men and 59 percent of women in low-wage occupations in Washington, D.C. were undocumented. Both documented and undocumented women immigrants typically earned between 70 and 80 percent of the earnings of equivalent male immigrants. The majority of women in Repak's sample (65 percent) were employed in domestic service and cleaning, earning a median wage of \$5.38 per hour in 1990. The majority of men (61 percent) worked in construction and earned a median wage of \$9.18. According to Repak, unequal wage scales in Washington, D.C. reflect gender-based segregation in the U.S. labor market and clear bias that places a lower value on women's labor than on men's. The fact that many women are confined to domestic service may, however, have insulated them from sudden changes in immigration law (such as the imposition of IRCA). Respondents interviewed in Repak's research indicated that it was easier for women than for men to find work after IRCA went into effect, largely because domestic employment remained unregulated and few prospective employers asked for documents.²⁹

Table 3. Summary Characteristics by Gender, Population Legalized under IRCA 1986³⁰

Characteristics	Men	Women
Median	9	9
Years since first arrival	30	31
Age at application	8	7
Years of School	8	7
English proficiency ³¹	4	3
Weekly earnings (constant US\$)		
<i>First job in US</i>	134	101
<i>Job at application</i>	250	177
Percent distribution		
Country or region of origin		
Mexico	70	68
Other Latin American and Caribbean	20	24
Africa	2	1
Asia	6	4
Europe and Canada	3	3
N	3,368	2,725

Cranford's study of janitors in Los Angeles highlights how the janitorial service sector was consciously restructured through outsourcing to employers who recruited low-paid undocumented immigrant labor.³² Janitors whom Cranford interviewed reported that employers would frequently remind them of their undocumented status as a tool to limit organizing or curb complaints about overwork, low pay and exploitative employer-worker relations. In describing the changes in terms and conditions of employment for immigrant janitors as the industry was restructured, Crawford described the following abusive treatment:

Employer strategies of speed-up were achieved through violating labor laws, particularly working overtime without pay. Workers were pressured to prepare their supplies before they clocked in, they often worked split shifts clocking in under different names at each shift, and they were encouraged to bring family members, often children, to "help" with the work without being paid. Many janitors worked for weeks without pay, to "practice" in order to "get a recommendation." Janitors worked by the piece, rather than by the hour. They would be given 3 floors to clean and they would have to stay until they were finished. Often this meant working 10 or 11 hours but being paid for 8.³³

Mehta *et al.* also explore the terms and conditions of employment for a sample of undocumented workers who had immigrated to Chicago. These authors find that undocumented workers more often experience unsafe working conditions than do immigrants with legal status (see Table 4). Approximately 36 percent of undocumented workers reported that their working conditions were unsafe as compared to 19 percent of documented workers. Fewer women report unsafe working conditions than do men, with the exception of Latin American undocumented workers, where the percentage of workers reporting unsafe working conditions is approximately the same for both genders (see Table 4).³⁴

Finally, it is important to note that undocumented workers may come disproportionately, but not exclusively, from developing countries or countries in transition. Even among undocumented immigrants from developed countries, however, gender differences in employment are often marked. Corcoran investigated recent Irish immigrants to the United States, many of whom had entered under the visa waiver program and overstayed their visas to work and earn money:

Table 4. Share of Immigrant Workforce Reporting Unsafe Working Conditions in Chicago³⁵

Population	Sample Size	Undocumented Workers	Documented Workers	Total
Total	1,131	36%	19%	28%
Latin Americans				
Male	441	37%	31%	35%
Female	419	36%	22%	30%
Other National Origin				
Male	100	43%	13%	19%
Female	161	10%	4%	5%

Newly arrived immigrants who had previously worked “on the building,” in farming or in other manual occupations generally seek work in the construction industry. White-collar workers and those who worked in the service sector at home gravitate towards jobs in restaurants and bars or work as care-givers in private homes. These distinctions are by no means definitive, and one will find teachers working as laborers and former laborers working as bartenders. The majority of men, however, work in construction, while most women work as nannies and home companions. A smaller proportion of both sexes work in the restaurant and bar trades.³⁶

Although there may be pronounced differences in education and opportunity for undocumented workers from developed and developing countries, their undocumented status may limit their ability to organize or denounce workplace abuses. An article in the New York based *Irish Echo* reported the case of a group of undocumented Irish women who were employed as waitresses in New York. After being asked to work three days for more than twelve hours without pay or food, the women were let go without any compensation.³⁷

The same article described the abuse and exploitation of immigrants from developed countries by employers’ taking advantage of the immigrants’ undocumented status. Liam Mason was recruited in Castleblarney, Co. Monaghan, Ireland, by a subcontractor in New Jersey who had promised to pay him over \$1,000 a week. The contract was not fulfilled. Upon arriving in the United States, Mason was paid little more than \$40

for what was often a fourteen-hour workday. His employer confiscated his documents and passport. Mason reportedly committed suicide in desperation at his situation.³⁸

DOCUMENTED IMMIGRANTS IN THE UNITED STATES

The situation of documented immigrants is significantly better than that of undocumented immigrants, but their status in the labor market is not equivalent to that of native-born Americans.

A number of programs in the United States offer employment to temporary professional workers. These programs provide employment opportunities under particular terms limiting the length of residency or the ability to apply formally for permanent residency or citizenship. A substantial number of these workers enter the health, education and high-tech sectors. Between October 1999 and February 2000, the Immigration and Naturalization Service (INS) granted 3,246 H-1B visas in the field of medicine and health and 4,419 in the field of education.³⁹ The majority of visas granted, more than 42,500 (53.5 percent), were for computer-related occupations.

Concerns have been raised that H-1B and H-1C workers do not press for raises or for equality of treatment with workers who are native-born, citizens or permanent residents, since the visas have been allocated to a specific employer and not to the individual.⁴⁰ Consequently, these workers may feel disproportionately dependent upon their employer and be reluctant to challenge the terms and conditions of their employment. A *Washington Post* article from September 2000 notes:

If an H-1B worker is being sponsored for a green card by the employer, the worker is trapped during the five years or more that it now takes to process the green card. Employers can underpay and overwork H-1Bs at will, without fear of the workers' moving to another firm.⁴¹

These programs are not a recent phenomenon: between 1965 and 1985, 25,000 Filipina nurses migrated to the United States. The Immigration and Nationality Act Amendments of 1965 appear to have encouraged the immigration of Filipino professionals through occupational preference categories that favored the immigration of professionals with particular skills.⁴² The working conditions and program benefits

were seldom commensurate with those offered to the immigrants upon recruitment and were not equivalent to similar conditions for nurses who were citizens. As Ceniza Choy reports of a visit by the Philippine congressman Epifanio Castillejos in 1966 to survey the situation of Filipino exchange nurses, “Almost every Filipino nurse I met had problems which ran the gamut from discrimination in stipend, as well as the nature and amount of work they are made to do, to the lack of in-service or specialized training in the hospitals they work in.”⁴³

Another visa program in the United States, granting A-3 or G-4 and G-5 visas, offers employment to domestic workers accompanying diplomats and international officials, foreign businesspeople, and U.S. citizens temporarily returning from their residence abroad. Each year approximately 4,000 visas in this special category are issued. They cover occupations such as nannies, cooks, drivers, gardeners and other personal servants. Unfortunately, the INS does not report the gender distribution of visas granted to successful applicants.

No government department or agency monitors the immigrant domestic worker visa programs. Furthermore, no laws establish specific employment conditions for these workers. Unless they complain publicly about employer abuse, the workers are ignored by the U.S. government. Human Rights Watch and the Institute for Policy Studies Campaign for Migrant Domestic Worker Rights have documented the cases of dozens of such workers who have been abused by their employers.⁴⁴ Abuses entail non-payment of benefits, failure to honor vacations and payments, health and safety violations, long hours, physical or verbal mistreatment and sexual assault. Many of these workers have their documents taken and some have been found to be confined to the house or subjected to onerous and punitive restrictions regarding their mobility, access to support networks and ability to socialize.

Documented immigrants who are non-citizens also face continual insecurity regarding their entitlement to and receipt of benefits.⁴⁵ For instance, on April 1, 1997, approximately one million fully documented immigrants lost access to food stamps through revisions in rules governing the receipt of benefits. An additional 500,000 immigrants lost their entitlement to Supplemental Security Income disability payments after August 1997. Similarly, on May 15, 2002, the House of Representatives passed the TANF reauthorization bill without including any restoration of

benefits for low-income immigrants.⁴⁶ The Center for Community Change, in a sign-on letter advocating the restoration of TANF and other benefits to immigrants, registered the following concerns:

Although immigrant families account for 20 percent of the country's low-wage workforce, current law prevents many of them from securing the assistance and work support services that help other low-income families. These immigrant restrictions apply not only to cash assistance but to all TANF-funded benefits and services that states provide to low-income families including job training, child care and literacy programs. Congress should give states the flexibility to determine how to best serve their own populations by lifting the federal ban from serving lawfully present immigrants during their first five years.⁴⁷

The letter continued,

Under current law, lawfully present immigrants, including pregnant women and children who arrived in the U.S. after August 22, 1996 are barred for five years from accessing Medicaid and SCHIP benefits. This is a misguided policy. By granting states the option of extending SCHIP and Medicaid to these vulnerable populations, Congress can lessen the chance that these children will develop long-term chronic health problems that will be expensive to treat. Similarly, the benefits of prenatal care have been well documented. The United States saves \$3 for every \$1 it spends on prenatal care. Finally, as states' financial problems continue, this prohibition on federal funding will have a disproportionate and unfair impact on state budgets.⁴⁸

TANF and SCHIP benefits are particularly important for families headed by single parents, young workers, minority workers and workers with less than a high school degree. Boushey *et al.* calculate the probabilities of experiencing hardships in securing sufficient food, housing, health care and child care using data from the Survey of Income and Program Participation and the National Survey of American Families.⁴⁹ These authors find that households headed by a person of Hispanic origin have the highest probability of experiencing one or more critical hardships, registering a predicted probability of 21 percent. Single-mother families are also at a higher risk of experiencing critical hardships.⁵⁰ Although the authors did not calculate the relative increment in the probability of experiencing hardships as a result of the coincidence of these factors, it is likely to be significant.

Table 5 uses data from the March CPS for 1996 to provide an overview of the receipt of health insurance coverage by children aged seventeen or younger, broken down by citizenship status. It is readily apparent that more children who are citizens born to U.S. parents are covered through employment-based insurance than through other sources, whether they are Mexican-American or non-Latino white children. Children who are non-citizens are disproportionately likely to be uninsured, particularly if they are Mexican-American. Brown *et al.* highlight how being uninsured and without a connection to the health care system exposes children, regardless of immigration status, to substantial risks of being unable to access health care services. They conclude:

These findings underscore the importance of policies that extend health insurance coverage and improve the availability and accessibility of health services to immigrant and non-immigrant populations... Recent policy changes, however, are likely to greatly weaken these efforts to ameliorate structural barriers to access in the health system. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (H.R. 3734), for example, terminated Medicaid eligibility for most new legal immigrants and, at state option for legal immigrants who resided in the United States when the legislation was enacted on August 22, 1996.⁵¹

Table 5. Percent of Health Insurance Coverage of Mexican Americans and Non-Latino Whites by Immigration and Citizenship Status, Ages 0-17, United States, 1995⁵²

	Uninsured	Employment- Based Insurance	Medicaid	Other
Mexican American Children				
Citizen Child with U.S.-born Parents	18	49	30	3
Citizen Child in Immigrant Family	29	34	35	2
Non-Citizen Child	55	20	23	2
Non-Latino White Children				
Citizen Child with U.S.-born Parents	10	74	10	7
Citizen Child in Immigrant Family	13	68	12	7
Non-Citizen Child	14	53	23	10

The implications of this are that most “qualified aliens,” defined as documented immigrants who entered the United States on or after August 22, 1996, are barred from receiving TANF and Medicaid for the first five years after their entry.

CONCLUSIONS

The data and analysis presented here demonstrate that a coincidence of factors conspires to reduce wages, increase labor market insecurity, and limit access to benefits for female immigrants. Being female, an immigrant, undocumented, and a person of color confers the least advantage upon workers in the U.S. labor market. Women immigrants, and particularly those who are undocumented, are confined to a narrow range of activities in typically poorly paid and insecure environments. They are disproportionately likely to fall into poverty and may face particular hardships in labor and housing markets. This affects not only the immigrants themselves but their families and children as well. In the absence of benefits and targeted programs to channel transfers to these families, the insecurities are likely to increase the intergenerational transmission of poverty and hardship.⁵³

NOTES

1. M. Crummet, “Rural Women and Migration in Latin America,” in C.D. Deere and M. León, eds., *Rural Women and State Policy: Feminist Perspectives on Latin American Agricultural Development* (Westview Press, 1987); S. Chant, ed., *Gender and Migration in Developing Countries* (Belhaven Press, 1992); E.G. Katz, “Individual, Household and Community-Level Determinants of Migration in Ecuador: Are there Gender Differences?” (Working Paper, Barnard College, Columbia University, 1998).

2. C. Menjivar, “The Intersection of Work and Gender: Central American Immigrant Women and Employment in California,” 42 *American Behavioral Scientist* (1999) 601–627; T. Repak, *Waiting on Washington: Central American Workers in the Nation’s Capital* (Temple University Press, 1995).

3. The Nursing Relief for Disadvantaged Areas Act (NRDAA), Pub. L. 106–95 (1999), amending the Immigration and Nationality Act of 1952, allows qualifying hospitals to employ temporary foreign workers (non-immigrants) as Registered Nurses for up to three years under H-1C visas. Only 500 H-1C visas can be issued each year during the four-year period

Women Immigrants in the U.S. Labor Market

of the H-1C program (2000–2004). H-1C nurses may be admitted for a period of three years; thus far, the law does not provide for an extension of that time.

4. PUMS data refer to the 1 percent and 5 percent samples of the Public Use Micro Sample of the U.S. Decennial Census.

5. R. Alarcón, “Skilled Immigrants and Cerebreros: Foreign-Born Engineers and Scientists in the High Technology Industry of Silicon Valley,” in R. G. Rumbaut and S. J. Gold, eds., *Immigration Research for a New Century: Multidisciplinary Perspectives* (Russell Sage Foundation, 2000).

6. J. Stremlau, “Dateline Bangalore: Third World Technopolis,” 102 *Foreign Policy* (1996) 152–168.

7. Official figures estimate the number of Filipinos working abroad at 3.5 million. Wichterich reports that unofficial estimates rise as high as 7 million with approximately 60 percent of these immigrants being women. C. Wichterich, *The Globalized Woman: Reports from a Future of Inequality* (Zed Books, 1998).

8. The Current Population Survey is a monthly survey of about 50,000 households conducted by the Census Bureau for the Bureau of Labor Statistics. The survey has been conducted continuously for more than 50 years.

9. S. A. Camarota, “Immigrants in the United States – 2000: A Snapshot of America’s Foreign-Born Population,” (Center for Immigration Studies, Georgetown University, 2001), using data from the March 2000 Current Population Survey.

10. W. Hu, “A Precarious Life Goes from Bad to Worse,” *The New York Times*, Aug. 18, 2002.

11. L. Mishel, J. Bernstein and H. Boushey, *The State of Working America 2002-03* (Economic Policy Institute, 2002, advance proof); M. Kim, “Has the Race Penalty for Black Women Disappeared in the United States?,” paper presented at the International Association of Feminist Economists, June 12, 2002; F. D. Blau and L. M. Kahn, “Gender Differences in Pay,” 14 *Journal of Economic Perspectives* (2000) 75–100; F. D. Blau and A. H. Beller, “Black-White Earnings over the 1970s and 1980s: Gender Differences in Trends,” 74 *Review of Economics and Statistics* (1992) 276–286; B. R. Bergmann, *The Economic Emergence of Women* (Basic Books, 1986); C. Golding, *Understanding the Gender Gap: An Economic History of American Women* (Oxford University Press, 1990).

12. Immigrants who are trafficked are often deceived by their traffickers into believing that they are migrating with documents for legitimate employment. They are frequently sold into indentured servitude and held against their will, while being forced to perform menial jobs, work in sweatshops, or engage in prostitution. J. O. Finckenauer and J. Schrock,

“Human Trafficking: A Growing Criminal Market in the U.S.” (International Center, National Institute of Justice, 2002); A. Richard, “International Trafficking in Women in the United States: A Contemporary Manifestation of Slavery and Organized Crime” (Center for the Study of Intelligence, 1999). Individuals who migrate without documents to the United States often do so with the aid of a *coyote*. Immigrants pay substantial sums to their *coyotes* and if they are unable to pay in advance, may be required to work for the *coyote* until the debt is deemed to be repaid. *Coyotes* may take a portion of the immigrants’ wages for an indefinite period until the debt has been repaid. Author’s interviews with immigrants and their families in Washington, D.C. and El Salvador, 1998–2000; Louis F. Nardi, Statement before the Subcommittee on Immigration and Claims, Committee on the Judiciary, U.S. House of Representatives, March 18, 1999.

13. C. N. Mehta, N. Theodore, I. Mora and J. Wade, “Chicago’s Undocumented Immigrants: An Analysis of Wages, Working Conditions, and Economic Contributions” (Center for Urban Economic Development, 2002); J. E. Benson, “Undocumented Immigrants and the Meatpacking Industry in the Midwest,” in D. W. Haines and K. E. Rosenblum, eds., *Illegal Immigration in America: A Reference Handbook* (Greenwood Press, 1999); E. A. Marcelli, “Undocumented Latino Immigrant Workers: The Los Angeles Experience,” in Haines and Rosenblum, op. cit.; A. Valenzuela, “Working on the Margins: Immigrant Day Labor Characteristics and Prospects for Employment” (Center for Comparative Immigration Studies, University of California, 2000). Valenzuela notes that many undocumented workers often resort to informal markets, yet for some this does not imply poverty wages. Day laborers are diverse in many characteristics, including family structure, length of residency, tenure in day labor, and human capital. Consequently, earnings among such laborers are mixed and hourly rates can be higher than federal or state minimums, particularly in heavily unionized sectors or regions. For an analysis of the impact of unionization on wages of the foreign-born, see J. Schmitt, “Analysis of Foreign-born and Union Janitors and Cleaners in CPS data for 1999 and 2000” (Economic Policy Institute Report to the Service Employees International Union, 2001).

14. C. Menjivar, “Salvadoran and Nicaraguans: Refugees Become Workers,” in Haines and Rosenblum, op. cit.; T. Repak, op. cit.; N. Rodriguez, “Undocumented Central Americans in Houston: Diverse Populations,” *21 International Migration Review* (1987) 4–26.

15. M. G. Powers and W. Seltzer, “Occupational Status and Mobility Among Undocumented Immigrants by Gender,” *21 International Migration Review* (1998) 21–55; Repak, op. cit.

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16. G. C. Aramas, "Population of Illegal Immigrants Doubled in the 1990s," Associated Press, Jan. 23, 2002; J. S. Passel, "Undocumented Immigration to the United States: Numbers, Trends and Characteristics," in Haines and Rosenblum, *op. cit.*

17. Marcelli, *op. cit.*

18. Mehta, *op. cit.*

19. *Op. cit.*

20. *Op. cit.*

21. March 2000 CPS, Table 1.11, <http://www.census.gov/population/www/socdemo/foreign/p20-534.html>.

22. Powers and Seltzer, *op. cit.*

23. The Immigration Reform and Control Act (IRCA), Pub. L. 99-603 (1986), amending the Immigration and Nationality Act of 1952, aimed to control unauthorized immigration to the United States. Employer sanctions were introduced, along with increased appropriations for enforcement, and amnesty provisions to allow certain workers to obtain documents and regularize their status in the United States. The employer sanctions provision designates penalties for employers who hire aliens not authorized to work in the United States. Under the amnesty provision, illegal aliens who lived continuously in the United States since before January 1, 1982, could have applied to the INS for legal resident status by May 4, 1988, the application cutoff date.

24. Powers and Seltzer, *op. cit.*, 478.

25. Repak, *op. cit.*; C. Menjivar, "The Intersection of Work and Gender," *op. cit.*

26. The equivalent figure for natives in the service sector is 16.6 percent for women and 10 percent for men. Service employment was differentiated from employment in managerial and technical jobs; sales and administrative support; precision production, craft and repair; operators, fabricators and laborers; and farming, forestry and fishing.

27. Marcelli, *op. cit.* Marcelli estimates that 20 percent of service sector workers, 25 percent of operators, fabricators and laborers and 30 percent of farming, forestry and fishing workers were undocumented in Los Angeles County in 1990. A far greater proportion of non-citizens among the foreign-born are likely to be contingent workers without explicit contracts, benefits, or fixed hours of employment. S. Hipple, "Contingent Work in the Late 1990s," *Monthly Labor Review*, March 2001.

28. Menjivar, "The Intersection of Work and Gender," *op. cit.*; Menjivar, "Salvadoran and Nicaraguans: Refugees Become Workers," *op. cit.*; Marcelli, *op. cit.*

29. Repak, *op. cit.*

30. Powers and Seltzer, *op. cit.*, using data from the 1989 Legalized Population Survey.

31. Ranges from 1 to 5 as an assessment of the individual's ability to perform six specific English spoken and reading tasks.
32. C. Cranford, "Economic Restructuring, Immigration and the New Labor Movement: Latino/a Janitors in Los Angeles" (Center for Comparative Immigration Studies, University of California-San Diego, May 2000).
33. Cranford, *op. cit.*, 11.
34. Mehta, *op. cit.*
35. *Op. cit.*
36. M. P. Corcoran, *Irish Illegals: Transients between Two Societies* (Greenwood Press, 1993), p. 55.
37. P. Markey and H. Keaney, "Triumph and Tragedy, Undocumented Irish Immigrants Risk it All," *The Irish Echo*, Dec. 8-14, 1999.
38. *Op. cit.*
39. "Leading Employers of Specialty Occupation Workers (H-1B) October 1999-February 2000" (Immigration and Naturalization Service, June 2000); "Characteristics of Specialty Occupation Workers (H-1B) October 1999-February 2000" (Immigration and Naturalization Service, June 2000).
40. The Department of Labor has documented widespread abuse of the work visa programs, finding that 19 percent of employers were not even paying the salaries they had promised in the H-1B applications. J. Fisch, "The Department of Labor's Foreign Labor Certification Programs: The System Is Broken and Needs to Be Fixed," Final Report No. 06-96-002-03-321 (Department of Labor, 1996). Similarly, Papademetriou and Yale-Loehr report systematic and significant differences in pay between H-1B visa holders and native-born workers. D. Papademetriou and S. Yale-Loehr, *Balancing Interests: Rethinking U.S. Selection of Skilled Immigrants* (Carnegie Endowment for International Peace, 1996).
41. N. Matloff, "High-Tech Cheap Labor," *The Washington Post*, September 12, 2000.
42. P. Ong and T. Azores, "The Migration and Incorporation of Filipino Nurses," in P. Ong, E. Bonacich and L. Cheng, eds., *The New Asian Immigration in Los Angeles and Global Restructuring* (Temple University Press, 1994).
43. C. Ceniza Choy, "Exported to Care: A Transnational History of Filipino Nurse Migration to the United States," in N. Foner, R. Rumbaut and S. Gold, eds., *Immigration Research for a New Century: Multidisciplinary Perspectives* (Russell Sage Foundation, 2000), p. 123.
44. Human Rights Watch, *Hidden In The Home: Abuse of Domestic Workers with Special Visas in the United States* (Report 13, 2(g), June 2001); Institute for Policy Studies, "Empowering the Powerless: Campaign for Migrant

Domestic Workers Rights,” <http://www.ips-dc.org/campaign/article.htm>, accessed August 2002.

45. Social Security Administration, “Understanding Supplemental Security Income” (2002), <http://www.ssa.gov/notices/supplemental-security-income/text-understanding-ssi.htm#eligible>; R.L. Swarns, “Denied Food Stamps, Many Immigrants Scrape for Meals,” *The New York Times*, Dec. 8, 1997; D. Perez, “On April 1 the Axe Falls: Showdown Coming over Welfare Cuts,” *Workers World*, Mar. 27, 1997.

46. Center for Community Change, “Sign on to Support Immigrant Priorities in TANF Reauthorization” (2002), <http://www.community-change.org/alerts/alert273.asp>, referring to the Personal Responsibility, Work, and Family Promotion Act of 2002, H.R. 4737.

47. Center for Community Change, *op. cit.*

48. *Op. cit.*

49. H. Boushey, C. Brocht, B. Gundersen and J. Bernstein, *Hardships in America: The Real Story of Working Families* (Economic Policy Institute, 2001).

50. *Op. cit.*

51. E. R. Brown, R. Wyn, H. Yu, A. Valenzuela and L. Dong, “Access to Health Insurance and Health Care for Mexican American Children in Immigrant Families,” in M. Suárez-Orozco, ed., *Crossings: Mexican Immigration in Interdisciplinary Perspectives* (Harvard University Press, 1998), p. 244.

52. *Op. cit.*, using data from the March 1996 Current Population Survey.

53. In addition to the works previously cited in these footnotes, see L. Desipio, “Sending Money Home...For Now: Remittances and Immigrant Adaptation in the United States” (Tomás Rivera Policy Institute, 2000); S. Gammage, H. Jorgensen, E. McGill and M. White, “Framework for Gender Assessments of Trade and Investment Agreements” (Women’s EDGE, Global Trade Program, 2002); S. Mahler, *American Dreaming: Immigrant Life on the Margins* (Princeton University Press, 1995); A. O’Neill Richard, “International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime” (Center for the Study of Intelligence, 2000); P. R. Pessar, “Engendering Migration Studies: The Case of New Immigrants in the United States,” 42 *American Behavioral Scientist* (1999) 577-600; and H. Stöbbe, “Undocumented Migration in the USA and Germany: An Analysis of the German Case with Cross References to the German Situation” (The Center for Comparative Immigration Studies, University of California-San Diego, 2000).

MAID TO ORDER

JOY MUTANU ZAREMBKA

The day that Tigris (not her real name) decided to escape from her abusive employment situation coincided with a bomb scare at the children's school. The bus driver brought the children back home at 10 a.m., a time she was not required to work as a nanny. The children, finding themselves alone, called the Virginia police. After a manhunt, Tigris was arrested and charged with two felony counts of child abuse and grand larceny.

The police record does not mention that Tigris, who was held for three weeks on \$20,000 bail, was paid only \$100 a week for around-the-clock chores as a live-in maid because her employer claimed "that was enough money for a black person." Nowhere does it mention that the man of the house attempted to fondle and kiss her on various occasions. As a result, the woman of the house not only forced Tigris to cut her hair and stop wearing make-up; she also threatened to kill her if Tigris had sex with her husband. Even though she came to the United States legally on a domestic worker visa program, Tigris, if convicted, will be deported to her home country in Eastern Africa, from which she had fled because of political persecution.

INVOLUNTARY SERVITUDE

Tigris is just one of a growing number of exploited immigrant domestic workers. Each year, thousands enter the United States on special visas to work for diplomats and international bureaucrats who feel their lifestyles can be sustained only with the assistance of live-in domestic help. Most of these domestic workers, who are overwhelmingly female, come from Asia, Latin America, and Africa.

In May 2001, a Korean domestic servant filed a lawsuit against the vice consul of the Korean Consulate in San Francisco. Tae Sook Park, who is being represented by Korean Immigrant Workers Advocates and the Asian Law Caucus, had been held in service seven days a week for only a few

hundred dollars a month. She could not leave because her employers had confiscated her passport. In many cases, the employment contract filed at a U.S. Embassy abroad is ignored or replaced with a new contract stipulating longer hours and lower pay. Typically, once the woman has passed through Customs, the employer illegally confiscates her passport and other documents, making her completely beholden to the whims of the employer. (Tigris's passport and visa had been taken by her employer, and when she "stole" her belongings back, her employers retaliated by accusing her of stealing a piece of jewelry, a tactic that is often used against runaway domestic workers.)

Although all documented and undocumented workers are protected by U.S. labor laws, it is not uncommon to hear reports of domestic workers being paid 50 cents or a dollar an hour or, in some cases, not at all. Many women are forced into dawn-to-midnight work schedules, six to seven days a week. They are often told that they may not make friends, use the phone, or leave the house unescorted. In more egregious cases, physical, mental, verbal and sexual abuse has been reported. One domestic worker was called "the creature;" another said she was forced to wear a dog collar; and yet another was forced to kneel down and kiss her employer's feet.

While employers sometimes use the threat of violence to ensure that domestic workers stay in abusive work situations, they also use psychological coercion. In a recent case, Hilda Rosa Dos Santos, a housekeeper from Brazil, was trapped with no pay and insufficient food for twenty years in the home of a Brazilian couple who told her that she would be raped or killed if she went outside because Americans don't like dark-skinned people. While employers often invoke race to deter domestic workers from leaving, some also exploit cultural and religious differences. An Indonesian maid was told by her Saudi Arabian boss that Americans dislike Muslims so she would not fare well if she left the home. Abusive employers often point to violence on television to bolster their claim about the dangers of the United States. These women, many of whom do not speak English and are unfamiliar with American culture and laws, live as prisoners in the homes they clean, with few safeguards and little protection.

Typically, if the domestic worker complains about her work conditions, her employer threatens to send her home or call the police or the INS. Ironically, because the domestic worker is in the United States on an

employment-based visa, the moment she runs away from her employer, she is immediately considered “out of status,” ineligible for other employment and liable to be deported. As one neighbor who helped a Haitian domestic worker escape said, “When she ran away, she was out of a job, out of money, out of a home, out of status and, quite frankly, out of her mind” with fear.

VISAS FOR THIRD WORLD SERVANTS

Nearly 4,000 special visas are issued annually: A-3 visas for household employees of diplomats, and G-5 visas for employees of international agencies such as the United Nations, World Bank, and the International Monetary Fund (IMF). As part of a larger visa category for businesspeople, foreign nationals and American citizens with permanent residency abroad are also able to import housekeepers, nannies, cooks, drivers, and gardeners on B-1 visas.

The locations of G-5, A-3, and B-1 workers remain well-kept secrets, making them some of the most vulnerable and easily exploited people in the American workforce. Because the U.S. State Department keeps no record of B-1 domestic workers, it is impossible to know how many B-1s are currently in the United States and, more importantly, how much of this invisible workforce is suffering in silence. Although the U.S. government and the institutions involved (IMF, World Bank, United Nations) keep records of the whereabouts of A-3 and G-5 domestic workers, the information is kept confidential in the name of protecting the employers’ privacy.

VISAS FOR WHITE NANNIES

The J-1 visa, a congressionally sponsored visa program for nannies or au pairs, also brings immigrant workers to the United States. They, however, are treated quite differently than women such as Tigris and Tae Sook Park. The program recruits mainly young, middle-class women from Europe for “educational and cultural exchange.” Each nanny is flown to New York for an orientation session and is placed in a geographical group with other nannies to help her form a network of friendships. Once the nanny joins a family, she attends another orientation program where she

receives information on community resources, educational opportunities and contacts for a local support network. Each month, both the nanny and her employers are required to discuss their situation with a counselor to report any problems and resolve disputes.

In contrast, the G-5, A-3, and B-1 domestic worker programs offer no official orientations, no information, no contact numbers, no counselors, and no educational programs. Many such workers are also systematically (though illegally) forbidden from contacting the outside world.

CLEAN HOME WITH JUSTICE

Over the years, the problems faced by this hidden workforce have surfaced periodically with high profile but short-lived media blitzes. Until recently, however, few groups had organized to foster systemic changes in the domestic worker community, at the grassroots and policy levels.

Today, groups such as *Mujeres Unidas de Maryland* are forming workplace cooperatives to advocate for improved work conditions for all workers. This cooperative originally began in 1999 as part of the Promoters' Rights Project, affiliated with *CASA de Maryland, Inc.* Former and current domestic workers, armed with legal information in Spanish, took to the streets, parks, buses, and churches looking for potentially abused domestic workers and educating them about their rights. If they encountered an exploited employee, they directed her or him to bilingual legal assistance in order to recover back wages. Eventually, the workers formed a 24-member, democratically controlled cleaning cooperative with the goal of securing dignified day jobs and equitable work conditions. Most impressively, ten percent of all proceeds made through the cleaning service are funneled to social justice organizations.

Silvia Navas, a domestic worker and one of the organizers of the cooperative, says that "having a small business where you are doing something for yourself and for someone else builds self-esteem, self-confidence in the business, and in your value as a person." By offering a "clean home with justice," *Mujeres Unidas de Maryland* epitomizes the positive possibilities of community-based initiatives.

While most members of *Mujeres Unidas* are Latina, other ethnically based organizations in the Washington, D.C. area such as *Shared Communities (Filipina)* and the *Ethiopian Community Development*

Council are also exploring creative tactics to tackle domestic worker abuse. More than 25 such organizations banded together to create the Campaign for Migrant Domestic Workers Rights, which sought to change public policy and strengthen the safety net available to G-5, A-3 and B-1 domestic workers. The Campaign has recently changed its name and mandate and now serves workers in all labor industries in the Washington, D.C. area as part of the Break The Chain Campaign. The Freedom Network (USA) To Empower Enslaved and Trafficked Persons was formed in response to the rising number of incidents of trafficking and slavery in the sex and labor industries. As a national rapid-response team, the Freedom Network attempts to react quickly to reports of abuse and slavery in various geographical locations in the United States. The Network's goal is to ensure that every enslaved and trafficked person is able to enforce his or her legal and human rights and have access to linguistically appropriate, culturally sensitive, victim-centered social, health and legal services. It also seeks to increase public and official awareness of modern-day slavery.

Workers' rights clinics in Washington, D.C., Los Angeles, and New York serve as the first stop on the "underground railroad" for individuals escaping slave-like conditions. After Tigris left her abusive employer, she depended on a family friend and the assistance of organizations like the Ethiopian Community Development Council, the Campaign for Migrant Domestic Workers Rights and the Washington Lawyers' Committee for legal, financial, moral, and political support. She is currently out on bail, telling the story of what she and thousands of others like her have endured in the "land of the free."

MOVING FORWARD TOGETHER: UNITING U.S. AND FOREIGN-BORN WORKERS

CHARITY C. WILSON

The most recent census demonstrates that women, people of color and immigrants make up an increasing share of the U.S. workforce, a trend that will continue into the future. Alarming, the same group of workers also constitutes the bulk of the low-wage workforce, the fastest growing segment of employment.¹ Despite the wage gains of the 1990s, women workers are much more likely to earn low wages than men. In 2000, 31 percent of women workers earned low wages (\$6.53 an hour or less), as compared to 19.5 percent of men.² Women of color are more likely to be low-wage workers than other groups: 36.5 percent of African-American women and 49.3 percent of Hispanic women are considered low-wage workers.³ Statistic after statistic comparing beneficiaries of employer-provided health insurance and pensions, paid vacation or part-time work, indicate that women in general and women of color in particular fare worse than their male counterparts.

Yet, even with so many similar issues in the workplace, women workers are often pitted against each other. Women without children are portrayed as less able to use flexible work hours than women who are parents, while women with children often protest that their careers stagnate because of the “mommy track.” College degrees often protect those women who hold them from the low wages, lack of benefits and poor working conditions endured by less-educated women. Many African-American workers fear displacement by immigrant workers of any nationality, while some immigrant workers believe they are more capable than African-American workers of doing the job.

There is no doubt that every group of workers has a story to tell that is unique to its situation. But it is no less true that the fundamental principles of workplace fairness - equal pay, equal opportunity, safety, living wages and benefits - affect all women workers in a profound manner. Whether our constituencies are defined by race or immigration status, it is imperative that we as advocates for women workers be inclusive as we

describe our issues and define resolutions. In order to accomplish this, we must help workers learn, understand and respect the unique and similar qualities of other workers' struggles in addition to their own. Second, we must counter divisive and inaccurate media reports about worker issues. Finally, we as worker advocates must facilitate the process of uniting our members.

When a group feels besieged, as many immigrant workers do in the current political and immigration enforcement situation, that group tends to believe that its issues rank higher than those of other groups on the "misery meter." It is important that workers be empowered to take control of their workplace problems and solutions, and that they select their own leaders and set agendas, goals, and strategies appropriate to their goals. However, insensitivity to the history and priorities of other groups only serves to stratify and alienate workers. In order to understand the problems of immigrant workers, native-born workers must understand the difficulties immigrants face when coming to this country, the challenges faced by undocumented workers and their families, and the limited access to benefits and services available to legal immigrants. U.S. workers must also understand the effects of globalization on people and jobs beyond those of plant closures and trade deficits. In many countries the poor have fallen even further behind than the poor in this country, and many live in poverty in close proximity to the United States, a land of jobs, opportunities, and, often, their family members.

There are many parallels between women workers in the United States and in the rest of the world. In the United States and abroad, women comprise about one-half of the workforce, but are far more likely than men to live in poverty. Workers in the United States face a 50-50 chance that an employer will threaten to close their plant when they try to empower themselves by joining a union. Elsewhere in the world, trade unionists are jailed, tortured and murdered when they fight for workplace rights.⁴

In fact, by concentrating on differences, workers often overlook common goals and solutions. Last year great publicity was given to the fact that the U.S. foreign-born population reached 11.1 percent in 2000, after a steady increase in both legal and undocumented immigration since the 1970s. Although studies suggest that recent immigrants are more likely than native-born workers to have less than a high school education (the

percentage of college-educated native-born and immigrants is now almost identical), wages at the lower end of the pay scale improved in the 1990s during a period of increased immigration.

This outcome suggests that low-skilled immigrants do not necessarily have a depressing effect on the wages of low-skilled native workers. The minimum wage was increased twice during the 1990s, and the latter part of the decade enjoyed nearly full employment, suggesting that good worker policies and the enhanced bargaining power of workers have more to do with the wages of low-skilled workers than do the effects of increased immigration. Unionization increases wages and benefits for all workers, especially African-American and Hispanic workers, offering further proof that good policies help all workers. It is now clear that the consequences of the gender gap in pay extend to men when female members of their households earn less than they should on the job.

It is equally important for immigrant workers, including immigrant women, to understand the history and current realities of other groups of U.S. workers. Recent immigrants often compare their experiences and their effect on the workforce to the beginnings of the U.S. labor movement with its male, European immigrant leadership and members. But this comparison excludes the experiences of African-American and women workers in the United States. By understanding the history and lasting effects of slavery and state-sanctioned discrimination against African-American workers, immigrant workers have a better context in which to consider their own experiences with racism and discrimination. Immigrant workers should also understand the experiences of women workers who, regardless of race, ethnicity or immigration status, have waged a relentless and ongoing battle for equal pay and opportunity in the workplace, and for the most important right of all, the right to vote. And though white males earn higher wages, hold more executive and management jobs and have not suffered the institutionalized discrimination of women and people of color, there are white men who struggle for dignity and respect in the workplace every day.

The resolution of workplace issues for one group cannot come at the expense of another. In fact, by accepting resolutions that exclusively affect one group, worker advocates often ignore the underlying discrimination that is the root cause of workplace unfairness for all groups. For instance, if an employer institutes family-friendly work hours only for management or

executive staff, then hourly and non-management staff, who are more likely to be women and people of color, are left without a remedy and become resentful of the group helped by the new policy. A broader remedy in this situation might include addressing work hours and mandatory overtime for all workers, or providing child care assistance, including on-site care.

Worker advocates must be mindful of representations of all worker issues in the press, and the lingering misperceptions with which they can leave the public. Since the events of September 11, the media have often focused exclusively on the difficulties faced by low-wage undocumented Hispanic immigrant workers due to increased interior immigration enforcement and accompanying employer wariness. However, undocumented workers of all nationalities face the same problems. Media reports on the effect of “Operation Tarmac” and other “security efforts” have documented job loss among immigrant security screeners, while often failing to mention that African-American and Asian workers with discrepancies in their applications also lost their jobs. Similarly, news articles on the increase in Social Security mismatch letters have explained the loss of employment and hardships faced by undocumented Hispanic workers but have rarely mentioned that all undocumented workers, regardless of nationality, face the same loss of employment and income and find themselves vulnerable to employer exploitation. Media representations fuel a perception that all low-wage immigrants and undocumented workers are Hispanic, which is a disservice to that group and to all other groups in similar situations.

Worker advocates must aggressively counter such misrepresentations both in the media and among their constituent members. Public displays of unity between workers, if nothing else, contradict divisive media images, and at their most effective initiate communication between groups of workers that can eventually lead to a united front on common issues, as well as understanding and support for issues that appear to be exclusive to one group.

Finally, worker advocates must acknowledge that it is virtually impossible for one group of workers to organize and pursue favorable changes in policy without the support of other workers. This is especially true when advocates address issues of concern to immigrant workers. Many non-immigrant workers are hostile to immigration issues because they do not perceive those issues to affect them or their families directly, or they

believe that any effect on their own lives would be negative. Yet, because immigrants who are not citizens cannot vote, workers who can vote are essential supporters for policy changes in areas such as legalization, reform of the family reunification system and full restoration of eligibility for public benefits. Although the Civil Rights movement most directly affected African Americans, it was courageous leadership across racial lines that helped change the law. Similarly, the influence of non-immigrant workers will be necessary to reform the U.S. immigration system and improve the fairness of the legalization program.

As with globalization, it is critical that non-immigrant workers understand that the fates of all workers are linked. In the most direct sense, non-immigrant workers face displacement by undocumented workers who the employer believes will accept lower wages and substandard working conditions because of their immigration status. Because employers will have less incentive to raise wages and may even have an incentive to depress wages in order to remain competitive, the indirect effect on non-immigrant workers in these industries is that they are less likely to receive wage increases. However, the fundamental consequence of continued unfairness to one group, whether perpetrated by employers in the workplace and or perpetrated by the government in society as a whole, is that the rights of *all* other workers are at risk, because the precedent is set for denial of fair treatment to subsequent groups.

In conclusion, worker advocates are uniquely situated to address issues of importance to all groups of workers through education and activism. The union movement has recognized this, and has committed itself to continuing the organization and effective representation of immigrant workers. We are also committed to teaching union members, regardless of immigration status, race, or gender that problems unique to one group are often grounded in policies that result in unfairness to all workers. Given the diversity of the U.S. workforce and the current economic uncertainty, this is not an easy task, but a necessary one that we urge all worker advocates to pursue.

NOTES

1. The Bureau of Labor Statistics projects that nine of the twenty occupations gaining the largest number of jobs between 1998–2009 will be low-

wage. Frank Parente, *The Future of Low Wage Employment* (AFL-CIO Public Policy Department, 2000), p. 6.

2. L. Mishel, J. Bernstein and H. Boushey, *The State of Working America 2002-03* (Economic Policy Institute, 2002), p. 131.

3. Op. cit., p. 134.

4. AFL-CIO Working Women's Department, *Workers' Rights are Women's Rights* (2002).

DISCUSSION

SHARRON CANDON, GENERAL ACCOUNTING OFFICE: If we legalize six to thirteen million undocumented immigrants now, won't we have another twenty-six million who are undocumented in sixteen years? Won't that undocumented population have the same problems?

CHARITY C. WILSON: Not only do we need to legalize undocumented immigrants, we must also address the root cause of the documentation problem, which is that our immigration policy fails a lot of people. In particular, family reunification, one basis of our immigration policy, does not work for immigrants from countries such as Mexico, India, and China. It also disadvantages immigrants from countries who were under-represented in earlier waves of immigration, and who therefore benefit less from derivative immigration. There were, for example, laws that specifically kept Asians from immigrating to this country. While there were not similar exclusionary laws for Africans, it was very difficult for that group as well to immigrate to the United States.

If we address deficiencies in the legal system, fewer people will try to enter the country without documentation. Would that mean no one would ever overstay his or her visa or try to sneak in? Of course not, as long as there is so much poverty so close to the United States. That is why our trade and foreign policies towards those countries should promote sustainable growth, so that they will be places where people want to live and can make a good living, and where they are not in fear of persecution.

QUESTION: Trafficking of women is a global phenomenon. How can we in the United States help with this in the international arena?

JOY MUTANU ZAREMBKA: I'd like to answer the question inversely: trafficking is now an issue in this country only because it was first a global issue. For a long time, the U.S. government spoke of the trafficking problem in other countries while ignoring it here. Today, some U.S. organizations are attempting to work with NGOs in other countries and learn from their experiences.

MARY OSIRIM, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS: Could you discuss the race, ethnicity and class of those who

bring trafficked people into the United States? Are they from the same ethnic group as the trafficked person or are they from other racial or ethnic groups? Are they from higher social classes?

JOY MUTANU ZAREMBKA: We have found that traffickers are not necessarily from the same countries as the domestic workers they traffic. For example, a Saudi Arabian family might bring an Indonesian woman to this country. In some of the other labor industries, especially the sex industry, it is more likely that traffickers and those they traffic come from the same area. This makes the provision of social services difficult because it is hard to know with whom the individual may feel comfortable. Another problem is that if the trafficker comes from the same area as the person being trafficked, he knows the exact location of that person's family. That creates an enormous threat back home, and therefore affects whether a person will speak out about the abuses she has suffered or help a prosecution.

DONNA R. GABACCIA: This discussion of trafficking in the present is both similar to and different from the discussions of trafficking that took place in the past.

In the past, there was an intense awareness among reformers that not all immigrants entering the country did so freely. They made a very sharp distinction between what we would today call the trade in women (the sex trade) and the trafficking of women, which in those days was called the white slave trade. There was also an awareness of the unfree male laborers who came as indentured servants or as contract laborers, or who came under the guidance of and usually in debt to recruiters who were typically men of their own backgrounds.

In talking about trafficking today, it is helpful to sort out the gender issue by seeing what, if anything, the sex trade has in common with these other forms of semi-free or unfree recruitment. One aspect to examine is the degree to which the migrant exercises choice or is coerced. Clearly these cases involve very exploitative labor conditions, but because the migrant is exercising a degree of consent himself or herself, I'm uncomfortable using the language of slavery.

JOY MUTANU ZAREMBKA: The U.S. government has determined that this type of arrangement is illegal even if the individual originally knew about or agreed to perform the labor voluntarily. In other words, a person cannot consent to enslavement. If a woman has agreed to be a maid, or a prostitute, and finds when she arrives here that the conditions are complete-

Discussion

ly different than those she had been promised and yet she is forced to remain, the labor is considered involuntary regardless of any previous consent.

CHARITY C. WILSON: We often find that people consent to be smuggled but not to be trafficked. They consent to being brought into the country on the basis of representations that are made to them. They are told, for example, that they will be taken to X place, to do Y, and owe the smuggler Z amount of money. If when they arrive, they discover that none of that is true, we consider that person trafficked.

The United Food and Commercial Workers Union (UFCW) discovered a case in 2000 in which about 150 Mexican men from the same Mexican state, who were working in meat packing plants in San Antonio, had gotten their H-2B visas through a program operated by their own state government. The first problem was that a job at a meat packing plant should never be the subject of an H-2B visa, because those are reserved for seasonal or temporary work while beef is slaughtered year-round. The men were paid just over six dollars an hour, while even non-union meat packing plant workers were paid eight and nine dollars an hour, and the unionized plant workers in that area were making between fifteen and eighteen dollars an hour depending on the job. Slaughtering beef is extremely difficult, messy and dangerous. The men's passports were taken from them, their pay was withheld, they were housed eight to a very small apartment, and their meals were withheld. They were essentially enslaved.

When they were interviewed by UFCW, these men said that if they had known what the conditions were going to be, they would simply have entered illegally on their own instead of going through the state. This element of fraud is key when we determine whether an organized laborer is smuggled versus trafficked.

SARAH GAMMAGE: In the community I work with in El Salvador, undocumented access to the United States costs between \$3,000 and \$5,000. Immigrants pay as much as they can up front to their *coyotes*, and then after they get here, if other relatives can't come up with the difference, the *coyotes* can command their labor.

This has been going on for a very long time and is particularly prevalent in the construction industry, especially in Washington, D.C. People who agreed to be smuggled become bound in an indentured relationship because of their debt to the smuggler.

Discussion

MARY OSIRIM, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS: Could you elaborate on female-on-female violence that employers inflict upon their domestic workers? It is extremely difficult to hear about, yet unfortunately it is involved in many of these cases.

JOY MUTANU ZAREMBKA: We have received numerous reports about physical abuse of domestic workers at the hands of females. A dynamic of female competition within the home underlies much of the abuse. The story of Tigris is only one such case. More of our sexual cases, though, still involve a male abuser.

PANEL FOUR

**REFUGEES, ASYLUM AND
DETENTION**

WOMEN ASYLUM SEEKERS

WENDY YOUNG

In recent years, there has been a serious deterioration in U.S. protection of asylum seekers. This essay focuses on the impact that such reforms have had on one of the populations most at risk in any refugee population: women.

Two stories are illustrative.

Chi is 18 years old. She escaped a forced marriage in her homeland of China, an experience she finds very difficult to discuss. She arrived in Los Angeles when she was seventeen and was originally held in a juvenile jail before the Immigration and Naturalization Service (INS) transferred her to a children's detention center in Miami. On her eighteenth birthday, she was transferred to the adult Krome Detention Center, where the Women's Commission for Refugee Women and Children and others had documented widespread sexual, physical, and verbal abuse of women detainees. Chi was held at Krome for months despite having established a credible fear of persecution. Although the situation at Krome is now under criminal investigation by the Justice Department, fourteen of the fifteen INS officers accused of sexual abuse have remained free, most still working at the INS.

Marie fled Haiti after a politically-motivated gang broke into her home searching for her husband, who had spoken out against the Haitian government. Two days later, one man returned to her home and raped her at gunpoint in the presence of her young son. Marie came to the United States in December 2001 and was detained by the INS for eight months in a maximum security prison before she was finally transferred to a less secure facility, along with approximately 60 other women asylum seekers. Her asylum claim was subjected to a cursory hearing and was denied. She told the Women's Commission that she initially did not tell the asylum officer about her case because she was uncomfortable discussing the rape in the presence of a male officer and a male interpreter.

While women asylum seekers who come to the United States are often fleeing war and human rights abuses, they also come to escape abuses that

are specific to their gender. This includes rape, sexual slavery, female genital mutilation, forced marriage, and honor killings.

The United States has made progress in recognizing the unique circumstances that women and children often face. In 1995, the INS issued Gender Guidelines to steer the adjudication of gender-based persecution claims. The guidelines establish critical procedural, evidentiary, and legal standards for claims raised by women. Although the guidelines are non-binding, they have helped U.S. asylum jurisprudence evolve to a wider recognition that women who have fled gender-related persecution deserve refugee protection. They also represent an international advance as the United States was only the second country to issue such guidelines (the first was Canada).

In addition to facing the complexities of the asylum system, women are frequently detained by the INS while awaiting adjudication of their cases. Since 1996, the detention of individuals apprehended by the INS has dramatically increased to an average daily population in the neighborhood of 24,000. Seven percent of detainees are women, three percent are children (a quarter of whom are girls), and about five percent are asylum seekers.

Conditions of detention are typically harsh. Approximately 65 percent of detainees are held in local prisons from which the INS rents bed space. The Women's Commission has documented numerous problems with conditions in all facilities, local prisons and INS-run facilities alike. These problems include poor medical and mental health care, handcuffing and shackling, little or no translation services, and arbitrary disciplinary procedures. The Commission has also documented widespread sexual, physical, and verbal abuse of women detainees in the Krome center. Abuses similar to those at Krome have been documented in facilities housing asylum seekers and other women newcomers in Virginia, New York, and New Hampshire.

Detention also hampers the ability of asylum seekers to obtain legal counsel. Many facilities are in remote areas where such services are not available. Detainees are frequently transferred, sometimes hundreds or even thousands of miles away from their original port of entry, further isolating them from any source of help. Attorneys have had difficulty getting into facilities and report waits of several hours before seeing their clients in some sites.

Women Asylum Seekers

In addition, due to the lack of government funded counsel, detainees in effect are in competition for extremely limited legal resources. It is easier for a lawyer to represent a non-detained asylum seeker than one held in prison. The results of this are stark. Georgetown University has documented that represented asylum seekers are four to six times more likely to win their asylum claims and detained asylum seekers are half as likely to obtain legal assistance as those who are not detained.

In 1996, Congress enacted sweeping immigration reforms, including expedited removal and an emphasis on detention. It has since revisited many of these changes and reversed or softened them, but has focused only on those that primarily affect legal immigrants. As a result, it has failed to address the needs of asylum seekers, perhaps the most vulnerable immigrant population.

The following legislative reforms are therefore needed:

- Congress should revisit expedited removal by either eliminating it or severely restricting its application to migration emergencies.
- Congress should enact detention reform legislation to ensure that asylum seekers are not unnecessarily detained and that conditions of detention are humane. This includes mandating a consistent and generous parole policy implemented by objective decision-makers for asylum seekers who have established a credible fear of persecution.

Meanwhile, the Administration itself can make significant changes with or without legislation, including:

- The INS and the Executive Office for Immigration Review should monitor implementation of the Gender Guidelines, and ensure consistent and frequent training of asylum officers, immigration judges, and the Board of Immigration Appeals under the guidelines. The Justice Department should support the development of U.S. jurisprudence that fully recognizes gender-related persecution claims.
- The INS should implement generous and consistent release procedures for detained asylum seekers. Parole decisions should be made by impartial adjudicators, such as INS asylum officers or immigration judges, and be subject to periodic review.
- The INS should discontinue immediately the use of local prisons and develop alternatives to detention for asylum seekers who cannot be released. The INS contracted with the Vera Institute in New York to test a pilot project for supervised release of asylum seekers and others.

The results of this study showed that with proper information the overwhelming percentage of asylum seekers do appear for their hearings.¹

- Conditions of detention must be improved and strictly regulated to ensure that asylum seekers are treated humanely. The INS has developed detention standards that address a range of conditions. However, the standards are not binding even in INS facilities.

Despite the tragedy of September 11th and the concerns it has generated regarding U.S. migration policy, revisiting our asylum and detention policies must be a top priority. The manner in which we treat asylum seekers is a test of the very human rights and refugee rights standards with which we encourage other countries to comply. It is hypocritical to violate those same standards in our own backyard.

NOTES

1. Megan Golden, Oren Root, and David Mizner, *The Appearance Assistance Program: Attaining Compliance with Immigration Laws Through Community Supervision* (VERA Institute of Justice, 1998); *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program* (VERA Institute of Justice, June 7, 2000).

DETENTION OF WOMEN ASYLUM SEEKERS IN THE UNITED STATES

MARLEINE BASTIEN

U.S. REFUGEE POLICY

For the first 100 years of its history, the United States did not have exclusionary immigration laws. Refugees from around the world could come to this country to seek protection from political and religious persecution or simply to search for a better life. With the passage of the Chinese Exclusion Acts of the 1880s, however, the country began to enact increasingly restrictive immigration laws aimed at excluding certain groups on the grounds of their personal characteristics such as race or national origin.¹ Years later, after the second World War, the United States passed comprehensive refugee legislation such as the Displaced Persons Act of 1948, the Refugee Relief Act of 1953 and the Refugee-Escapee Act of 1956.² These acts were enacted to address political upheavals in the Western Hemisphere. When the Soviet Union invaded Hungary, President Eisenhower utilized the Immigration and Nationality Act of 1952 to offer asylum to over 21,000 Hungarian refugees.³

Congress, viewing Eisenhower's action as an abuse of executive power, amended the 1952 Act to define a refugee as someone who had fled his or her country of origin because of political persecution. The provision increased the discretionary power of the Attorney General and placed the burden of proof of persecution on the refugee. Only aliens in deportation proceedings, as opposed to aliens who were in exclusionary proceedings because they had not made it to land and therefore "have not entered the U.S.," could take advantage of section 243(h).⁴

The U.S. treatment of asylum seekers in the years thereafter varied according to country of origin. During the 1960s the United States welcomed about 600,000 Cubans who had received permission from Fidel Castro to leave Cuba. In 1968, the United States joined the United Nations Protocol on Refugees. In 1975, the country took in 130,000 Indochinese; a total of 322,000 Indochinese refugees came to this coun-

try between 1975 and 1980. In 1980, 125,000 Cuban refugees landed in South Florida at the same time as 13,000 Haitian refugees. While the Cubans were welcomed, the Haitians were kept in detention for months and, in some cases, years. Most were returned to Haiti where they again risked imprisonment and even death.

One such deportee was Oman Desanges, founder and President of the Association des Jeunes Progressistes de Martissant (Young Progressive Association of Martissant), a neighborhood committee. He was returned to Haiti after requesting political asylum in the United States in 1993. On January 26, 1994, his body was discovered near the international airport in Port-au-Prince, his arms bound, a cord around his neck, and a red handkerchief reading “President of the Red Army and indigent” around his arm. His eyes had been gouged out, an ear cut off, and his stomach split open.

On May 24, 1992, President George Bush issued an Executive Order stating that all Haitians intercepted at sea outside United States territorial waters would be returned directly to Haiti, without consideration of their asylum claims.⁵ When President Clinton took office in January 1993, he continued this policy despite campaign promises to end it. For two years, while the policy was in force, Haitians intercepted by the U.S. Coast Guard were returned to Haiti without even a cursory attempt to identify those who might be at risk - in violation of international rules and the obligations of the United States under Article 33 of the 1951 Convention relating to the Status of Refugees.⁶ The United States government claimed that while some Haitians deserved political asylum, most attempted the difficult 750 mile voyage for economic reasons, and allowing them to remain in the United States would encourage others to risk their lives to come in search of better economic opportunities. In the landmark case of *Haitian Refugee Center v. Civiletti*, filed by the Haitian Refugee Center in 1979, Haitian advocates successfully argued that the program “violated the most basic rights of the Haitian refugees and that it was both unconstitutional and illegal.” A collective letter written by a group of refugees detained at Fort Allen, Puerto Rico stated,

Since we arrived on American soil, we have been mistreated...Our situation is pitiful. We have been locked up behind barbed wires from Miami to Puerto Rico...Sometimes we are hungry, and we cannot eat. We have needs and cannot satisfy them. Is this the better life we

Detention of Women Asylum Seekers in the United States

were seeking...If we have not been released by November, a good number of us are going to commit suicide...We are asking why you treat us this way...Is it because we are negroes?⁷

Twenty-five years later, it is not only Haitian asylum seekers who are still being detained despite not having committed any crime. Asylum seekers from many nations who are detained by the INS can be found in Immigration Processing Centers, facilities run by private corporations, the U.S. Bureau of Prisons facilities, local jails and maximum-security prisons. No logical standards regulating the placement of asylum seekers exist. In 1998, the INS issued seventeen standards for its own facilities, and created new standards for county jails and other centers that have contracts with the INS. It has failed to implement these standards in its own facilities, however, as well as in those not under its control.

IMMIGRATION AND NATURALIZATION SERVICE DETENTION SYSTEM

It is estimated that 125,000 people are in INS removal proceedings. Expedited removal is provided for in the 1996 Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act that amended some of its provisions, which together give the INS authority to detain refugees who enter the country illegally.⁸ A refugee unable to establish a bona fide fear of persecution if he or she were to return to his or her country of origin is immediately deported without a hearing or an appeal before an immigration judge. Most people who flee their countries to seek refuge in the United States have to leave very quickly, with no time for planning or strategizing. Many, in fact, must go into hiding and live in dangerous conditions for months before being able to flee. Those who are able to articulate a credible fear of persecution are allowed to stay to present their cases in a court of law but, under IIRIRA, can be detained throughout the months- or years-long process. Since the INS does not have the capacity to detain every refugee placed in expedited and non-expedited removal proceedings, district offices have used their discretion to release some refugees on bond or on their own recognizance. The INS frequently violates its own guidelines, however, and its implementation is biased and inconsistent.

No other group in recent history has been more victimized by these policies than Haitian refugees. In December 2001, nearly 130 Haitian asylum seekers arrived on the shores of Miami in a boat called “Si M’ap Viv Se Jezi,” (“If I live it’s because of Jesus”). They remain in detention nine months later despite local, national, and international appeals for their release. Many Haitians who fled for their lives and sought protection in this country have been subjected to physical and emotional abuse by guards, lack access to legal resources and counsel, and have been exposed to hardened criminals.

WOMEN IN DETENTION IN THE UNITED STATES

Many of the 135,000-150,000 refugees in removal proceedings at any given time in the United States are women who were forced to flee their countries of origin as a result of war, political instability or societal oppression related to their gender: female genital mutilation, politically motivated rape, sexual slavery, prostitution, and planned and forced marriage. Most suffer from post-traumatic disorder. This essay focuses on the conditions in the detention centers in the Miami INS district, which has one of the worst records in the treatment of women refugees – but it should be remembered that “worst” in this context is merely a matter of degree.

In the past, most male and female refugees were detained at the Krome Detention Center, one of the largest INS Service Centers. As Wendy Young noted earlier, Krome has been plagued for years with problems such as overcrowding; inadequate or non-existent medical care; illegal, arbitrary, and insensitive discipline and solitary confinement procedures; and physical and sexual abuse of women detainees. After long-term research and advocacy by the Florida Immigrant and Advocacy Center (FIAC), Fanm Ayisyen Nan Miyami, Inc. (FANM), the Haitian-American Grassroots Coalition, the Women’s Commission for Refugee Women and Children and other local and national groups, the women detained at Krome were transferred to the Turner Gilford Knight maximum security prison (TGK). When they first learned about the move from the media and confronted INS officials, they were told that TGK was a “model facility” with better telephone and attorney access, medical care, food and other services and that they would have private rooms.

Detention of Women Asylum Seekers in the United States

TGK contracted with the INS to house the women detainees in a separate section of the jail. They are, however, housed and treated like criminals. Upon arrival at TGK they are photographed, fingerprinted, and given uniforms. In March 2001, Amnesty International issued a statement indicating that the women's move from Krome to TGK amounted to "punishing them for the government's failure to protect them" and called on the INS to "take immediate steps to ensure the women's safety and well-being."⁹ What the women have found at TGK is language barriers, inadequate room for attorney visitation, inedible food, and an inability to communicate with family members abroad, as well as lack of access to legal advocates, telephones, activities, medical care, and sanitary services and personal hygiene items.

ATTORNEY ACCESS

The INS standard for attorney visits gives detainees the right to "eight hours of uninterrupted, private legal visitation seven days a week. Meals will be provided to detainees who are meeting with their legal counsel during meal time."¹⁰ Attorneys trying to interview their clients at TGK, however, face long waiting periods to see clients and their visits are frequently cut short because of arbitrary head counts, lockdowns, policy changes, and unexplained emergencies. Only one attorney or paralegal can meet with clients at a time, as the women's unit has only one small attorney visitation room, right next to the INS and TGK offices.

Detainees at TGK have to be taken to the Krome camp for court hearings. Upon return to TGK they are subjected to a body search, including a cavity search. Most women say they will be scarred for life as a result, and some experience anxiety attacks resulting from past rape experiences in their countries of origin.

ACCESS TO LAW LIBRARY

INS standards mandate that "detainees be entitled to at least one hour daily to use law libraries equipped with immigration and asylum-related materials and typewriters. The relevant forms and copying will be available to detainees to help them prepare their cases. Detainees will be allowed to assist one another in preparing their cases."¹¹ The women were

promised a full-fledged separate law library upon arrival at TGK, with five computers with CD-ROMs and full access to immigration statutes and regulations. In fact, however, the asylum unit library has only two computers, one table, two chairs, and a small bookcase. There is no typewriter or photocopier. The materials in the library are scarce, outdated, and only in English.

TELEPHONE ACCESS

INS detention standards state, “Detainees can make free, unmonitored, private phone calls for *pro bono* representation and to confer with consular officials through pre-programmed phone technology.”¹² Most women detainees at TGK are permitted to make only collect calls, but most of their families cannot receive collect calls. Countries like Haiti have automatic blocks that prevent communication between the detainees and their family members. Some detainees go for months without knowing if their family members are dead or alive. One detainee was able to call home after spending months in detention only to find out that her mother had died. When, four weeks later, she used a calling card donated by a Haitian doctor to find out about the funeral, she was given the news of her father’s death. She became suicidal.

VISITATION

“Family – including children – and friends can visit detainees for at least thirty minutes per visit on weekends and holidays in an appropriately furnished and arranged, and as comfortable and pleasant as practicable environment... visits will be conducted in a quiet, orderly, and dignified manner... To maintain detainee morale and family relationship, INS encourages visits from family and friends.”¹³ Women detainees at TGK are allowed only one contact visit per month and two non-contact visits a week. Non-contact visits are conducted across a Plexiglas barrier. The small holes that allow the detainees to communicate with family members are below the glass and at waist level, so that speakers must bend and twist their heads in order to hear each other. Contact visits are often conducted in the hallway, where they are constantly interrupted by prison personnel entering and exiting the area. Women interviewed by FANM advocates

say they feel “ashamed, dehumanized, and undignified by the process.” One commented, “I truly believe that once I get out of here I’ll have to see a psychologist because it’s too much. The psychological abuse here, with no access to our family, it’s so cruel. At least we could talk to our family by phone at Krome. One officer said even if we complain, nothing is going to change. It will be worse for us.” Another added, “Does INS understand that they are not only destroying our lives but destroying our children’s lives as well?”

RECREATION, OTHER ACTIVITIES, AND RELIGION

Women detainees at TKG and other facilities around the United States lack access to basic recreational activities. The outdoor recreation area at TKG consists of a small concrete wall space exposed to the elements. The women supposedly have access to it from 8 a.m. to 7 p.m. but actually do not because of frequent lockdowns and other unexplained emergencies. Most women prefer to remain inside instead of going to the restricted recreation area because they are strip-searched when they return. There are no educational activities except for occasional religious activities programmed by area volunteers. Detainees are not allowed to receive books or magazines and are not given local newspapers. There is only one television set in each unit. When interviewed by FANM and FIAC personnel, the women complained that they feel “useless, helpless and hopeless sitting around all day with nothing to do,” and many expressed suicidal feelings.

On Sunday, convicted detainees at TKG are able to attend religious services. Those charged with lewd and lascivious behavior are not permitted to attend, however, nor are the asylum seekers. Priests often come to the asylum seekers’ unit, but they speak only Spanish and English, leaving detainees who do not speak those languages feeling isolated. There is no support for women of other faiths, whose requests for a prayer mat or a book other than the Bible are often denied. Most Muslims resort to using bath towels to pray and are constantly harassed by the guards as a result.

Although INS standards call for “reasonable quantities of small religious items, religious and secular reading materials and correspondence,”¹⁴ the women’s personal belongings, including pictures, rosaries, wedding bands, watches, and mirrors, are taken away from them when they arrive at TKG.

FOOD SERVICE

One of the biggest complaints about TGK is the food. Most of the women say they have lost weight because of poor food, which is very scarce and for the most part spoiled, uncooked, and cold. Said a Colombian detainee interviewed by FIAC, “The food here is really ugly... slimy lunch meat. There was even a worm in the meat, moldy food, rotten beans, wilted lettuce, hard bread. Sometimes even though I’m starving I just can’t eat it. I know what the food is like here because I’m in charge of heating it up.” Another commented, “When someone is coming to inspect from INS or another institution, then the food is a little more decent. They make sure the tray is full and serve cheese, a fruit, meat, a cookie and jello. On weekends, on the other hand, we are lucky if we get a sandwich and fruit for lunch.” And a third: “I’ve seen mice and rats running in the kitchen area by the janitors’ closet. There are flying roaches and the food is getting worse.”

The women have told advocates that they are awakened for breakfast at 5 a.m. and served dinner at 4 p.m. Consequently, they get hungry often and they have to spend money at the commissary for bags of food sold at severely inflated prices.

MEDICAL CARE

Many of the women at TGK lack access to medical care. A young Haitian woman with a bleeding ulcer was ignored until a FIAC paralegal and her lawyer intervened. There are reports of abrupt medication changes, reduction or discontinuation of detainees’ medication without notification, and of women receiving the wrong medication. The women complain that they have to wait 24 hours for over-the-counter medications for pain and menstrual cramps. Some women with serious depression are given sleeping pills at 5 p.m. and are reprimanded if they fall asleep during the 11 p.m. head count. They are not allowed to have any medication in their possession, although this is contra-indicated for women suffering from chronic illnesses.

ABUSE, HARASSMENT AND ILLEGAL LOCKDOWNS

Many women detainees are victims of abuse and racial slurs by guards. Women are punished, punched, pushed, and placed in isolation or lock-

down for minor offenses such as asking repeatedly for an item like a sanitary pad or not responding immediately to commands because of language barriers. One detainee said, “Sometimes an officer for whatever reason decides to punish us and locks us down for a long period of time. I have gotten to a point of desperation locked up in that tiny room, and I have desperately cried. I have also consoled some of my cellmates when I have seen them affected by this. It is a large psychological harm which they are doing to us.”

Women who have been persecuted at home find themselves incarcerated all over the country in detention centers and jails that house the worst types of criminals. In Florida, refugees are held at Krome, TGK, area motels and hospitals, Sarasota County jails, Palmetto Mental Health Center, the federal detention center in Miami, Fort Lauderdale jails, the Stockade and Palm Beach County Jail, the Hernando County Jail, and the Monroe County Jail. The conditions in all these facilities lack the basic infrastructure for treating the women in a humane and dignified manner. All have problems with access to health care, telephones, education, recreation, exercise, a balanced diet, family, visitors and press, an adequate law library, and detainees’ ability to practice their religion.

Shocked by the conditions of women asylum seekers at a detention center near Kennedy International Airport, officials from several major religious groups, including the Episcopal Church, have called on Congress and President George Bush to correct the situation. Leaders of Protestant, Roman Catholic, Jewish and Muslim communities who visited a detention center run by the Wackenhut Corrections Corporation for the INS wrote to the Bush administration, “We are deeply troubled by the way our country is treating people who come to our shores fleeing persecution in their homelands.” They described the asylum-seeking detainees as kept in a segregated cell, dressed in orange jumpsuits, and locked in windowless 12-40 bed dormitories with no privacy.¹⁵

IMPACT OF DETENTION ON WOMEN DETAINEES

Long-term detention has a physical and psychological impact on women detainees. In *Hawa Abdi Jama v. INS*, a New Jersey federal district court found that the detained asylum seekers faced inhumane and abusive conditions and authorized them to sue the federal government for damages

under the Alien Tort Claims Act.¹⁶ The court held that the “alleged treatment suffered by the plaintiff in the above-referenced case violated the international human right to be free from cruel, inhumane, or degrading treatment.”¹⁷

CONCLUSION

Every year, the INS detains thousands of refugees fleeing persecution. Many are women and girls who have suffered grave abuse because of their gender. They have faced forms of persecution that are gender-specific: rape, sexual violence, forced sterilization, genital mutilation, domestic violence, indentured slavery, forced marriage and prostitution.

There is a double standard in the treatment of women and men asylum seekers. In Miami, men are housed mainly at Krome, an open door facility where detainees are not placed in cells or locked down. They have access to a separate cafeteria, law library, outside patio and a large recreation area, as well as better access to family visits and lawyers. While they are not always paid, they are allowed to work. The comparison with the conditions of the women detainees at TGK is stark, and similar to that which exists throughout the country. The INS has failed to protect the women detainees in its custody and has, sadly, relegated them to the same second-class citizen status they fled in their own countries.

NOTES

1. Chinese Exclusion Act of 1882, 22 Stat. L. 58 (1882). Several additional exclusion statutes were passed between 1882 and 1902. The acts were repealed in whole or in relevant part in 1942.

2. Displaced Persons Act, Pub. L. 80-774 (1948); Refugee Relief Act, Pub. L. No. 83-203 (1953); Refugee-Escapee Act (amending Immigration and Nationality Act of 1952), Pub. L. 55-316 (1957).

3. Immigration and Nationality Act (INA), Pub. L. 82-414 (1952); Act of July 25, 1958, 72 Stat. 419.

4. Section 243(h) of the Immigration and Nationality Act of 1952, codified at 8 U.S.C. 1253(h), reads, in pertinent part, “The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution...” The provision was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208.

Detention of Women Asylum Seekers in the United States

5. Executive Order 12807 (57 Fed. Reg. 23133 (1992)).
6. Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into in force April 22, 1954.
7. *Haitian Refugee Center v. Civiletti*, 503 F Supp. 442 (S.D. Fla. 1980), aff'd as modified sub nom. *Haitian Refugee Center v. Smith*, 676 F.2d 1023 (5th Cir. Unit B 1982). Amnesty International, "Haiti: On the Horns of a Dilemma: Military Repression or Foreign Invasion?," AMR 36/33/94 (August 1994), pp. 1-25.
8. IIRIRA, op. cit.; Antiterrorism and Effective Death Penalty Act, Pub. L. 104-132 (1996).
9. Amnesty International, "I'm not an inmate. Why should I be treated as one? Women asylum seekers punished for state's failure to protect them," AMR 51/028/01 (March 2001).
10. Immigration and Nationalization Service, Detention Operations Manual (Revised 2/11/02), <http://www.ins.gov/graphics/lawsregs/guidance.htm>.
11. Op cit.
12. Op cit.
13. Op cit.
14. Op cit.
15. Ecumenical News International, "Detainees Held in Prison-Like Conditions," <http://www.episcopalchurch.org/episcopal-life/Detainee.html>.
16. Alien Tort Claims Act, enacted as part of the Judiciary Act of 1789, 1 Stat. 73. Codified at 28 U.S.C. § 1350.
17. *Hawa Abdi Jama, et. al. v. United States Immigration & Naturalization Service, et. al.*, Civil Action No. 97-3093 (New Jersey).

ADDITIONAL REFERENCES

- Alexander, Barbara Cochrane, "Detention of Asylum Seekers in the United States." American University Washington College of Law, 7 *Human Rights Brief* (Winter 2000) <http://www.wcl.american.edu/hrbrief/07/2detention.cfm>.
- Catholic Legal Immigration Network, *The Needless Detention of Immigrants in the United States: Why Are We Locking Up Asylum-Seekers, Children, Stateless Persons, Long-Term Permanent Residents and Petty Offenders?* (2000).
- Florida Immigrant Advocacy Center, "INS Detention In Florida: A Double Standard of Treatment," December 2001 and April 2002.
- Musalo, Karen, Lauren Gibson, Stephen Knight and J. Edward Taylor, *Report on the First Three Years of Implementation of Expedited Removal*. Center for Human Rights and International Justice, Hastings College of Law (May 2000).

Pritchard, Llewelyn G., "The INS Issues Detention Standards Governing the Treatment of Detained Immigrants and Asylum Seekers." U.S. Committee for Refugees, 2001 (http://www.refugees.org/world/articles/developments_rr01_02.cfm).

United Nations High Commissioner for Refugees, "UNHCR Urges Fair Treatment for Refugees, Asylum Seekers." UNHCR press release, May 3, 2002 (<http://globalization.about.com/blunhcrusa.htm>).

Women's Commission for Refugee Women and Children, "Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center." WCRWC, October 2000 (<http://www.ilw.com/lawyers/immigdaily/editorial/2000,1023-Krome.shtm>).

Women's Commission for Refugee Women and Children, "Innocent in Jail: INS Moves Refugee Women from Krome to Turner Gilford Knight Correctional Center, Miami." WCRWC, June 2001.

Women's Commission for Refugee Women and Children, "Liberty Denied: Women Seeking Asylum in the United States." WCRWC, April 1997.

IMMIGRATION ISSUES: A VIEW FROM THE BENCH

HON. JEFFREY S. CHASE¹

IMMIGRATION COURT: AN OVERVIEW

The approximately 212 immigration judges sitting at 50 courts throughout the United States are administrative judges appointed by the Attorney General, and are in fact the only judges within the Department of Justice. They are not in the Immigration and Naturalization Service but, rather, part of the Executive Office for Immigration Review (EOIR). EOIR contains two components in addition to the immigration courts: the Board of Immigration Appeals (BIA), the sole administrative tribunal reviewing immigration judge decisions on appeal; and the Office of the Chief Administrative Hearing Officer, whose corps of administrative law judges hears cases involving sanctions against employers of illegal aliens.

Hearings are commenced before the immigration court by the INS, which appears as a party before the court and is represented by attorneys from the INS Office of District Counsel. Cases come before the court along several tracks. Aliens caught at the border, including air and sea ports of entry, and found by the INS to be ineligible for admission to the United States, have the right to be placed directly into proceedings and are entitled to a hearing on the issue of their admissibility. If found to be inadmissible, an alien may file a defensive application for relief with the judge.

An alien who is apprehended by the INS after entering the United States will also be subject to proceedings as outlined above. Such proceedings can involve aliens who were legal at the time of entry but who later violated the terms of their stay. This includes non-immigrant visitors and students or temporary workers who remain longer than permitted or work without permission, as well as lawful permanent residents of the United States convicted of certain crimes.

A third track involves aliens who are in the United States illegally but who are not apprehended at the time of entry. Unlike the aliens apprehended at the border, who must file applications for relief defensively

with the immigration judge, non-apprehended aliens may first file affirmatively for some reliefs, including asylum. Such an application is heard by INS officials in a non-adversarial interview, rather than by a judge. If the INS does not grant the application for relief, the alien is placed into court proceedings, where he or she is entitled to a *de novo* hearing before the judge on the same application.

The alien who successfully enters the country illegally thus gets a second chance for relief not available to apprehended aliens. Furthermore, whereas arriving aliens are usually detained for at least a brief period of time and often have to post a bond to ensure their release, illegal aliens filing affirmative applications are rarely if ever detained, regardless of their manner of entry or the outcomes of their applications for relief. Aliens placed into proceedings at the time of arrival are barred from applying for certain reliefs (e.g. adjustment of status or voluntary departure) that are available to those who managed to enter the country.

These provisions mean that, in effect, the law creates numerous incentives for aliens to be smuggled into the United States. Aliens who are smuggled over the border without detection, who are admitted using false passports or visas, or who obtain and enter with valid student visas but have no intent either to attend school or to return to their home countries, will enjoy far greater legal benefits than aliens who, upon arrival at the airport, immediately admit to the INS that they intend to seek asylum.

THE NEW YORK IMMIGRATION COURT

Policy decisions are often based upon national statistics which, unfortunately, can be deceptive. Statistics are frequently cited, for example, to show that the majority of aliens are unrepresented in their immigration court proceedings, and that the majority of decisions are not appealed. However, most aliens falling within the above two categories are either detained criminal aliens who are not eligible for any type of relief, or aliens detained upon arrival at the border with little chance of relief. For a truer picture of immigration court proceedings, one must examine courts in large cities such as New York, Los Angeles or Miami. In New York, virtually every alien is represented by counsel. While the INS rarely appeals decisions granting relief, almost all denials of relief are appealed to the BIA, where, until recently, they would often languish for years. Recently enacted feder-

al regulations have helped to alleviate this problem by streamlining the appeals process and greatly narrowing the scope of the BIA's review.

In my experience, over ninety percent of applications for relief in the New York court are for asylum. More than half of those applications are filed by individuals from one small area of Fujian Province, China, and are usually based upon forced family planning.

Lawyers prepare few of the asylum applications filed with the court; instead, individuals engaged in the unauthorized practice of law (UPL) prepare most of them. Because such individuals cannot represent aliens in court proceedings, many have arrangements with unscrupulous lawyers who will "front" for the UPLs. Cases are generally assigned to these lawyers in the hallways of the immigration court, with the lawyers receiving \$50 for a preliminary hearing and \$150 for a merits hearing. In contrast, the UPLs are paid fees of anywhere from several hundred to \$2,000 for preparing and "handling" the cases. In the Chinese community, the UPL receives a bonus of up to \$10,000 for a successful case.

Besides providing legal advice for which they have no license or training, many such non-attorney "agencies" have ties to and coordinate with the alien smugglers. The agencies often fabricate asylum claims and supporting documents. Prosecution of such UPLs is very rare, however: state laws defining what constitutes the unauthorized practice of law are poorly drafted; and local officials lacking an understanding of the issues may not only fail to see the harm in such actions, but actually laud such agencies for providing their communities with low-cost legal assistance.²

Orders of removal or deportation issued by immigration judges are rarely enforced against non-criminal aliens. Aliens with outstanding deportation orders are rarely detained in New York. Should the INS ever try to execute such orders, it would be largely unsuccessful, as many aliens do not live at the addresses they have provided to the court. Aliens who live and work in other states are told by the "agencies" to provide New York addresses in order to allow the agency to continue to control the case and collect its bonus. An exception arises when an alien draws a judge whom the agencies believe to be unlikely to grant relief; in those cases, the alien is advised to fabricate an address in New Jersey - close enough for the agency to maintain control, but far enough to allow for a change of venue, and perhaps a more lenient judge.

Immigration judges have no bailiffs or other court officers. Although Congress granted immigration judges civil contempt power by statute in

1996, in fact they have no right to use such power, as six years later no implementing regulations have yet been issued. This is largely due to arguments by the INS that their attorneys should be exempt from such penalties.

Thus, as immigration judges' orders are rarely enforced, and therefore few unsuccessful applicants are detained or deported, no disincentive exists to discourage the filing of frivolous or fraudulent applications for relief. And as the court has no contempt power, there is no disincentive for incompetent or unscrupulous attorneys to aid and abet non-attorney "agencies" by appearing with no preparation on behalf of "clients" whom they have never met.

Immigration judges face additional pressures created by the heavy caseload and the statutory requirement that asylum cases be completed within 180 days of filing. As noted above, the New York immigration judges are primarily responsible for asylum claims. The immigration judge hears affirmative applications referred by the INS after at least 60 or 70 days have already run on the clock. Judges are thus forced to schedule three or four asylum hearings in a single day. Almost all cases have documents that need to be marked and some cases have several witnesses. Testimony is almost always through an interpreter, and therefore takes twice as long as testimony in English. Nearly all decisions are rendered orally at the conclusion of testimony, and the average decision takes 40 minutes to dictate, with some running over an hour. It is therefore nearly impossible to complete all scheduled cases.

As a result, judges often work through lunch and schedule cases in their administrative time. This leaves them with little time for ruling on written motions or for researching legal issues. Unlike other types of courts where each judge has his or her own law clerk, the New York immigration court has five law clerks shared by approximately thirty judges.

The court is further hindered by the fact that the evidence presented tends to be one-sided. Whereas in criminal or civil cases arising in other courts, both sides present documentary evidence and call witnesses, the INS does not have the resources to do so in immigration proceedings.

In light of these problems, it is remarkable that New York immigration judges continue to complete a high number of cases, render fair and accurate decisions, maintain control of their courts, and provide due process. And although the press has inaccurately claimed otherwise, the court has continued to grant a dramatically higher percentage of asylum claims in

recent years. In Fiscal Year 2001, immigration courts across the country granted a total of 40 percent of all asylum claims adjudicated. This grant rate is more than double that of a decade ago. In considering this number, one should remember that most of the asylum claims heard by the court were first heard and rejected by the INS Asylum Office; that is, most court grants are essentially reversals of INS denials.

THE IMPACT ON WOMEN IMMIGRANTS

The problems described above have a severe impact on women immigrants seeking legal protections. Some of the effects are illustrated by the following excerpts from an affidavit actually filed in court.

A woman asylum seeker from the People's Republic of China found an advertisement in a Chinese newspaper for a particular "consulting company" (actually a UPL agency). She and her husband were warmly received at the company's office by a male employee. The woman explained her reasons for seeking asylum, which were based entirely upon her treatment under China's one child policy.

The employee responded, "Your story is not good enough for political asylum...but we are very experienced in working these kinds of cases for many years." The employee told her that she had to hire his company if she wished to be granted asylum, as that would increase her chances of winning. The fee would be \$1,250 to prepare the application and attend the interview, plus an additional \$10,000 if the case was granted. The respondent stated that she "looked at his face full of confidence and honesty" and hired him.

The employee first asked the respondent to sign several blank forms and papers. The woman was then told that because she and her husband had never registered their marriage in China, the agency would obtain a false Chinese marriage certificate for them. When she objected, the employee convinced her that this was standard practice, and that she was "just not familiar with the field. You just follow what we tell you and everything will be fine."

A few days later, the employee called to change the woman's actual address in Queens to a false address in Manhattan, explaining "that it would be easier to pass with this address."

When the woman received an appointment from the INS for an asylum interview, the employee showed her the application for the first time. He

had provided false information about her manner of entry to the United States; provided a false marriage certificate; and fabricated a story about the woman having practiced Falun Gong in China, explaining that “he had won a lot of cases based on Falun Gong.” She was then provided with a book about Falun Gong and instructed to study it before her interview.

The woman and her husband were “shocked,” “upset” and “scared,” and asked if they could change the application to the true story. The employee replied that it was too late; “also, the judge won’t believe that and we were totally going to lose our case if we reported it.” When her case was not granted, she demanded that the employee tell the judge the truth. His response: “He said that he is an American citizen and also a lawyer [he was not] and that American law will protect him, because we had no status and nobody would trust us and also we would be arrested and deported.”

Thus the asylum seeker, who might have succeeded in obtaining asylum on the basis of the true facts of her case, was not only victimized by the non-attorney agency, but was further prevented from pursuing remedies by the threat that the authorities would arrest and deport rather than protect her. This fact pattern, unfortunately, is not an isolated incident but is rather a common occurrence.

ISSUES RELATED TO WOMEN IMMIGRANTS

In the asylum context, most women refugees do not even make it to the United States. While over 80 percent of the world’s refugees are women and children, most asylum applicants in the United States are men. In New York, this fact is striking because the majority of claims are based upon forcible abortions or sterilizations suffered under China’s one child policy. Obviously, women are the sole victims of forcible abortions and the primary targets for forcible sterilization, yet the majority of applicants for such relief are male, and include claims by teenage boys as young as sixteen years old who say they have impregnated girlfriends who remain in China.

In 1996, the BIA decided the precedent decision *Matter of Kasinga*,³ holding that asylum may be granted to a woman fearing female genital mutilation (FGM) in her home country. Fears that this decision would open up a floodgate of similar claims have proven unfounded, as a very small number of FGM claims have been filed with the courts.

The court hears numerous claims from rape victims. Immigration judges receive training on this topic, including lectures by mental health professionals on post-traumatic stress disorder. Furthermore, in some cases the court has suggested that the rape victim speak to a mental health professional and waive confidentiality for the limited purpose of allowing the INS trial attorney to question the examining professional by telephone. This method has successfully allowed the court to avoid subjecting the victim to the trauma of testifying in open court.⁴ Judges will also honor requests for female interpreters in rape cases, and will ban spectators and at times male family or friends from the courtroom during such testimony.

At present, the court suffers from a lack of guidance in cases involving battered spouses. The law provides relief only to the battered spouses of U.S. citizens or lawful permanent residents. However, no provision exists for spouses who have been victimized by husbands with no lawful status in the United States, or who fear harm from spouses remaining in their home country.

For lack of any specific relief, such victims have generally filed asylum applications, but such claims fall within a gray area of the law. In a precedent decision, *Matter of R-A-*, the BIA held that such claims fail to meet the criteria for asylum. However, former Attorney General Janet Reno vacated the decision in the final days of the Clinton Administration.⁵ The Department of Justice simultaneously published proposed federal regulations that created a framework for granting asylum in such cases. These proposed regulations are under review by the current administration.

Immigration judges sometimes become aware of spousal abuse or child abuse in cases appearing before the court. Victims are often reluctant to bring such abuse to the attention of the court for cultural reasons or out of fear of retribution from the abusive spouse or parent. However, immigration judges who suspect abuse have no authority to issue orders of protection or to order home studies.

A similar source of concern involves women who have been abused in the course of being smuggled to the United States or, especially in the case of young single women, after arrival. As such youths pay smuggling fees of up to \$80,000, often borrowed at high interest, and arrive here with no immigration status, little education or other skills, and no proficiency in English, they become easy targets for abuse. However, immigration judges have no means of discovering such abuse and no way of offering protection to the victims.

Competent and caring attorneys who develop a true attorney-client relationship with their clients would be able to learn of such abuses. As described above, however, most aliens are represented by lawyers who meet their clients only in the hallway of the courthouse. Furthermore, even if such lawyers were to stumble accidentally on such abuse, they would run the risk of losing their only source of business, the referring “agency,” by inquiring or taking action.

POSITIVE DEVELOPMENTS

Over the past dozen years, there have been numerous positive developments relating to women immigrants in our immigration laws. These include the creation of an independent corps of asylum officers; a larger, more diverse and highly qualified corps of immigration judges; the publication of women’s asylum guidelines; statutory protections for battered spouses; and case law finding rape and female genital mutilation to be grounds for the granting of asylum. Our asylum laws have been compared to the American Constitution: both are living, breathing documents. The above developments suggest that this is correct.

NOTES

1. The views expressed in this article are the personal views of the author. They do not in any way reflect the views of the U.S. Department of Justice, the Executive Office for Immigration Review or the Chief Immigration Judge. This article will offer a number of observations and experiences from my time as an immigration judge in New York City and, before that, as an immigration lawyer and advocate. I hope that these views may be useful to policy-makers on both sides of the debate.

2. For a detailed series of articles on this topic, see “Justice Denied: Unscrupulous Immigration Lawyers Team Up With Businesses to File Hundreds of Bogus Asylum Cases, Leaving Some Facing Deportation,” *Newsday*, August 11, 2002.

3. *Matter of Kasinga*, Int. Dec. 3278 (BIA 1996).

4. This method was suggested by now retired Immigration Judge Paul Nejelski at the 1996 Immigration Judges training conference in Washington, D.C.

5. *Matter of R-A-*, Int. Dec. 3403 (BIA 1999), *vacated* (A.G. 2001).

WOMEN REFUGEES AND ASYLUM

HON. NOEL BRENNAN¹

OVERVIEW OF THE BOARD OF IMMIGRATION APPEALS

The Board of Immigration Appeals is the highest administrative tribunal in the field of immigration law. It has nationwide jurisdiction and adjudicates appeals of decisions of the 230 Immigration Judges who sit in 54 Immigration Courts across the country. It also adjudicates certain decisions of the INS. The Board is currently composed of nineteen Members appointed by the Attorney General. They come not only from Justice Department agencies such as the INS, but from the private bar, law schools, and so on. Most of the Board's decisions are rendered by standing panels consisting of three members, although a significant percentage of appeals to the Board are now adjudicated by single members. Such matters include uncontested motions, routine administrative dispositions, and cases in which the decision of the Immigration Judge may be summarily affirmed because it is legally correct, the appeal raises no substantial disputed issues of fact or law, and the outcome is controlled by statute, regulation, or precedent decision. The majority of matters involve decisions made in removal, deportation or exclusion proceedings. Currently, the Board has the authority to make a *de novo* review of the record and to issue its own findings and independently determine the sufficiency of the evidence. Board decisions designated for publication are printed in bound volumes entitled *Administrative Decisions under Immigration and Nationality Laws of the United States*. The Board's website, www.usdoj.gov/eoir, contains a virtual law library, a ream of statistical reports, updates on regulations, and so forth.

During fiscal year 2001 (October 2000 to September 2001) approximately 27,000 new cases were filed with the Board. It decided over 32,000 cases during this period. Between October 2001 and June 2002 the Board received more than 24,000 new filings and decided approximately 33,500 cases. At the end of June 2002 there were approximately 47,000 cases still pending.

Each year, a small handful of the Board's approximately 25,000–30,000 decisions that involve a novel enough issue to publish on are designated as precedent – Interim Decisions binding on the Immigration Courts and the INS. In 1999, for example, 50 cases were designated as precedent decisions and published by the Board. In 2000, only eighteen precedent decisions were published, and in 2001 we published nineteen precedents. As of this date, twelve cases have been designated as precedents in 2002.

Most Board decisions are subject to judicial review in the Federal courts under the substantial evidence standard of review. The Ninth Circuit Court of Appeals, which has jurisdiction over approximately 40 percent of the Board's decisions, is the leading interpreter of laws related to immigration and asylum matters.

THE PROPOSED RULE²

In February 2002 the Department published a new rule which would substantially alter the administrative structure of the Board and the way the Board does its business. Over the past several years, the Board experienced a sharp increase in both the number of appeals filed and the number pending. The reforms were designed to reduce delays in the review process, shrink the current backlog of pending appeals, increase the Board's ability to keep up with its caseload, and allow Board Members to focus attention on cases presenting significant legal issues. The regulation mandates a "streamlined process" in which most appeals before the Board are to be decided by a single Board Member rather than a panel of three. Under the new rule, a single Member would therefore have the authority to decide most cases by himself or herself. However, the Member would refer the appeal to a panel of three if the case presented one of these circumstances:

- The need to settle inconsistencies between the rulings of different Immigration Judges;
- The need to establish a precedent to clarify ambiguous laws, regulations, or procedures;
- The need to correct a decision by an immigration judge or the INS that is plainly not in conformity with the law or with applicable precedents;
- The need to resolve a case or controversy of major national import; or,
- The need to correct a clearly erroneous factual determination by an Immigration Judge.

The regulations would also reduce the size of the Board to eleven Members. Comments on the proposed rule have been received from numerous organizations. The final rule had not been published as of July 2002.

REFUGEE RELIEF

Women make up nearly half of the international immigrant population, and their motives for migration are similar to those of men: a better life for themselves and their families and/or escape from persecution. Women's immigration experiences are different from men's for a variety of reasons, such as economic insecurity, issues of safety that do not arise for men, and victimization. Even as she escapes from repression, the immigrant must immediately familiarize herself with the American system of immigration law and with arcane legal concepts such as "withholding of removal" and torture as defined by the United Nations Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. To gain relief one must work within a complex system of statutes and regulations, often without the benefit of counsel. All this is more difficult for women than for men, since many women come from cultures in which they are excluded from "officialdom" in all its forms.

Requests for asylum under Section 208 of the Immigration and Nationality Act (INA)³, which is the principal form of relief sought by refugees, are often accompanied by claims for withholding of removal under Section 241(b)(3) of the Act and withholding or deferral of removal under Article 3 of the Convention Against Torture.⁴ The same application is used for each form of relief and the same core facts are generally relied upon for each. The eligibility requirements for each form of relief differ in a number of respects, however, including (1) bars to relief, (2) standard of proof, (3) persecutor's motive or purpose, (4) governmental involvement, and (5) the nature and extent of the harm. In some situations coverage is overlapping. In others, the Convention provides more or less protection than asylum or Section 241(b)(3) withholding of removal. The statutes and regulations are so complex that immigration law has become a specialized area within the law, much like antitrust, corporations, or domestic relations.

A request for asylum requires the applicant to prove her statutory eligibility by establishing that she is a "refugee" within the meaning of section 208 of

the Immigration and Nationality Act. A refugee is defined in relevant part as a person who is unable or unwilling to return to her country because of a well-founded fear of persecution because of race, religion, nationality, membership in a particular social group, or political opinion. Asylum cases are generally fact-intensive. Corroborating evidence in the form of witnesses, affidavits and documents, while not essential, assists in meeting the threshold of the burden of proof that is required in any hearing or court proceeding.

RECENT CASES INVOLVING CLAIMS BROUGHT BY WOMEN

In the majority of cases the legal status of the female immigrants is “relatives of immigrants,” although women are increasingly pursuing claims independently. The following is a list of asylum cases involving women refugees culled from a review of all the cases decided by the Circuit Courts of Appeals between January and July 2002, each of which was an appeal from a ruling denying asylum. These cases represent only a small percentage of the overall cases decided during this period. Nonetheless, they tell a story about the nature of persecution of women in a wide range of situations and countries.

*François v. INS*⁵: The petitioner, a member of the Catholic Youth Organization and supporter of the Eritrean Liberation Front, claimed that she suffered past persecution in Eritrea because of her religious beliefs and political opinion, and that she had a well-founded fear of future persecution. The court affirmed the Board’s decision denying political asylum, since the petitioner’s fear of persecution was not objectively reasonable due to changed country conditions.

*Rios v. Ashcroft*⁶: The wife and son of a Guatemalan army colonel suffered past persecution on account of political opinion. The wife was kidnapped and wounded by guerrillas, who also attempted to kidnap her son, and the wife’s husband was murdered. The guerrillas perceived the respondents to be political opponents, and in fact had actually told the adult respondent that they abducted and harmed her because her husband and brother were causing harm to the guerrillas. Evidence of peace accords in Guatemala was not enough to show changed country conditions because there was no evidence to rebut, on an individualized basis as required, the respondents’ well-founded fear of future persecution. The Board and the Immigration Judge were reversed and relief was granted.

*Krijanovskaja v. INS*⁷: A Ukrainian woman testified that she was threatened and assaulted on several occasions because of her Jewish identity. On one occasion, she was pushed so hard that she hit her head on the ground and her attackers drew a yellow Star of David on her vest. The Immigration Judge did not make an explicit credibility finding (the Board affirmed the Immigration Judge), so the court accepted the respondent's testimony as true. In a very brief decision, the court found that the respondent had suffered past persecution and the presumption of future persecution had not been rebutted.

*Fisher v. INS*⁸: The petitioners, a husband and wife from Ukraine, claimed past persecution and a well-founded fear of future persecution due to the husband's German ethnicity and practice of the Lutheran religion. The court found substantial evidence that supported the Immigration Judge and the Board's denial of the petitioners' asylum application because the record established ethnic or religious discrimination, but not persecution.

*Cardenas v. INS*⁹: The court found the Peruvian respondents – husband and wife and their children – eligible for asylum based on threats made by the Shining Path. The fact that the lead respondent was able to live elsewhere in Peru for six months was not an important factor because, after the six months in the new location, he received a threat from the Shining Path informing him that they would get to him wherever he was located. The case was remanded for a Consideration of Country Conditions. A dissent was filed.

*Toptchev v. INS*¹⁰: The husband and wife petitioners, citizens of Bulgaria, were properly denied asylum despite evidence of past persecution, where the presumption of future persecution was adequately rebutted given the passage of time since their departure and the country's progress toward democracy.

*Krastev v. INS*¹¹: The respondents, husband and wife, suffered persecution at the hands of local authorities in Bulgaria. The Board found past persecution but concluded that evidence of changed country conditions in the 1995 Country Reports was sufficient to rebut the presumption of fear of future persecution. The court disagreed, saying there was too little information but the information available was favorable to respondents.

*Paramasamy v. Ashcroft*¹²: This case involved a Sri Lankan woman who presented evidence of having been assaulted by the Tamil Tigers. The

Ninth Circuit Court of Appeals criticized the Immigration Judge for using “cookie cutter” credibility findings and the Board for upholding them. This case was remanded for an individualized credibility determination.

*Zadegar–Sargis v. INS*¹³: The court affirmed a decision of the Board that denied asylum and withholding of deportation. The court found that (1) although the petitioner had endured harassment and hardship in Iran due to her Armenian Christian faith, that alone did not compel a finding of persecution, and (2) being a Christian woman opposed to wearing Islamic garb did not establish persecution.

“MEMBERSHIP IN A PARTICULAR SOCIAL GROUP” AND GENDER-RELATED PERSECUTION

While the above decisions address persecution on account of race, religion, nationality and political opinion, the category of “membership in a particular group” provides an additional basis for potential relief: gender-related persecution. This basis is distinctive to women and is an area of the law that is still under development.

- The Board’s first ruling on a gender asylum case was in 1996. In *Matter of Kasinga*,¹⁴ the Board recognized female genital mutilation as a basis for asylum and found that if the applicant were to return to Togo, she would have a well-founded fear of persecution based on her membership in the social group of young women of the Tchamba–Kununtu tribe who have not been mutilated and who oppose the practice.
- In *Matter of R-A-*,¹⁵ the Board determined that although a Guatemalan woman who sustained domestic abuse rising to the level of “persecution” was unable to gain protection from the Guatemalan government, she was ineligible for asylum based on domestic violence. At the hearing, the Immigration Judge found the applicant eligible for asylum based on persecution on account of “membership in a particular social group.” The Board, however, found in a ten-to-five decision that the applicant failed to show that her husband abused her on account of or because of her “membership in a particular social group” (or political opinion), and that she was therefore ineligible for asylum.
- In January 2001, following a request from the INS to the Attorney General and *amici* filing briefs with the Attorney General asking her

to certify the decision and reverse the Board, the Attorney General vacated *Matter of R-A-* and directed the Board to stay reconsideration of the decision until after the INS published its proposed regulations on gender- and domestic violence-based asylum in final form. (The Department had published the regulations in draft form in December 2000.¹⁶) The proposed regulations recognize in the preamble that gender can form the basis of a particular social group and set out principles for interpretation and application in claims made by applicants who have suffered domestic violence. The comment period on the rules has closed and it is not clear when the rule will be finalized or what changes may be made to it.

- A few months after the Board's decision in *Matter of R-A-*, a three member panel of the Board granted asylum to a young woman from Morocco who based her claim on regular, extreme and escalating physical and emotional abuse by her father, an orthodox Muslim. In *Matter of S-A-*,¹⁷ the panel granted asylum on the basis of religion.
- Finally, international tribunals are dealing with circumstances surrounding persecution and the more complex issue of nexus in finding persecution. In May 2002 the United Nations High Commissioner for Refugees issued "Guidelines on International Protection: Membership of a Particular Social Group," after tribunals in Australia, New Zealand, the United Kingdom, and Canada published decisions recognizing gender-based claims of women fleeing violence at the hands of their husbands.

CONCLUSION

The Immigration Courts and the Board of Immigration Appeals are among the principal participants in deciding issues of law in the immigration area. As is apparent from the list of Circuit decisions, women's asylum claims take many forms. Women's applications for relief continue to rise in areas of accepted bases for asserting refugee protection: race, religion, nationality and political opinion. Gender-based cases do come before the Board and, although few in number, set out claims directly related to special circumstances that arise because of gender. While international tribunals recognize gender-based violence as a human rights violation, the extent of coverage in the United States for women seeking relief through a gender-based claim is still under development and much remains to be resolved.

NOTES

1. Views expressed in this essay are those of the author and do not purport to represent the Justice Department.

2. Department of Justice, Proposed Rule, “Board of Immigration Appeals: Procedural Reforms to Improve Case Management,” 67 Fed. Reg. 7309 (Feb 19, 2002) (to be codified at 8 C.F.R. Parts 3 & 280). This rule expands upon regulations promulgated in October 1999 that permit administrative appellate review by a single Board Member, who may affirm decisions without opinion in certain non-controversial cases.

3. Immigration and Nationality Act (INA), Pub. L. 82-414 (1952); Act of July 25, 1958, 72 Stat. 419. Links to all parts of the U.S. Code relating to immigration can be found at <http://www.ins.usdoj.gov/graphics/aboutins/statistics/legishist/index.htm>.

4. Under Article 3 of the Convention Against Torture, the United States has agreed not to return a person to a country where it is “more likely than not” that he or she will be tortured.

5. *Francois v. INS*, ___ F.3d ___ (2002 WL 407579) (8th Cir. March 18, 2002) Asylum/Eritrea/Religion.

6. *Rios v. Ashcroft*, ___ F.3d ___ (2002 WL 818832) (9th Cir. May 1, 2002) Asylum/Guatemala/Political Opinion.

7. *Krijanovskaja v. INS*, 2002 WL 1042118 (9th Cir. May 23, 2002) (unpubl.) Asylum/Ukraine/Religion.

8. *Fisher v. INS*, ___ F.3d ___ (2002 WL 1050236) (8th Cir. May 28, 2002).

9. *Cardenas v. INS*, ___ F.3d ___ (2002 WL) (9th Cir. June 12, 2002) Asylum/Peru/Political Opinion.

10. *Toptchev v. INS*, ___ F.3d ___ (2002 WL 1433405) (7th Cir. July 3, 2002) Asylum/Bulgaria/Political Opinion.

11. *Krastev v. INS*, ___ F.3d ___, No 01-952 2, (2002 WL 1313170) (10th Cir. June 17, 2002) Asylum/Bulgaria/Political Opinion.

12. *Paramasamy v. Ashcroft*, ___ F.3d ___ (2002 WL 1544588) (9th Cir. June 16, 2002) Asylum/Sri Lanka/Ethnicity.

13. *Zadegar –Sargis v. INS*, ___ F.3d ___ (2002 WL 1608220) (7th Cir. July 22, 2002) Asylum/Iran/Religion.

14. *Matter of Kasinga*, Int. Dec. 3278 (BIA 1996).

15. *Matter of R-A-*, Int. Dec. 3403 (BIA 1999), *vacated* (A.G. 2001).

16. 65 Fed. Reg. 7658-98 (Dec. 7, 2000).

17. *Matter of S-A-*, Int. Dec. 3433 (BIA June 27, 2000).

REVISITING SOCIAL GROUP AND NEXUS IN GENDER ASYLUM CLAIMS: A UNIFYING RATIONALE FOR EVOLVING JURISPRUDENCE

KAREN MUSALO

The meaning of the term “particular social group” and the determination of what is commonly referred to as “nexus” – the shorthand term used in the refugee adjudication context to describe the required causal connection between persecution and a Convention Relating to the Status of Refugees reason for granting asylum – may be among the most thorny interpretive issues in refugee law. As the law relevant to the protection of women asylum seekers evolves, it becomes increasingly apparent that the parameters of protection depend to no small degree upon State interpretation and application of these two key concepts.

Since 1999 the tribunals of three countries – the United Kingdom, New Zealand and Australia – have issued decisions addressing social group and nexus with an interpretation that is inclusive of women’s claims.¹ In June 2002, the United Nations High Commissioner for Refugees (UNHCR) published guidelines on both social group and gender claims which affirm in many respects the approach taken by the three State tribunals. The jurisprudence in the United States on these key issues has been more of a question mark due to somewhat unusual developments which included the issuance of two seemingly inconsistent opinions, *Matter of Kasinga* and *Matter of R-A-*, followed by the intervention of the then-Attorney General, who ordered that the latter of the two be vacated (see the article by Judge Noel Brennan in this report).² *Matter of Kasinga* was roundly praised for opening the door to gender claims, while *Matter of R-A-* was just as roundly condemned for slamming it shut. Even in the wake of the Attorney General’s vacating of the offending *R-A-* decision, commentators have characterized the U.S. position on gender claims as being out of step with evolving jurisprudence and inconsistent with international norms.

This article examines the analytical approach that informed the key decisions in these four countries – the United Kingdom, New Zealand, Australia, and the United States – and finds that they share a unifying rationale, which carries the potential to bring the United States fully into step with the positive adjudicatory trends of the three other countries. This unifying rationale applies not only to the interpretation of “particular social group” but, more importantly, goes to the nexus analysis necessary to establish the causal connection between social group membership and the feared persecution in cases involving non-State actors. The key element of the nexus determination in the decisions of all four countries is the employment of a bifurcated analysis. The bifurcated approach does not limit the nexus consideration to an analysis of the motives of the individual perpetrator of the persecution, but includes societal and State factors in the equation. Although there is a difference in rationale and articulation of the bifurcated approach in the relevant U.S. decision, *Matter of Kasinga*, as compared to the United Kingdom, New Zealand, and Australian decisions, there is sufficient similarity to reconcile the approaches. The recently-released UNHCR guidelines, which explicitly adopt an analytical framework incorporating a bifurcated nexus analysis, provide an additional basis for this unified approach to nexus determination.

BACKGROUND

Few substantive areas of refugee law have drawn the sustained attention given to gender asylum claims. Beginning in 1985 when the Executive Committee (Ex Comm) of the UNHCR issued its first conclusion on refugee women, and perhaps more notably since 1993 when Ex Comm recommended that States develop appropriate guidelines for gender claims, there has been a steady stream of developments. At current count, five countries have issued guidelines for gender claims. Canada was the first in 1993, followed by the United States (1995), Australia (1996), the United Kingdom (2000) and Sweden (2001). The European Parliament has approved two resolutions on the issue, and a European Union Council Directive addressing the issue was developed as part of the European Union harmonization process. The national legislation of Ireland and South Africa incorporate gender persecution as a basis for

protection. Against this backdrop of extensive intergovernmental, executive and legislative activity on gender asylum, the refugee determination tribunals of a number of States have considered the issue and adjudicated gender-based claims.

A key catalyst for this activity has been the growing recognition that there has been an historical failure of protection for women refugees. The seminal international refugee instrument is the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It is gender neutral, defining a refugee as any person with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”³ Notwithstanding its neutrality, numerous commentators have observed that the Convention has been interpreted within a male paradigm, resulting in the historic exclusion of women from its protection. It is this criticism, in tandem with the increasing international attention to issues of women’s human rights, which has served as a key factor in the initiation of multiple measures addressing gender asylum. A stated objective of the majority of these initiatives – whether guidelines, directives, legislation, etc. – is to incorporate a gender perspective into substantive and procedural aspects of the refugee determination process. In practical terms, this means that women should not be precluded from protection because their claims differ in salient ways from those of men.

SOCIAL GROUP AND NEXUS ANALYSIS

Defining Concepts – The Refugee Definition and Barriers to Women’s Claims

A refugee is defined as a person with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” The definition is understood to require proof of (1) an objectively reasonable fear of a harm which is serious enough to be considered “persecution” and which (2) is causally linked, or bears a “nexus” to race, religion, nationality, membership of a particular social group, or political opinion.

The barriers to women that arose from this definition were threefold. First, the harms inflicted on women were often not considered to be persecution because they were condoned or required by culture or religion

(e.g., female genital mutilation, repressive social norms), disproportionately inflicted on women (domestic violence) or simply different from the harms suffered by men under similar circumstances (i.e., men might be beaten while women might be raped). Second, the perpetrators of these harms were often non-State actors such as husbands, fathers, or members of the applicant's extended community. Although some Convention signatories accept that persecution by non-State actors is a basis for protection where the government cannot or will not control these actors, this recognition has been slow in coming, and is not accepted by all parties to the Refugee Convention. Third, and perhaps most importantly, women are often persecuted because of their gender, and gender is not one of the five grounds in the Convention definition.

It was in response to these interpretive barriers that the UNHCR, other United Nations bodies, and various States issued their recommendations and guidelines. Although cumulatively these measures cover a broad range of substantive and procedural issues, they focus on the key issues: persecution, non-State actors, and nexus to a Convention ground. To a great degree, they share the common approach of (1) recommending the use of a human rights framework inclusive of women's rights for assessing whether a harm constitutes persecution, with the corollary that persecution may include harms inflicted in the private sphere by non-State actors; and (2) suggesting that under appropriate circumstances women may constitute a particular social group, and may be able to establish a nexus between the persecution and their social group membership. A survey of recent jurisprudence reveals that the "harm as persecution" issue has been less intractable, and constituted less of a roadblock, than that of defining women as a particular social group or finding a nexus between the persecution suffered and their social group membership.

Nexus and the Definition of a Particular Social Group

The Refugee Convention requires a nexus between one or more of its five grounds and the feared persecution. The nexus analysis involves a two-step process: identification of the relevant Convention ground, followed by the establishment of the causal connection between this ground and the persecution. It is when women are persecuted for their gender, rather than for reasons common to both men and women (as political opponents, or members of a disfavored ethnic, racial or religious group)

that interpretive obstacles have arisen because gender is not one of the five Convention grounds. Beginning with its earliest pronouncements on the issue, the UNHCR recommended that under certain circumstances women could be considered to constitute a “particular social group” and that the nexus could be established on that basis.

The definition of particular social group as including reference to gender was recognized in principles established in the influential decisions of *Matter of Acosta* in the United States and *Canada v. Ward* in Canada.⁴ These cases based their analyses on two distinct but related concepts – the *ejusdem generis* (“of the same kind or class”) rule of interpretation and the non-discrimination principle. Applying the rule of *ejusdem generis*, the Board of Immigration Appeals (BIA) in *Acosta* ruled that in order for “particular social group” to be “of the same kind” as the other four grounds, it should be limited to characteristics which are immutable or fundamental. The Board explicitly recognized sex as the type of characteristic which met this requirement.

In *Ward*, the Supreme Court of Canada cited *Acosta* and its *ejusdem generis* approach with approval. However, its analysis went further, exploring the objectives of the Convention’s drafters. The Supreme Court of Canada found that “underlying the Convention is the international community’s commitment to the assurance of basic human rights without discrimination.” The Convention drafters included race, religion, nationality, and political opinion because they constituted clear examples of status and beliefs deserving of protection under international norms of non-discrimination. The particular social group ground should, therefore, be interpreted to embrace groups similar to the other four specifically stated categories, and to reflect the non-discrimination principle. As had the Board in *Acosta*, the Court in *Ward* adopted criteria going to the immutable or fundamental nature of the defining characteristic, and explicitly identified gender as an example of a characteristic which is “innate” or “unchangeable.”

The only serious interpretive challenge to the immutable or fundamental criteria for social group formulation originated in the U.S. Ninth Circuit Court of Appeals, which ruled in its 1986 decision of *Sanchez-Trujillo v. INS* that a voluntary associational relationship between group members, rather than innate or fundamental characteristics, was necessary to establish a particular social group.⁵ This approach, also referred to as the “cohesion” requirement, has been rejected by a number of tribunals as

well as the UNHCR in its recently released guidelines. The Ninth Circuit revisited the issue in 2000 in *Hernandez-Montiel v. INS*, and ruled that either immutable characteristics or a voluntary relationship may form the basis for a particular social group.⁶

Decisions such as *Acosta* and *Ward* were extremely important in affirming that a particular social group could be defined in reference to gender. However, this recognition resolved only one-half of the nexus equation. The remaining and more problematic element has been to establish the nexus, or causal relationship, between the gender-defined social group and the feared persecution.

Much has been written about the nature of the nexus requirement, which derives from the Convention language “for reasons of” (i.e., “well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion”). Although it is agreed that nexus requires a showing of some relationship between the feared harm and the Convention ground, there is great variance as to the nature of that relationship. One of the most demanding tests, which has been adopted by the United States, requires proof that the persecutor was motivated by a Convention reason. Other States have left open the question of what it means, or have indicated that its meaning may vary depending on the context of the claim.

The nexus requirement has posed a substantial barrier to gender claims because adjudicators have been slow to accept a causal connection between an applicant’s gender and the harm inflicted upon her. The difficulty is exacerbated where the persecutor is a non-State actor, and it is presumed that the motivation for the harm is “personal” rather than related to gender. For example, in the United Kingdom, New Zealand, Australian and U.S. cases discussed here, involving domestic violence and female genital mutilation at the hands of private actors, the claims were all initially rejected by adjudicators who ruled that there was no causal link between the feared persecution and the gender of the asylum applicant. On appeal, the nexus issue was favorably resolved, and the approach adopted by the courts provides a positive framework for prospective gender claims. In all five cases, the tribunals developed a bifurcated interpretive framework that allowed the requisite causal connection to be established in relation to *either* the non-State perpetrator or the State/society. This bifurcated approach provides a unifying rationale for evolving

jurisprudence, and because it was employed in *Matter of Kasinga*, which continues as controlling authority, it provides the conceptual basis for aligning the United States with international trends.

CONCLUSION

The increasing recognition of gender claims has not been without great controversy. Many of its most vocal critics have argued that a fair interpretation of the Refugee Convention or the U.S. Refugee Act does not encompass such claims.⁷ These recent decisions of the tribunals of the United Kingdom, New Zealand and Australia present a different perspective. They clearly stand for the proposition that a social group may be defined by gender, and if the role of the State as well as the individual persecutor is considered, nexus can easily be established. This approach makes an invaluable contribution to the evolving jurisprudence and, most notably, does so in a way which is entirely consistent with the underlying principles of the refugee protection regime – to provide surrogate protection when the individual’s country of nationality fails to do so. The recent UNHCR guidelines are significant for affirming this analytical approach, and for doing so in a way which is more explicit and direct than its prior pronouncements on the issue.

The United States has moved in a contradictory and unsteady manner on the issue. The BIA’s *Kasinga* decision broke new ground, and although it employed a slightly different rationale than that of the trilogy of cases discussed here, it too developed a bifurcated analysis that allowed it to contextualize the claim within the country and society of the asylum seeker. With the issuance of its decision in *Matter of R-A-*, the BIA appeared poised to reverse itself and negate the progress made with *Kasinga*. The vacating of *R-A-* by former Attorney General Janet Reno gave the United States another opportunity to revisit the issue, and left *Kasinga* as the most significant remaining relevant precedent in the United States. When the BIA re-decides *Matter of R-A-*, it can reach a protection-oriented decision by applying its own *Kasinga* precedent in a manner consonant with the rationale developed in its three sister States as well as by the UNHCR. For the United States to do otherwise would be a regrettable rejection of well-developed refugee norms, as well as international principles of non-discrimination on the basis of gender.

NOTES

1. *Islam v. Secretary of State for the Home Department*, 2 All E.R. 546 (1999), <http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990325/islam01.htm>, *Refugee Appeal No. 71427/99* [1999], <http://www.nzrefugeeappeals.govt.nz/default.asp>; *Minister for Immigration and Multicultural Affairs v. Khawar*, HCA 14 (2002), available at <http://scale-plus.law.gov.au/html/highcourt/0/2002/0/2002041114.htm>.
2. *Matter of Kasinga*, Int. Dec. 3278 (BIA 1996); *Matter of R-A-*, Int. Dec. 3403 (BIA 1999), *vacated* (A.G. 2001).
3. Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into in force April 22, 1954; Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into in force Oct. 4, 1967.
4. *Matter of Acosta*, 19 I & N Dec. 211 (BIA 1985); *Canada v. Ward*, 2 S.C.R. 689 (1993).
5. *Sanchez-Trujillo v. INS*, 801 F.2d 1571 (9th Cir. 1986).
6. *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir. 2000).
7. The Refugee Act, Pub. L. 96-212 (1980).

DISCUSSION

QUESTION: Is there a split in the U.S. human rights community about whether to try to make gender the sixth ground for establishing persecution rather than having it considered a “particular social group”? How is this being resolved?

KAREN MUSALO: There was some discussion in the past about whether gender should be a sixth ground for establishing persecution. I think most people who work in this area of law feel that it should not, because it would put the United States out of step with the international refugee definition based on five grounds. It also limits the use of the term “social group.” Many of us would rather see the social group criterion become a ground for protecting any people who are persecuted for inherent elements of their identities. Gays and lesbians who are persecuted for their sexual orientation, for example, should fall into the “social group” category, as should children. We don’t want “social group” to be so limited in its use that every time there is a new criterion, like gender or sexual orientation, the definition of “refugee” in the Refugee Act has to be amended.¹ There are probably about ten or twelve major western industrialized countries that now recognize women’s claims as falling within the social group category.

WENDY YOUNG: I agree. As somebody who also works on child asylum issues, I would not like to see gender set apart from social group because if it were, then the next time we want to include children in the “social group” criterion, our opponents will argue that since children have not been listed separately, they should not be included. The way that countries interpret the refugee definition is not a matter of law but a matter of will.

The definition of refugee is like the U.S. Constitution: a living, breathing document, open to interpretation.

LESLYE ORLOFF: We discussed this issue with legislators after the *R-A* case. Putting gender into our own definition of refugee when it isn’t there internationally would create a second-class, non-equal ground for women that is not tied to any body of international law. A male refugee would get

real asylum, while a female refugee would get the second-class option we had inadvertently created. It is best for women to be viewed in the same way as other persecuted groups are viewed internationally.

KAREN MUSALO: Some countries already have such a second-class asylum category. Germany, for example, has Big Asylum and Little Asylum; Little Asylum is often granted for gender claims and has fewer benefits associated with it.

QUESTION: In cases of expedited removal, do most women with legitimate asylum claims meet their credible fear interviews? Have there been studies on this topic?

WENDY YOUNG: The key to expedited removal is what happens at the port of entry, and there is very little data on that. It appears, however, that the INS has been implementing the credible fear screenings fairly generously. The rate at which people pass the credible fear screening is higher than ninety percent.

KAREN MUSALO: What occurs after people arrive at ports of entry is a closed process, so there is not much information available. I directed a Ford Foundation study for three and a half years that tried to get researchers access to the ports of entry, but had no success. The General Accounting Office has done two studies, but neither looked substantively at what was actually happening at the ports of entry.

QUESTION: When looking at gender refugee issues, how are private and public issues distinguished? Are persecution and isolated criminal acts distinguished? I can understand a fear that the definition might expand so much that it covers all kinds of individual criminal acts or instances where the law wasn't working properly, which might not necessarily reflect persecution of a social group.

KAREN MUSALO: The refugee law as it emerged after World War II is based on the idea that refugee protection is surrogate protection when the government of a person's own country will not protect him or her because of race, religion, nationality, political opinion, or social group membership.

To establish eligibility for refugee status, one must show a failure of state protection. In other words, a woman who was the victim of a criminal act would have to show that the government did not protect her from that act because she was a woman. In the *R-A-* case, for example, the woman made repeated attempts to have both the police and the courts in

her home country intervene but both failed to get involved.²

We contend that where governments will not protect individuals because of their gender, refugee protection is appropriate. But if a woman's government is willing to protect her, then she will find it difficult to make a successful asylum claim.

NOEL BRENNAN: There may also be cases where the government has appropriate laws on the books but the cultural norms are such that they are not enforced. The State Department often uses such a situation as evidence before us in appeals cases involving a number of countries.

AFAF I. MELEIS: What has happened to gender-related issues among those seeking refugee status after 9/11?

NOEL BRENNAN: For some people, 9/11 has provided a justification to argue for restrictions in immigration and refugee policy. Although I agree that appropriate security measures need be taken, 9/11 should not be used to turn refugees and immigrants into scapegoats. The day after 9/11, I saw a disturbing press release from a group asserting that 9/11 was a result of loopholes in our immigration policy, including the improper use of asylum for women fleeing cultural harms.

WENDY YOUNG: It is important to recognize that women are going through a system designed for the entire asylum-seeking population, and that the restrictions that are being promoted apply to the entire asylum system. I would argue that women may be one of the groups most hurt by the restrictions because they are at such high risk and so have the most difficulty articulating their claims. As we tighten our asylum policy, women are one of the populations we must consider carefully.

COMMENT: Additionally, because we closed our borders to refugees for eight months, we have vast numbers of unprocessed refugee claims from abroad. As a result, thousands of men, women and children are left in refugee camps, living in horrible conditions, unable to escape persecution. The administration hasn't indicated that it will increase the processing again, or that it will reopen our borders to these refugees. It has simply decided that refugees need to be kept out of our country in the name of protection.

WENDY YOUNG: The process to which you are referring, called refugee resettlement, is the one immigration system that was entirely shut down after 9/11. It resumed after a few months but has only been at a trickle since then. While we had planned to bring in 70,000 refugees from

overseas this year, we will probably end up admitting only 25,000 to 35,000. Included in that number are refugees who were literally left languishing in refugee camps overseas. Many of them are women, such as Afghan women, who have been victims of gender persecution.

PATRICIA HATCH, MARYLAND OFFICE FOR NEW AMERICANS: This is a critical time to lobby the administration about next year's refugee admission numbers so that 25,000 does not become the expected quota. Congressman George W. Gekas' bill, the SAFER Act (Securing America's Future through Enforcement Reform Act)³, contains a clause that would put a ceiling on refugee admission to the United States. Specifically, it says that the United States could admit no more refugees in a given year than are accepted by other countries. That requirement would usually create a ceiling of no more than 30,000. At the peak of U.S. resettlement we admitted 140,000. Even the lower-than-normal admissions level set after September 11 was 70,000. By the end of the fiscal year on September 30, there will likely have been only 25,000 admissions. Unless we advocate diligently, these low numbers are going to become the basis for future refugee guidelines.

DEBORAH W. MEYERS: Can you comment on the draft agreement between the United States and Canada on asylum seekers? What will happen with these asylum seekers and how does the agreement deal with the differences between the Canadian and U.S. treatment of gender claims?

KAREN MUSALO: Since it released its guidelines on gender in 1993, Canada has been a trailblazer on gender claim cases. It has had no trouble granting pleas involving female genital mutilation, domestic violence, rape during war, and so on. One fear we had during the agreement process was that women who were not allowed to enter Canada to apply there would be forced to apply in the United States, which is not a safe third country when it comes to women's claims.⁴

WENDY YOUNG: The agreement with Canada, another consequence of 9/11, is part of a larger national security agreement that we are seeking to enter into with the Canadians. The Canadians decided to make the safe third country agreement part of the package. As a result, about 15,000 people per year will be forced to apply in the United States rather than pursuing their claims in Canada where, as was mentioned, the laws are more sympathetic to gender claims. Because people tend to travel through the United States on their way to Canada, where they have strong family,

community, or language ties, those 15,000 people could end up in detention in the United States. They will have been unable to reach the country to which they intended to go, although there is nothing in international law to prevent refugees from choosing their destinations when they flee.

LARRY KATZMAN, OFFICE OF UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES: Expedited removal would be eliminated under the Refugee Protection Act as proposed. If the number of deportations by the INS has increased under expedited removal, would there be political pressure to maintain expedited removal for that reason?

TIMOTHY H. EDGAR: With only two months until the end of session, it is very doubtful that the bill will pass. There is strong bipartisan support in the Senate for this kind of provision, however, and support from some moderate House Republicans as well. If Democrats ever gain control of the Congress, there is every reason to expect that they will move forward with a bill calling for the elimination of expedited removal.

I should note that security considerations do not argue entirely in favor of expedited removal, because that process entails sending a deportee back without knowing who he or she is instead of providing full due process. That does not necessarily provide better security than going through a full immigration hearing.

QUESTION: Could you tell us more about the private agencies that become involved in developing legal cases for immigrants? Historians such as myself think of the business of immigration as one in which shady businessmen become involved in offering services, many of them illegal (practicing fraud or trafficking, for example), and in giving false advice, with the goal of exploiting immigrants of their own background. Agencies that handle immigrants' legal claims are an example of this kind of business that is clearly related to the rise of restrictive immigration legislation and an increasingly complex bureaucracy. What are the origins of these agencies? Who starts them? What are their working relationships with the lawyers who argue in the courtroom?

JEFFREY S. CHASE: The phenomenon began in the late 1980s or early 1990s. The cases that were filed then were much less sophisticated than they are now, and immigrants did not get in touch with the agencies until long after they arrived in this country. The amount of money involved has also increased since that time. Earlier, immigrants paid around \$18,000 to

be smuggled here. Prior to September 11 the price was between \$50,000 and \$60,000, and I have heard rumors that it is now \$70,000 to \$80,000.

Another factor contributing to the rise in these agencies is the change in the law as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), effective September 30, 1996, which made family planning claims a basis for asylum.⁵ Before the law was changed, those claims were denied with only rare exception, so people who went through the process did not expect to win. Once the cases became winnable, these agencies were suddenly able to charge much higher fees. They started preparing sophisticated documents and coaching people more, even before they came here, on what to tell immigration officials. In the old days they simply said, “I’m poor and I’m coming to work,” and it wasn’t until months later that the full story emerged.

The arrest in September of 2000 and eventual guilty plea in February of 2002 of a lawyer named Robert Porges exposed many of the agencies’ techniques. First, smugglers would contact a lawyer in advance and ask him in which port smuggled individuals were likely to be released most quickly. The smugglers would get advice from the lawyer doing the hearings in that place, then give the lawyer a list: these twenty individuals will be arriving in San Diego, for example, on this date. The immigrants were given the lawyer’s phone number to call when they arrived. Once the lawyer received the call, he was to contact the smugglers and confirm the arrival. The smuggling fee includes paying the attorney for the initial bond hearing, and may also include money for the bond payment to get the immigrant out of detention.

Agencies approach these lawyers saying, “I’ve got thirty people sitting in detention, and I’ll pay you \$7,000 for each bond hearing you do.” The lawyers who accept these cases tend to have been unsuccessful because of personal problems or trouble with the Bar Association. When someone suddenly offers them a huge amount of money to do virtually nothing, asking only permission to put the lawyers’ names on some forms, it is very hard for them to resist.

This is a worrisome development, and I think part of it stems from the courts being demonized. Immigrants are convinced that the courts will deny them, but feel they can trust the agencies. Something must be done to stop this trend.

TIMOTHY H. EDGAR: This is a huge problem for Congress because some of the anti-immigration groups seize on these agencies to argue for

mandatory detention, saying that without it, smugglers bring in large numbers of people and then get them all bond hearings, resulting in their escape. The issue of granting bond to immigrants thus becomes tied up with this scheme of immigrant smuggling. Instead of focusing on eliminating smuggling and exploitation, these issues simply become pawns in the argument that the way to solve the problem is to give nobody bond.

These are very serious public policy problems without easy solutions. Those of us who advocate for immigrants' rights must always remember that there are unintended consequences of having a bond system, and that to crack down on those problems we need to think of creative solutions, like focusing on the unauthorized practice of law. Those situations are complicated, and they are subject to exploitation by those who are simply looking for another anti-immigration argument.

LESLYE ORLOFF: Another side of this problem with the *notarios* is one I've seen in the Latino community since the early 1980s. We saw flagrantly bad forged immigration papers for which immigrants had paid a lot of money and which came with a lot of false promises. The Washington, D.C. Latino community tried to curb the operations of these *notarios*, but it was a very difficult process.

The opposite side of using "unauthorized practice of law" charges to fight this problem is that immigration law, particularly that related to battered women, is one of the few areas where well-trained non-lawyer advocates can really be helpful. As accredited representatives working within immigration programs or battered women's advocates in the field working under some supervision, they can help battered women fill out forms and gather evidence, giving those women access to the Violence Against Women Act immigration protections.

We must be careful not to crack down on the unauthorized practice of law in a way that hinders good non-lawyer advocates from helping immigrant women in important ways.

TIMOTHY H. EDGAR: The political dynamics of these issues are extremely tough. One of the strongest allies in most of our fights to help immigrants is the American Immigration Lawyers Association, but they have a very different view of the issue of the unauthorized practice of law. It is Congress, however, that bears responsibility not only for ensuring that these issues are not exploited but also for seeing that the solutions are not too complicated. For example, the flawed 245(i) extension that was

being debated was so complicated that some critics called it the “*Notario Full Employment Act*.”⁶ This creates an extraordinary political dilemma because there will be some individuals who would qualify for relief under it. So do we kill the bill and deny relief to those people because of the possibility that it will increase fraud for the millions of people who will not qualify?

JEFFREY S. CHASE: Another problem is that the definition of unauthorized practice of law has so many gray areas. For example, helping someone fill out an application for a drivers license shouldn’t be a problem. In an asylum case, however, someone must explain to the immigrant what asylum means and what the risk of persecution is, even before starting to fill out a form. A lot of non-lawyer advocates don’t have the sophistication to understand those concepts, and yet many local officials and enforcement authorities view these people as providing a valuable community service. That may be affected by the fact that in many cases the people in the agencies are also active politically and make contributions to campaign chests.

KAREN MUSALO: The United States provides no free representation for asylum seekers other than what non-governmental agencies can provide, and agencies have limited resources. When an asylum seeker comes to the United States under our laws and is not permitted to work and is given no social services, he or she has to find an attorney. Many other countries either allow asylum seekers to work or provide them with some social benefits or free legal representation.

This is why many immigrants go to *notarios* and pay them \$150 for an asylum application: what other option do they have? In today’s anti-immigration climate it is unlikely that Congress will pass a bill providing for appointed counsel for asylum seekers. The system would actually run a lot better with appointed counsel because the papers would be better prepared and the fraudulent cases would be sifted out.

TIMOTHY H. EDGAR: A provision for appointed counsel for children asylum seekers is part of the Senate’s version of the Homeland Security Bill. The entire Unaccompanied Alien Child Protection Act has been added to the Sen. Joseph Lieberman substitute bill.⁷ This is among the provisions that have been targeted by anti-immigrant activists, but if people like those in this room call their Senators and Representatives, the provision has a good chance of staying in. How can one be against

guardian ad litem for a nine-year-old? How can a nine-year-old fill out an asylum application or appear and represent herself or himself in court? Under our current system, a seven-year-old would be expected to represent herself before Judge Chase and advocate her interest if she could not afford a counsel, which is obviously ridiculous. But the reason that the provision has been controversial is that anti-immigration advocates fear it will lead to demands for counsel for all immigrants. However, Congress is capable of doing some things that it likes and not going as far as other people want it to. Appointed counsel for children is a tremendous sleeper advance that we may be able to make this year.

LESLYE ORLOFF: The traditional source of legal services for low-income people in this country has been civil Legal Aid offices. They are funded with federal money, and so are prohibited from representing undocumented people, which by definition includes asylum seekers. The Legal Aid offices could serve people currently taken advantage of by *notarios*. We would only have to eliminate the restriction against representation of undocumented immigrants and allow offices that so chose to add an immigration services component to the work they already perform, thus providing low-income people with legal services in immigration cases.

NOTES

1. The Refugee Act, Pub. L. 96-212 (1980).
2. *Matter of R-A-*, Int. Dec. 3403 (BIA 1999), *vacated* (A.G. 2001).
3. Securing America's Future through Enforcement Reform Act, H.R. 5013 (2002). Representative Gekas was not reelected in November, 2002.
4. The Canadian government has acknowledged the different approach in gender between the two countries, stating that "Canada and the United States have different approaches to the treatment of claims based on gender-based persecution...." Regulations amending the Immigration and Refugee Protection Regulations, 26 October 2002. If Canada recognizes gender claims that the United States does not recognize, it may be said that the United States is not a "safe third country" for persons bringing such claims.
5. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208.
6. Section 245(i), Legal Immigration and Family Equity Act of 2000, Pub. L. 106-553, amending section 245 of the Immigration and Nationality Act.
7. Unaccompanied Alien Child Protection Act of 2001, H.R. 1904.

PANEL FIVE

LAW AND POLICY

MAKING IMMIGRATION LAW AND POLICY IN THE HOUSE OF REPRESENTATIVES

KRISTIN WELLS¹

The House of Representatives Judiciary Committee has jurisdiction over a number of policy areas related to the law, and includes a Subcommittee on Immigration, Border Security and Claims. As Minority Counsel, my colleagues and I work closely with staff and Members on the Subcommittee and full Committee, the Democratic leadership in the House, other Members concerned about immigration issues, and immigration advocacy groups, to develop and promote progressive policies that support immigration and combat anti-immigrant policies. What follows is a description of the process by which the House of Representatives makes immigration law, and the way recent changes in immigration policy will affect women immigrants.

In the wake of the terrorist attacks in 2001, our nation's legislative efforts have largely focused on national security concerns. In response to those attacks, Congress has tightened some loopholes in immigration law and in the structure of our immigration process. It has also passed laws that will make it harder for people to enter the country and to stay here. While Congress is not particularly focused on issues facing women immigrants, many of the laws being enacted will have negative effects on them.

POLITICS AND PROCESS

The House and Senate are very different bodies, with very different political realities and processes. We work together quite a bit, especially in the area of immigration, but generally, there is less cooperative law-making in Congress than one might think.

How do we produce the legislative language of our immigration laws? Any Member of Congress can draft a bill on immigration or any other issue. Many immigration bills are drafted by Members who sit on the Judiciary Committee, though not always by Members who also sit on the

Immigration Subcommittee. We work regularly with immigration advocacy groups and organizations with strong membership interest in immigration policy. Members often drive the focus and impetus for a bill, but sometimes staff consultation plays an encouraging role. Often we work with staff from other Members' offices and lobbyists from the advocacy groups to map out the issues that will be addressed by a bill and exactly what that bill will do. Legislative attorneys then put these ideas into legislative language and we continue to work collaboratively to improve the bill and gather the support of other Members, both before and after introducing the bill. Without a doubt, the political and regional concerns of Members, as well as their personal interests, strongly affect what actually ends up in a bill. Staff do background research to support the policy idea and prepare written statements, talking points and questions that can be used with the media, in hearings, or in conversations with other Members.

Generally, bills with an immigration component are referred to the Judiciary Committee in the House. The leadership decides which bills to promote by referring them to a committee, and they decide which committee will review a bill in full or in part.

The Chairman of the Judiciary Committee, Representative James Sensenbrenner from Wisconsin, and the Chairman of the Immigration Subcommittee, Rep. George Gekas from Pennsylvania, decide which immigration-related bills will move through the Committee.² They schedule hearings, during which witnesses from the private sector and the Executive Branch testify about the issues involved, and they schedule mark-ups, where a bill is debated, amended and voted on by members of the Committee or Subcommittee.

Bills that start in the Subcommittee are reported to the full Committee and must be marked up and voted on there before they can be scheduled for a vote on the floor by the full House of Representatives. Again, the leadership of the House has the option to reform, reject or replace a bill before bringing it to a floor vote. This happened with the USA PATRIOT Act of 2001, the sweeping legislation to expand the government's ability to fight terrorism that passed Congress in the aftermath of the attacks last year.³ After we worked around the clock with our Republican counterparts to write a carefully crafted bipartisan compromise on that bill and get it passed through the Committee, Speaker of the House Dennis Hastert

threw out the Judiciary Committee language and replaced it with the strong Republican-supported language that became law. If the leadership does not like the legislative language crafted in Committee, they can simply sit on the bill and refuse to schedule it for a vote.

IMPACT OF RECENT CHANGES IN IMMIGRATION LAW AND THEIR EFFECT ON WOMEN IMMIGRANTS

The major immigration bills that Congress passed in the last year have not focused on women's issues. However, a number of them have provisions that do impact women. Some immigrant women, for example, were benefited by provisions of the USA PATRIOT Act that allow spouses of legal permanent residents or citizens who were killed in the attacks to maintain their eligibility for permanent residence, despite the death of their sponsors. At the same time, Congress passed the Aviation and Transportation Security Act, federalizing airport security workers and requiring that all airport baggage screening personnel be U. S. citizens.⁴ This law will have a substantial impact on the numerous baggage screeners nationwide, many of them women, who are non-citizen immigrants. These individuals will have to be transferred to other responsibilities, or they will lose their jobs.

The Enhanced Border Security and Visa Reform Act of 2000, passed by Congress in December 2001, tightens border entry and exit requirements and security and requires closer monitoring of foreign students.⁵ It certainly will affect most immigrants, especially students, but there is no obvious impact that is specific to women.

On a positive note, Congress made the S-visa permanent last year. This visa is available to non-citizens who cooperate in criminal prosecutions. It is often used to help women who are involved in sexual and labor trafficking and who are willing to testify in criminal prosecutions against the traffickers. At the same time, Congress appropriated ten million dollars to assist the victims of trafficking who are found in the United States, and those victims are disproportionately women. It also appropriated ten million dollars to assist torture victims in the United States, many of whom are women refugees and asylees.⁶

There are several other issues of concern to Members that will affect women immigrants in the near future. States are increasing restrictions on

access to drivers licenses and are changing the processes for getting drivers licenses for security reasons. Many advocates fear that these acts will lead to the establishment of a national identification card, facilitating certain types of discrimination and further reducing our privacy. Many of these reforms are likely to make it harder for immigrants to get drivers licenses. This may well reduce access to transportation for the many immigrant women who are employed as domestic workers, or who work on farms without public transportation access, thus further limiting their access to employment opportunities.

In addition, the Attorney General has recently decided to enlist the help of state law enforcement personnel to enforce immigration laws by identifying and detaining people who violate them. Over the objections of Rep. Conyers and other Members of Congress, the Republican majority gave the Executive Branch the power to do this in a 1996 law authorizing agreements between the federal government and the states.⁷ The Department of Justice recently entered into one such agreement with the state of Florida, which has a high immigrant population, and may well seek agreements with other states.

Such agreements will have significant negative impacts on immigrant women, who may be afraid to report domestic abuse, crimes, or threats of harm for fear that they or someone in their household who lacks legal status will be jailed and deported. Even if everyone has legal status, an immigrant may fear that the police will find some technical problem of which the immigrant is unaware, leading to his or her arrest on immigration charges. Witnesses may be afraid to cooperate in investigations and immigrants will perceive the police as the dreaded enemy, rather than as officers who ensure their safety and protection.

The House Democratic leadership is working closely with Members of the Judiciary Committee and the Hispanic Caucus to craft a more comprehensive set of immigration reforms that would address the persistent problem of illegal immigration. A comprehensive list of principles has been agreed upon which, if implemented, would create several important programs that would benefit large numbers of immigrant women. First, an earned legalization program would make it possible for undocumented immigrants who have been working in the United States, and have followed the laws and paid taxes, to legalize their status here. Second, a temporary workers program would allow workers from certain countries,

probably our closest neighbors, to come to the United States for short-term work assignments. Third, the legislation would improve family unification by decreasing the backlog of family members waiting to enter the United States. While these policy ideas have broad support among Democratic Members, some of the ideas and many of the details are still being negotiated and worked out among Members, immigrant advocacy groups, and employer and labor representatives. We also are hoping for a detailed proposal on this issue from the Administration, which has been lacking since President Bush and President Fox of Mexico met last year and agreed to address the problem of legalization.

CONCLUSION

In preparing this essay, I was surprised at how difficult it was to find current, relevant and detailed information on policy issues facing immigrant women. Fortunately, there are many scholars, advocates and organizations, including participants in this conference, who are publicizing issues facing refugee women. But there seems to be little comprehensive and current research on the broad class of women immigrants. There have been important efforts underway in Congress to assist immigrant children, especially those who arrive in the United States unaccompanied by a parent or guardian. Other than the important efforts to help battered immigrant women in the Violence Against Women Act enacted several years ago,⁸ the legislature appears to have paid very little attention recently to the needs of immigrant women.

NOTES

1. I work on the full committee staff of Congressman John Conyers Jr. from Michigan, the Ranking Democrat on the House Judiciary Committee. These remarks, however, are my own, and are in no way attributable to or necessarily shared by Congressman Conyers.

2. Rep. Gekas was defeated in the November 2002 election. A new Chairman of the Subcommittee on Immigration, Border Security and Claims will be selected to serve in the 108th Congress, beginning in January 2003.

3. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. 107-38.

4. Aviation and Transportation Security Act of 2001, Pub. L. 107-071.
5. Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173.
6. Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Pub. L. 107-116.
7. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208.
8. Violence Against Women Act of 1994, Pub. L. 103-386.

LEGISLATIVE SOLUTIONS TO CHALLENGES FACED BY WOMEN IMMIGRANTS AND REFUGEES

TIMOTHY H. EDGAR

Immigrants in the United States face greater challenges than ever, and not only as a result of an unfortunate backlash against immigrants after the terrorist attacks of September 11, 2001. Even before those attacks, immigrants in the United States were suffering the effects of punitive anti-immigrant legislation passed in 1996. Among other things, this legislation permitted the deportation of arriving refugees without a hearing or judicial review, implemented mandatory detention of many asylum seekers, and cut off access to vital benefit programs for many low-income immigrants.¹

These policies have had a destructive impact on the immigrant community as a whole, and a number of these changes have particularly affected women immigrants and refugees. Fortunately, momentum continues to build for reform of these unjust laws. Some modest positive steps are likely to be enacted in this [107th] Congress, but comprehensive reform of the 1996 laws will still be needed even if these steps are taken.

There are three particularly vulnerable populations of non-citizen women: asylees and refugees, including those fleeing gender-based persecution; low-income immigrant women; and battered immigrant women.

WOMEN ASYLEES AND REFUGEES

The Immigration and Nationality Act (INA) defines a “refugee” as a person outside his or her country who is unwilling or unable to return “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...”² In recent years, gender-based persecution has received greater legal recognition as a result of court and agency decisions. In 1995, the Immigration and Naturalization Service (INS) published formal guidelines on gender-based persecution. Significant decisions of

the Board of Immigration Appeals and the federal courts have recognized various forms of gender-based persecution, including rape and female genital mutilation. These decisions have served as precedents for women seeking refuge in the United States.³

Unfortunately, these gains for women refugees have been undermined by the severe injustices that have been visited on refugees and asylum-seekers as a result of the 1996 laws. Expedited removal, enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, permits the expulsion, without further review and without a hearing, of individuals who arrive at the border without valid travel documents.⁴ Individuals who are fleeing persecution are often unable to obtain valid travel documents, either because they are in immediate fear for their lives or because obtaining such documents requires the permission of the very government officials responsible for their persecution. Moreover, even individuals who arrive with facially valid documents showing they are United States citizens, permanent residents, or that they have already been granted asylee or refugee status in the United States may be sent back without a fair hearing and without review solely on an immigration inspector's suspicion that the documents they present are not genuine.

Although individuals who express an intent to apply for asylum or to establish credible fear of persecution are supposed to be granted a hearing before an asylum officer, with review by an immigration judge, the decision by a low-level immigration inspector that an individual does not have a fear of persecution results in that person's immediate expulsion from the country.

Supporters of expedited removal argued that the INS could administer expedited removal without sending genuine refugees back to persecution and without violating the rights of United States citizens or residents accused of having false documents. Experience has proven these predictions wrong. Expedited removal, in practice, has been a disaster.

In May 2001, the Immigration Subcommittee of the Senate Judiciary Committee heard the harrowing stories of refugees who had fled persecution in Afghanistan and other countries, and were mistreated when they arrived in the United States. One of the more compelling stories was that of an Afghan woman who spoke of her desperate flight from persecution by the Taliban only to suffer further mistreatment at the hands of our government during her lengthy detention by immigration authori-

ties. Other individuals were ordered removed despite their attempts to express their fears and to apply for asylum. In some cases, refugees who were later granted asylum managed to escape deportation only by pleading with airline officials, by the intervention of desperate relatives, or by managing to contact human rights organizations or Members of Congress.

According to one nationwide scholarly study of expedited removal, these and other cases of abuses resulting from expedited removal are only the tip of a very large iceberg. From April 1997, when expedited removal was first implemented, to October 1999, approximately 190,000 people were subject to expedited removal. Over 99 percent of those removed pursuant to this procedure were removed at secondary inspection; i.e., without further review or a fair hearing.⁵ As many as 900 individuals may have been removed in 1999 despite expressing a fear of returning. At some ports of entry, as many as 21 percent of persons were not asked the credible fear questions that are required by INS procedures.⁶

Five years of implementation of expedited removal have revealed particularly negative effects on arriving refugees who are women. Expedited removal has had a disproportionate gender impact because victims of rape or other gender-based forms of persecution are more likely to arrive at ports of entry weary and traumatized and find it difficult to discuss their experiences upon arrival, particularly if they have suffered physical and sexual abuse. Survivors of rape and other gender-based discrimination face particular risks. Dr. Allen S. Keller of New York University, with fifteen years experience treating survivors of torture, told the Immigration Subcommittee of the Senate Judiciary Committee that many survivors in his practice are “not able to testify [at asylum hearings] within one year because of the psychological and emotional consequences of their abuse.” Dr. Keller noted that for one of his patients, who was repeatedly raped by police for her participation in pro-democracy activities, “[i]t would have been psychologically devastating for her to have to recount these events immediately upon her arrival in this country, or even within a year of arrival.”⁷

Nonetheless, under expedited removal, refugees are expected to articulate persuasively their fear of persecution, without counsel or other assistance, in a brief interview at a port of entry. If refugees are unable to do so to the satisfaction of harried and often overworked immigration

inspectors, they will be returned immediately to the country which has persecuted them, without an interview with a trained asylum officer or a fair hearing before an immigration judge.

The 1996 immigration law also, for the first time in history, placed a time limit on asylum applications.⁸ Worse still, the time limit was unrealistically short, giving refugees only one year after entry in which to file asylum applications. Refugees usually arrive in this country after a long and harrowing ordeal. Many do not speak English and face difficulties integrating into our society. Most cannot afford a lawyer, and individuals in immigration proceedings are not entitled to a lawyer at government expense.

The Refugee Protection Act of 2001, introduced on August 2, 2001 by Senators Patrick Leahy and Sam Brownback, would limit expedited removal to declared immigration emergencies, end mandatory detention of asylum seekers, promote alternatives to detention and end the one-year filing deadline for asylum applications.⁹ Unfortunately, the post-September 11 backlash against immigration appears to have delayed momentum towards enactment of the Refugee Protection Act in its entirety.

Section 1123 of the National Homeland Security and Combating Terrorism Act of 2002, sponsored by Senator Joseph I. Lieberman, as approved by the Senate Governmental Affairs Committee, now contains a modest provision mandating the Homeland Security Department's immigration agency to implement alternatives to detention for asylum seekers and to reform conditions of detention.¹⁰ Additional improvements, including elimination of the one-year filing deadline, may also be feasible. Ultimately, however, unless expedited removal and other issues are addressed, women refugees will continue to face extraordinary obstacles in finding freedom in the United States.

LOW-INCOME IMMIGRANT WOMEN AND PUBLIC BENEFITS

In 1996, Congress severely restricted the availability of public benefits for both lawful permanent residents and undocumented immigrants through the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), commonly known as the welfare reform law, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

These restrictions had a severely disproportionate impact on women, as they are far more likely than their male counterparts to receive public assistance. For example, of those currently receiving benefits under the Temporary Assistance for Needy Families (TANF) program, 87 percent are women.¹¹

These laws as originally enacted barred most legal immigrants from receiving food stamps and Supplemental Security Income (SSI) until they became citizens or had worked in the United States for at least ten years. They barred new immigrants from receiving TANF, Medicaid, or assistance from the Child Health Insurance Program for five years. Immigrants were thus deprived of services that their own tax dollars supported. “Unqualified” immigrants, including not only undocumented aliens but also others permitted to remain in the United States without permanent residence, were barred from receiving any federal public benefits at all. SSI was subsequently restored to immigrants who resided in the United States at the time of PRWORA’s passage and food stamps have been restored to non-citizen children who were in the United States at the time of PRWORA’s passage, as well as to some elderly and disabled immigrants.

PRWORA also imposed new requirements on family members who sponsor immigrants. It required that the income and resources of the sponsor be “deemed” available to the immigrant, even if the income and resources are not in fact available. As a result, many poor immigrants are ineligible for services despite their poverty and lack of access to “deemed” income. “Deeming” applies until the immigrant becomes a citizen or works for approximately ten years.

Incremental reform of these provisions is likely this year. With the support of President Bush, restrictions on food stamp eligibility have already been eased, so that refugees, asylees, children and disabled immigrants, as well as all immigrants with five years (instead of ten years) of residence, are now eligible for food stamps.¹² The President has opposed further restoration of public benefits for immigrants, however. In July 2002, a bipartisan vote of the Senate Finance Committee nonetheless approved a welfare reform reauthorization bill permitting states the option of restoring benefits for legal immigrants under the TANF program, regardless of the immigrants’ date of entry. These benefits include not only cash assistance but job training and English as a Second Language classes, which will help those immigrants with limited English proficiency obtain better-

paying jobs. An amendment offered by Senator Bob Graham is particularly important for immigrant women, as it would make lawfully resident pregnant women and children eligible, at their state's option, for medical services under Medicaid and the State Children's Health Insurance Program.¹³ The Committee's bill was reported to the Senate in July but was not taken up by the end of the 107th Congress.

For immigrant women with permanent resident status who live in states that elect these options for health care and other benefits, these reforms, if made part of the final welfare reauthorization bill, will greatly enhance their ability to obtain the services they need for survival.

SPECIAL BARRIERS FACED BY BATTERED IMMIGRANT WOMEN

Battered women in general face enormous challenges in breaking the cycle of violence and freeing themselves from the physical, economic and psychological control of their abusers. Battered immigrant women face additional barriers because restrictions on public assistance may trap them into continuing a relationship with an abusive spouse and because they may be reluctant to report abuse to the proper authorities for fear of deportation if they lack legal immigration status.

Congress included special provisions in the 1996 welfare reform law, exempting from the ban on immigrant assistance those women who lack permanent resident status but have made out a *prima facie* case for immigration relief under the Violence Against Women Act (VAWA).¹⁴ They would be entitled to public benefits as "qualified aliens." This exception, however, applies only if the individual can demonstrate a link between the abuse and the need for benefits.¹⁵ Unfortunately, this exception has not been consistently implemented, particularly in the area of public housing. Federal guidance is needed to make sure that those who administer these programs are aware of Congress's intent to make benefits available to battered immigrant women with *prima facie* eligibility for relief under VAWA.

Even if the exception for immigrants who can make a case under VAWA for immigration relief were properly implemented through guidance from the relevant federal agencies, many battered immigrant women do not qualify for relief under VAWA. Lacking any other legal immigration status that would make them eligible for benefits, they continue to face a complete ban on receiving federal public benefits. Unfortunately,

this is unlikely to change. Neither the House nor Senate version of welfare reform reauthorization legislation reverses the ban on federal benefits for undocumented immigrants. The Senate version does, however, contain language to clarify that states may use their own funds to provide benefits to their residents regardless of immigration status.¹⁶

Finally, battered immigrant women could face a devastating new barrier to self-sufficiency if current proposals to involve state and local police in immigration enforcement are implemented. For decades, it has been the federal government's policy that state and local police lack independent legal authority to make arrests based solely on a person's immigration status. That policy is reflected in a 1996 opinion from the Office of Legal Counsel (OLC) of the Department of Justice. Recently, however, the Bush Administration has proposed weakening that sensible policy, despite the strong objections not only of immigrant advocates, but of many state and local police, who fear greater involvement in immigration enforcement could destroy carefully constructed relationships with immigrant communities.

While the Administration has backed away from its original plan to formally reverse the 1996 OLC opinion, it has nevertheless gone forward with a series of incremental steps that may have the same practical result. First, the Administration has entered into a Memorandum of Understanding (MOU) with the State of Florida, permitting Florida police to enforce federal immigration laws, and reportedly has plans to enter into MOUs with other states. Second, the Administration has gone forward with a plan to enter persons with immigration status violations into the National Crime Information Center database, targeting them for possible arrest by state and local law enforcement officers. While the White House has attempted to reassure the immigrant community that these steps are being taken only with respect to persons allegedly "of national security concern," this appears to be nothing more than a euphemism for immigrants from predominantly Arab or Muslim countries (although there are plans to expand the system beyond these countries). Finally, the Administration recently issued final rules permitting the Attorney General to declare a "mass influx of aliens," thereby permitting state and local law enforcement officers to arrest immigrants who lack legal status, without any meaningful definitions that would cabin the Attorney General's discretion.

If the Administration persists in this effort to involve state and local police in immigration enforcement, battered immigrant women will be even less likely to report abuse to the appropriate authorities. State and local legislation to clarify that local police are responsible for fighting crime, including domestic violence, and should not become federal immigration agents, will be essential to assuring battered women and other immigrants that they will not be deported because they reported a crime to the police.

The challenges faced by women immigrants and refugees in the United States, particularly after the enactment of the 1996 laws, are very great. While the terrorist attacks of September 11, 2001 have had the unfortunate consequence of delaying some reform efforts, there is still a good prospect for real reform, at least on an incremental basis, in the near future. Ultimately, a comprehensive reform of our immigration laws will be needed to address the systemic problems faced by women and other immigrants today.

NOTES

1. Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub. L. 104-193 (1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208.

2. Refugee Act of 1980, Pub. L. 96-212, amending the Immigration and Nationality Act of 1952.

3. See, e.g., *Lazo-Majano v. INS*, 813 F.2d 1432 (9th Cir. 1987) (repeated rape by Salvadoran soldiers); *Matter of Kasinga*, Int. Dec. 3278 (BIA 1996) (female genital mutilation); *Matter of D-V-*, 21 I&N Dec. 77 (BIA 1993) (rape by soldiers based on membership in church group). See generally Karen Musalo and Stephen Knight, "Gender-Based Asylum: An Analysis of Recent Trends," 77 *Interpreter Releases* 1533 (Oct. 30, 2000).

4. See Immigration and Nationality Act (INA), Pub. L. 82-414 (1952) at § 235(b)(1)(A)(i) ("If an immigration officer determines that an alien . . . is inadmissible [on account of fraud or lack of valid travel documents] the officer shall order the alien removed from the United States without a further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.")

5. An Overview of Asylum Policy: Hearing Before the Immigration Subcommittee of the Senate Judiciary Committee, May 3, 2001, Statement

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of Karen Musalo, Director, Expedited Removal Study (hereinafter “Musalo Statement”) at 7–8.

6. Musalo Statement, at 20–21 (citing GAO study).

7. *An Overview of Asylum Policy: Hearing Before the Immigration Subcommittee of the Senate Judiciary Committee*, May 3, 2001, Written Testimony of Allen S. Keller, M.D., at 4–5.

8. *See* INA, *op. cit.*, at § 208(a)(2)(B) (“[P]aragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien’s arrival in the United States.”).

9. Refugee Protection Act of 2001, S. 1311.

10. National Homeland Security and Combating Terrorism Act of 2002, S. 2452.

11. Census Bureau, March 2000 Current Population Survey.

12. *See* Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, at § 4401 (May 13, 2002).

13. *See* Personal Responsibility, Work, and Family Promotion Act of 2002, H.R. 4737, at § 104 (as reported by the Senate Finance Committee, July 25, 2002).

14. VAWA permits a non-citizen spouse who is married to a United States citizen or lawful permanent resident to file her own petition for adjustment of status to permanent resident, and also contains provisions permitting a victim of domestic violence to obtain suspension of deportation under certain circumstances. *See* INA, *op. cit.*, at § 204(a).

15. IIRIRA, *op. cit.*, amending PRWORA, *op. cit.*, at 8 U.S.C. § 1641.

16. Personal Responsibility, Work, and Family Promotion Act of 2002, *op. cit.*, at § 104(c).

AFTERWORD

PHILIPPA STRUM

The conference papers and discussions lend themselves to a number of overall comments.

The first is that U.S. policies towards the needs of immigrants are an extension of the country's overall position on human rights. U.S. law and political theory, which focus on civil liberties rather than civil rights, emphasize the negative: the people have a right to be free from government, to keep government off our backs – to keep it from interfering, for example, with our liberty of speech and religion. In essence, what the government owes us is the right to be left alone. Most other countries, however, along with international human rights law, emphasize the positive: government has an obligation to provide certain services to the population, and exists not merely to prevent people from harming each other, as in the U.S. model, but to play an affirmative role in ensuring a high quality of life.

If the United States adopted the latter philosophical approach, immigrants would be among the people for whom the government would be required to provide services. Current United States law includes no national right to education, health care, housing, employment, or legal services outside the criminal justice system. It is not only immigrants who lack those rights, but all of us – although of course the rights' absence falls particularly hard on newcomers to this country. The lack of services provided to immigrants should therefore be understood to reflect a more general approach to rights and liberties.

That said, it would be naïve not to recognize the important influence of nativist sentiment on immigration policy. While, given most Americans' immigrant origins, anti-immigrant attitudes are somewhat puzzling, they are also ubiquitous. We clearly have a national propensity to view ourselves as generous in our immigration policies, believing that we do a major favor for those immigrants whom we let into the country. What we as a polity ignore is that in reality the well-being of the country rests on immigrants, past and present. That is true of the economy: think of the jobs performed by today's immigrants, from agricultural and

restaurant workers to medical residents and computer experts. It is equally true of our culture, which is a glorious amalgam of customs and music and cuisine brought from all over the world. This country is dependent on precisely those people for whom those of us who arrived here somewhat earlier are supposedly doing such a great favor.

Nativism exists nonetheless. We as a nation disfavor immigrants, and among the immigrants we value least are women. I would suggest that the country's view of women in the public arena generally has not been greatly affected by either the women's movement or the resultant changes in gender equality law over the last thirty years. Our implicit attitude is that women should be trained and permitted to work and run for public office because it would be unfair not to allow them to do so – rather than that women should be encouraged to do those things for the benefit of the country.

Adding that position to the overarching attitude towards immigrants, it is not surprising that this country tends to regard women immigrants as needing society's help but contributing nothing to its welfare. The role of immigrant and non-immigrant women as mothers is simultaneously romanticized and ignored, for they receive no meaningful credit for maintaining homes and raising children. Unlike men's work, which "deserves" societal recognition and reward, assuming responsibility for home and progeny is just "what women do." The jobs many immigrant women perform outside the home, such as cleaning corporate offices, providing child care, and nursing, are viewed as unimportant extensions of their "natural" nurturing role. Little attention is paid to women immigrants who work, for example, as computer programmers and university professors.

Given our view of immigrants in general and women immigrants in particular, along with the country's historic negative conception of liberty, the initially startling lack of rational public policy towards women immigrants turns out to be not so astonishing at all. It follows that these policies are unlikely to change until, at a minimum, policy-makers and the public have more information about who women immigrants are, the nature of their particular problems and needs, and the ways in which meeting those needs will benefit the country as well as specific individuals within it. It is the hope of the Wilson Center and the Migration Policy Institute that this conference has furthered the process of making such information available.

PANELIST BIOGRAPHIES

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LESLYE ORLOFF, Director of NOW LDEF's Immigrant Women Program, was a co-founder of the National Network on Behalf of Battered Immigrant Women and participated in drafting the Battered Immigrant Women Provisions of the Violence Against Women Acts. She has written numerous journal and law review articles, including a 400-page law review article analyzing civil protection order law in the United States.

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Panelist Biographies

KRISTIN WELLS is a Minority Counsel for the House Committee on the Judiciary, reporting to Representative John Conyers, the Committee's Ranking Democrat. Her responsibilities include advising committee Democrats on policy, legislation and strategy relating to immigration, refugee, asylum, civil rights, and antitrust matters. She has also clerked for the Constitutional Court of South Africa.

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WENDY YOUNG, Director of Government Relations and U.S. Programs for the Women's Commission for Refugee Women and Children, coordinates the Commission's Detention and Asylum Project. She works for the protection of women and children during asylum proceedings, and is the author of numerous reports on detention conditions for women and children asylum seekers based on site visits to over 40 U.S. detention facilities.

JOY MUTANU ZAREMBKA is the executive director of the Break the Chain Campaign, an advocacy/direct service organization working to help end modern-day slavery and trafficking and to provide better protections for abused, enslaved and exploited workers in the Washington, D.C. area. She is regularly quoted on the subject of trafficking by, e.g., *The Wall Street Journal*, *Newsweek*, and *The Washington Post*.

MIN ZHOU, Professor of Sociology and Chair of the Asian American Studies Interdepartmental Degree Program at UCLA, works on immigrant adaptation and ethnic and racial relations. She is the author or editor of numerous books and articles including *Chinatown: The Socioeconomic Potential of an Urban Enclave*; *Growing up American: How Vietnamese Children Adapt to Life in the United States* and *Contemporary Asian America*.