

Reforming America's Immigration Laws: A Woman's Struggle

While immigrant communities across the nation endure the long wait for immigration reform, there are roughly 19 million immigrant women and girls currently in the U.S. Immigrant women, particularly the undocumented, are often more vulnerable than their male counterparts, lack the same economic opportunities, and experience exploitation while crossing the border, while working and even in their own homes. In short, immigrant women have become the silent victims of a broken immigration system.

In IPC's latest Special Report, [Reforming America's Immigration Laws: A Woman's Struggle](#) [1], immigration attorney Kavitha Sreeharsha lays out the economic and social disparities, legal barriers to current immigration law and the many dangers hard-working immigrant women are forced to endure.

The report also explores how women are distinctly harmed by heightened enforcement of immigration laws. Abusers, traffickers, and exploitative employers keep immigrant women from seeking local law-enforcement protection by convincing them that police officers are working in partnership with DHS and will deport victims instead of protecting them. Essentially, these enforcement measures increase the likelihood of abuse and assault against immigrant women by cutting them off from help and giving their perpetrators a powerful tool to silence their victims and escape prosecution.

Ultimately, the author concludes, only through a comprehensive immigration reform package—one that includes a path to legalization that values the contributions immigrant woman make as mothers, wives and workers—can the U.S. reconcile these disparities.

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Introduction

The shifting political landscape has meant that comprehensive immigration reform (CIR) has not yet passed Congress and become law. Furthermore, states and localities are increasingly passing legislation targeting undocumented immigrants, and these laws have had a harmful impact on entire communities. While immigrant communities all over the United States endure the long wait to reform a broken immigration system, immigrant women often remain invisible and forgotten.

Contrary to public discourse which often omits any discussion of women immigrants, nearly half of the foreign-born population in the United States is female. There are nearly 19 million immigrant women and girls. Immigrant women are very diverse in terms of country of origin, age, education, labor force participation, and poverty level. They work tirelessly alongside immigrant men, and in some fields of employment comprise the majority of the labor force. According to a 2005 report by the Immigration Policy Center, 8.3% of employed immigrant women were business owners in 2000,

compared to 6.2% of employed native-born women. In addition to the 563,814 immigrant women business owners, 1,054 immigrant women across the United States were CEOs of not-for-profit organizations. At one extreme, many foreign-born women have professional school or doctorate degrees, but there are also many immigrant women who lack even a high school diploma.

Many women, particularly those who are undocumented, are often more vulnerable than their male counterparts and lack the same economic opportunities. Lack of access to higher education, for example, contributes to lower incomes among immigrant women. Immigrant women had a median income of \$21,182 per year in 2008, which was \$3,259 less than that of native-born women, and \$8,351 less than that of foreign-born men. Immigrant women are more likely to experience exploitation while crossing the border, while working, and even in their own homes. Immigrant women are, in fact, the silent victims of the broken immigration system.

Precisely because so many immigrant women suffer in silence, lawmakers can easily overlook the specific reforms necessary to ensure that CIR does not inadvertently create new barriers and establish eligibility criteria that are beyond the reach of some immigrant women. For instance, a CIR package must include a path to legalization that values the contributions of immigrant women as part-time and informal workers. It must recognize that women need independent opportunities to apply for legalization (as opposed to merely deriving it from a spouse or father). It must account for the fact that many immigrant women—who make significant contributions to the workforce—nonetheless have had less formal access to educational and employment opportunities. CIR must also consider the role that women play in immigrant families and as the predominant beneficiaries in the family immigration system. Enforcement measures must be reformed to avoid re-victimizing the most vulnerable immigrants. Without immigration reforms, many immigrant women will continue to lack economic access, experience separation from their families, and be subjected to exploitation and criminal activity.

Legal Barriers to Equality in Current Immigration Law▲ [8]

Women immigrants arrive in the United States from their home country seeking economic opportunity, family reunification and safety. The migration of women is often based on gender inequality in their home countries. Many immigrant women come from societies where women lack equal access to employment opportunities, and many are escaping violence and political instability which make women particularly vulnerable targets. Others come to the United States to join their families, not wanting to raise their children alone. Uniformly, women experience external pressures that in many cases leave them with no viable options but to enter the United States. Yet when women arrive in the United States, they often struggle to achieve the economic opportunity and safety they seek.

From the beginning of the migration process, women are often at a disadvantage. Faced with an employer-sponsorship system that hinges on education, specialized occupational needs, and economic opportunity, women are less likely than men to qualify under the current requirements of employment-based immigration. Many more women immigrate through family sponsorship than as employment-based immigrants. In Fiscal Year (FY) 2009, for instance, 112,694 females obtained legal permanent resident (LPR) status under family-based “preference” categories, compared to 99,165 males. Yet only 69,471 women obtained LPR status through employment-based visas, compared to 74,563 males (and many of them came as derivatives of the principle male visa holder). But the family immigration system has been fraught with backlogs and burdens that sometimes separate families for more than 20 years. The backlogs force women to wait in their home countries, separated from the sponsoring family member with whom they seek reunification. While separated, many of these women are left as the sole providers in countries where women may lack the same economic and employment opportunities as men. These immigration-processing backlogs create an emotional and financial burden on women and their families even though they will ultimately be eligible to unify with their families in the United States.

Immigrant Women Experience Danger Entering the U.S.—and Poor Conditions in the U.S.▲ [8]

The overburdened family-based system often creates circumstances where women living abroad must choose between waiting in lengthy backlogs or entering the U.S. unlawfully and, in many cases, unsafely. Approximately 4.1 million immigrant women in the U.S. are undocumented. Women outside the United States may risk unsafe and unlawful migration to the United States to reunify with their families, seek economic opportunities, or escape other dangers. Women who migrate unlawfully by crossing the U.S.-Mexico border, for example, are far more vulnerable to unsafe conditions and are particularly at risk for sexual assault. A United Nations representative estimated that 70% of women who cross without spouses or other families are sexually assaulted during the border crossing. Advocates report that women are encouraged to take birth control pills before traveling across the border in anticipation of the sexual assault.

Workforce Inequities

Whether undocumented immigrant women cross the border illegally or enter lawfully and then overstay their visas, the prolonged backlogs in family-based immigration ensure that they may wait years for legal status. Once in the United States, many immigrant families require two incomes to support themselves and their children. Consequently, undocumented immigrant women are left with no choice but to work in the underground economy without work authorization. Without lawful permission to accept employment, undocumented immigrant women work for substandard wages, making 13.2% less than their immigrant male counterparts and 14.4% less than their female U.S.-citizen counterparts. While most civil employment protections are available to undocumented immigrants, fear of deportation prevents many undocumented immigrants from pursuing civil court protections.

Given these limitations, undocumented immigrant women tend to be employed in the informal labor market as domestic workers and caretakers. Many undocumented women provide child, elder, and disabled care; clean and maintain American homes; and provide the labor that fuels the service industry. In short, undocumented immigrant women care for our homes and families, allowing the middle class to pursue more lucrative and productive jobs.

In contrast to many other forms of employment, these work sectors render their workers largely invisible. These women are generally employed by individuals or small businesses and maintain nontraditional and part-time hours. Because they are often single employees or one among a small number of employees in a particular workplace, there is less opportunity to formally organize and assert workers' legal rights. In fact, the number of immigrant women domestic workers unable to organize has led to an increase in national and regional political organizing of domestic workers. These domestic-workers organizations assert that immigrant domestic workers' rights are not protected under current laws.

Exploitation in the Workplace

Lack of a legal immigration status also leads to increased exploitation by unscrupulous employers. Women, in particular, are vulnerable to sexual violence, sexual assault, sexual harassment, and other gender-motivated exploitation in the workplace. Absent any fear that employees will report these actions and crimes, employers continue to take advantage of immigrant women.

Even immigrant women who have temporary visas to work for diplomats or in agricultural work experience exploitation in the workplace. These visas tie an immigrant worker's legal status to a particular employer and are not portable to other employment. When immigrant women are restricted to specific employers, the work environment can be rife with abuse. Immigrant women are paid less and have less flexibility and rights within the workplace. The lack of portability (the ability to leave one job for another) means that an immigrant woman must sometimes endure deplorable conditions, elect to leave the employer and violate the terms of her visa (rendering her effectively without legal immigration status), or return to her home country. Given these choices, most immigrant women end up enduring abuse and deplorable conditions in the workplace.

Breakdown of Family Structures

Ironically, the desire to keep families together that leads some women to come to the U.S. without documentation ultimately is undermined by the lack of status itself. Mothers are directly harmed by their lack of legal immigration status. As parents, undocumented mothers seek a multitude of services, but must worry about their lack of immigration status. In Mississippi, Cirila Baltazar Cruz, a Chatino-speaker from Oaxaca, Mexico, who had been working in a Chinese restaurant, gave birth to a baby girl in November 2008. Hospital workers called the State Department of Human Services, who intervened to take away the child claiming that she was an unfit mother because she did not speak English.

Such actions on the part of government agencies create fear and apprehension among immigrant women. When a woman's child is taken away from her because she does not speak English, other immigrant women will increasingly be fearful of even going to a hospital to give birth. Immigrant women will fear taking their children to school or utilizing other public resources for fear that they will be reported for not having legal immigration status or for not speaking English. Because immigrant women are often the sole or primary caretakers of children, the fear of separation from their children often prevents them from accessing public resources.

Lack of immigration status also prevents immigrant women from enhancing their economic mobility, further limiting their ability to provide for their families. Undocumented immigrants are unable to qualify for federal financial aid programs, making it difficult for them to pursue higher education. With limited exceptions, undocumented immigrants are also unable to access federal safety-net protections like cash benefits and health-care benefits. These benefits are aimed at bridging an individual's economic vulnerabilities with employment opportunities through cash benefits and job-training opportunities.

Human Trafficking

A smaller subset of immigrant women are brought into the United States for more extreme exploitation: human trafficking—a form of modern-day slavery. Immigrant women are forced to work in home under lock and key, surveillance, threats of deportation, and physical harm. One such example was the criminal case brought against Varsha and Mahender Sabhani:

Varsha and Mahender Sabhani, a wealthy couple living on Long Island, enslaved two women from Indonesia in their house, making them work 18 hour days and then sleep on the floor, physically beating them and cutting them with a knife, and forcing them to eat hot peppers and later eat their vomit from the peppers. The Sabhani's treatment of these women was easily hidden within the house compound.

The numbers of domestic-servitude human-trafficking cases that have emerged in the 10 years since passage of the Trafficking Victims Protection Act suggest that the often misunderstood crime of human trafficking is occurring in far more cases, hidden from public view. High costs of child care in a suffering economy only increase the likelihood that families will bring someone from another country or hire someone in the United States without a legal immigration status, and will pay them lower wages and subject them to potentially exploitative conditions.

Immigrant Women and Domestic Violence▲ [8]

Both legal and undocumented immigrant women face many challenges related to domestic violence and their ability to obtain relief from abusive spouses. Immigrant women whose legal status is dependent on a spouse often lack economic opportunity and consequently, independence. In some cases, women are dependent upon their U.S.-citizen or LPR spouse to petition for them through the family-based system. In other cases, immigrant women obtain legal immigration status that derives from their spouse's employment-based temporary nonimmigrant visa (such as an H-1B visa). Spouses who receive visas that permit them to come to the United States with their employment-visa-holder spouse are not provided legal work authorization in the majority of cases. Thus, whether legal or undocumented, these immigrant women are often dependant on their lawfully

present spouses for financial support and to complete the immigration-sponsorship process.

This leaves a woman on unequal footing and lacking economic independence. In many cases, this economic dependence creates a power and control dynamic that manifests itself in domestic violence. Abusers often take advantage of immigration status to threaten deportation against their spouses. The lack of economic options and dependence for legal immigration status upon a spouse with an employment-based visa makes it more difficult for immigrant women to access resources and leave abusive relationships. The case of Shaila illustrates the degree to which the lack of an independent legal status can destroy a woman's life:

Shaila came to the United States on an H-4 visa as a derivative of her husband Samir who held an H1B visa and worked at a software company. Samir became abusive when she became pregnant with their first child. Samir beat Shaila badly but when he took her to the hospital, she told the doctor that she was mugged. Shaila knew that her status in the United States depended on Samir maintaining his status. If Samir was arrested, he could lose his job and his visa. She also was worried he would be deported because she knew someone else who was arrested and ended up being deported. Shaila had no options. She could not go back to India pregnant and ashamed of a failed marriage. She also could not leave Samir; she had no work authorization and no way to support herself and her child. Shaila remained with Samir and the violence continued.

Some women who are victims of domestic violence are able to utilize the family-based immigration system to self-petition for status under the Violence Against Women Act (VAWA). The self-petitioning model is limited to the spouses of U.S. citizens and Lawful Permanent Residents (LPRs). Moreover, the backlogs in the family immigration system also apply to VAWA cases and force VAWA self-petitioning spouses to wait for up to a year or more to receive employment authorization.

Even a VAWA self-petition grant does not alleviate the personal and financial burdens the immigration system imposes on immigrant women. Successful VAWA self-petitioners receive deferred action and access to employment authorization and are placed on a path to obtaining lawful permanent residence. However, deferred action itself is not a type of immigration status, but rather an administrative term of art that places the individual at a lower priority for deportation. Approved self-petitioners must also renew their work authorization every year, and even the processing backlogs for employment authorization can cause someone to be terminated for not having a current work authorization.

While VAWA self-petitioners are placed in the family immigration system, subjecting them to the same backlogs as other family immigration beneficiaries, they are still subject to many of the immigration constraints of potentially being barred from reentering the U.S. if they leave. The case of Rose Maria illustrates this common barrier for VAWA self-petitioners:

Rosa Maria entered the U.S. with her two children in 1995, joining her husband Ernesto who insisted that she enter unlawfully rather than wait through the family backlogs. For years Ernesto abused her but it took Rosa Maria years to learn about the VAWA self-petition and gain courage to leave Ernesto. Rosa Maria self-petitioned for herself and her children and received deferred action and work authorization. Then her mother became very ill. Rosa Maria desperately wanted to visit her mother and say goodbye in person but was advised that without status, she could be barred from reentering the U.S. for ten years. Rosa Maria decided not to take the risk and was unable to see her mother before she died.

In other cases, victims of domestic violence are ineligible under VAWA, because their abuser is not a U.S.-citizen or LPR spouse or parent. Some victims may obtain a U-visa, which is available to victims of criminal activity who are helpful in the detection, investigation, or prosecution of specified criminal activities including domestic violence, sexual assault, and human trafficking. But immigrant victims' distrust of law enforcement precludes many of them from seeking this protection.

Women are Distinctly Harmed by Heightened Enforcement of Immigration Laws ▲ [8]

The Disproportionate Risk of Local Law Enforcement Partnerships

The Department of Homeland Security (DHS) has initiated several local law-enforcement partnerships, including the 287(g) and Securities Communities programs, to increase local law enforcement identification of undocumented immigrants for detention and removal from the United States. While DHS has developed a three-tier system to identify the most dangerous and violent criminals, there are widespread reports of non-violent criminals being identified and referred to DHS for removal. These immigration-enforcement programs can result in detention and removal of crime victims when abusers call law enforcement and use superior English-language skills to have the victim arrested, while the perpetrators elude arrest. By providing local law enforcement with authority to enforce immigration laws, the program shifts the mission of local policing from community safety to immigration enforcement. These programs encourage law-enforcement agents to prioritize immigration status over crime prevention and crime fighting.

Abusers, traffickers, and exploitative employers keep immigrant women from seeking local law-enforcement protection by convincing them that police officers are working in partnership with DHS and will deport victims instead of protecting them. Essentially, these enforcement measures increase the likelihood of abuse and assault against immigrant women by cutting them off from help and giving their perpetrators a powerful tool to silence their victims and escape prosecution. Immigrant women make unsettling compromises as a result. A domestic violence victim may stay with her abuser rather than calling the police. A teenage girl sexually assaulted at work may remain at that workplace without calling the police or possibly even seeking medical treatment. These programs teach immigrant women that they can no longer seek help from and participate in the criminal justice system.

For those immigrant women who try to buck the odds and seek help from law enforcement, the results can be devastating. For Rita Cote, protecting her sister from domestic violence resulted in her detention and the initiation of removal proceedings.

In Miami in February 2009, Rita Cote's sister called 911 to seek police protection after a domestic violence incident. Ms. Cote's sister had lawful immigration status but had a limited capacity to speak English. Law enforcement agents asked for identification for everyone at the scene. Ms. Cote urged the agents to first address the domestic violence issue but they insisted that Ms. Cote's sister could only press charges by going to the police station. After Ms. Cote showed her passport to the officers the officers arrested her, and took her away. The domestic violence crime went unaddressed.

The effects of not investigating crimes perpetrated against immigrant victims harms not only immigrant women, but all communities. Word spreads quickly in immigrant communities and immigrants fear that reporting a crime to the police will lead to the victim's deportation. Undermining years of efforts to implement community-policing programs, DHS local partnerships create a two-tier society in which immigrant victims have less access to police protection than other community members.

The ease with which crime perpetrators are free to exploit and harm non-U.S. citizens bolsters their confidence and the likelihood they will perpetrate crimes against others in the community. When immigrant victims are deterred from reporting crimes, perpetrators are not held accountable for their crimes. A perpetrator who victimizes an undocumented immigrant is just as capable of committing the same crime against a U.S. citizen. For the many crimes that are serial in nature, failure to investigate crimes increases the number of community members at risk of crime victimization.

The Harmful Impact of Immigration Detention on Immigrant Women and their Families▲ [8]

When immigrant women are apprehended and detained, their vulnerability increases. Detention often removes access to services and legal relief necessary for immigrant women to protect their

children, access services, and reduce trauma. For single parents, the detention separates immigrant women from their children, often with devastating effects. Immigrant mothers are losing custody of their children when state courts issue rulings that unconstitutionally separate immigrant mothers from their children.

Maria Luis was deported back to Guatemala while her children were placed in foster care in Nebraska. Maria Luis was arrested and detained for not having lawful immigration status in the U.S. Separated from her children, a Nebraska family court provided her with a reunification plan. However, because she was not provided interpretation in her language of Quiche, she did not understand the terms of compliance and could not comply because of her detention. Her parental rights were terminated. Maria Luis was ordered removed from the United States and her children were placed in foster care. Ultimately, the Nebraska Supreme Court reversed the family court decision and Maria Luis was allowed to temporarily return to the United States in order to be reunified with her children.

Similarly, when domestic-violence victims are detained, the children are often left in the care of the abusive party. In another situation, in a 287(g) jurisdiction, an undocumented victim's child was left with her abusive boyfriend, while she was put in immigration detention.

Marisol had been living with her boyfriend who had become abusive. After being pushed against the wall and repeatedly beaten, she scratched him to try to get away and later was able to call the police. The police did not provide an interpreter and Marisol and her boyfriend were arrested. Marisol had an immigration detainer placed on her while her U.S. Citizen boyfriend was released. While Marisol was being detained, her baby stayed with her boyfriend.

In another case, an attorney reported that while her client was being detained, her abuser kicked her teenage son out of the home and he became homeless.

Finally, given the vulnerability and likelihood of domestic violence, rape, and escape from torture and/or violence in their home countries, immigration detention amplifies trauma and exacerbates the mental-health needs of survivors. Detention facilities do not yet adequately address the comprehensive mental-health needs of female detainees.

Conclusion▲ [8]

The current dialogue about immigration reform focuses on the efforts to protect all undocumented immigrants. Yet immigrant women's experiences remain on the periphery of the debate, and the unique experiences and compromises faced by immigrant women are often forgotten. Many immigrant women are separated from their families by borders, and cannot reunite due to U.S. immigration backlogs. Many immigrant women are victims of violence whose likelihood of victimization is enhanced by a system that disadvantages them. Many immigrant women are low-wage workers with less opportunity for upward mobility and less legal protections. Many immigrant women are the silent victims of a broken system.

Immigration reform efforts must take into account and address women's unique struggles and equally value immigrant women's contributions to American society. Immigrant women need true equal access to legalization opportunities. Comprehensive immigration reform legislation including gender-neutral language must be written to ensure that immigrant women truly benefit from immigration reforms to the same extent as immigrant men. To do this, CIR should:

- **Create a path to legalization that equitably values women's work:** Avenues for legalization that value work must recognize and 'count' the range of immigrant women's work in the informal economy such as domestic work, child care, and home health care. Part-time and contract work, as well as work for multiple employers, must count toward legalization. Because many recent legalization proposals have required full-time employment or schooling, they fail to take into account the unique barriers faced by many undocumented women. Legalization fee structures must ensure incentives for immigrant families to apply for legal immigration status for all eligible family members. High fees may limit the number of applications a family can afford,

resulting in applications only being filed by and for male heads-of-household. Fees must be on a sliding scale so that they are not cost-prohibitive for low-wage women workers.

- **Promote family reunification and reduce family visa backlogs:** Social constraints and lack of access to capital generally result in immigrant women disproportionately immigrating through family-based channels compared to men. However, long backlogs and bureaucratic delays exacerbate immigrant women's vulnerability, heightening women's dependency on partners and increasing the likelihood of exploitation by family members and employers. Measures to promote family reunification and reduce backlogs will thus particularly benefit immigrant women.
- **Improve personal security and autonomy by expanding access to independent immigration status:** Immigrant women's economic security is enhanced when they can independently obtain legal immigration status. Independent immigration status can also facilitate personal security and physical safety. When women attain legal status based upon a family relationship, other family members gain control over whether she ever attains legal status. This dynamic can jeopardize women's autonomy and safety. Immigration reform must create avenues through which more immigrant women can directly file family-based visa applications on their own behalf.
- **Eliminate local law-enforcement partnerships such as 287(g) and Secure Communities:** These partnerships result in undocumented immigrant women being drawn into the immigration-enforcement system as victims and witnesses of domestic violence and other crimes. Immigrant mothers and working women, who must drive to their children's school and to work, are stopped by police and arrested for driving without a license. Crime perpetrators, abusive spouses, and abusive and exploitative employers call DHS to report undocumented immigrant victims for deportation. This very effective power-and-control tactic silences crime victims and keeps them from seeking help. Finally, victims lack meaningful language access and knowledge about their legal rights and often end up arrested as crime perpetrators through the manipulation of abusive spouses and family members.
- **Reform the immigration-detention system in order to not re-victimize vulnerable immigrant women detainees.** Such reforms must include meaningful access to health services. All detainees should be screened and undergo a risk assessment that evaluates vulnerable immigrants such as crime victims, pregnant women, sole caretakers, and those with health conditions so that they can be allowed to seek alternatives to detention, humanitarian release, or release on their own recognizance.

Ensuring that immigrant women can overcome traditional immigration barriers will not only enable more women to succeed in their new lives, but will also ensure that comprehensive immigration reform is truly comprehensive and addresses the needs created by the broken immigration system.

Published On: **Mon, Jun 28, 2010** | [Download File](#) [1]

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