

**DREAMING A COMMON DREAM, LIVING A
COMMON NIGHTMARE: ABUSES AND
RIGHTS OF IMMIGRANT WORKERS IN THE
UNITED STATES, THE EUROPEAN UNION,
AND THE UNITED ARAB EMIRATES**

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I. INTRODUCTION	654
II. BACKGROUND: WHAT IS AN IMMIGRANT WORKER?	656
III. THE AMERICAN DREAM: IMMIGRANT WORKERS IN THE UNITED STATES	658
A. <i>The Immigrant Workers</i>	658
B. <i>The Awaiting Jobs (and Abuses)</i>	660
C. <i>The Laws and Rights of the Immigrant Workers in the U.S.</i>	662
IV. THE EUROPEAN UNION: DIFFERENT WORKERS, SAME NIGHTMARE	663
A. <i>European Labor Laws</i>	667
V. THE UNITED ARAB EMIRATES: A RUDE AWAKENING.....	669
VI. SAME TREATMENT, DAY OR NIGHT	673
A. <i>Abuses Occur Independently of Status</i>	673
B. <i>Inadequate Protection</i>	675

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654 *HOUSTON JOURNAL OF INTERNATIONAL LAW* [Vol. 31:3

VII. SWEET DREAMS AHEAD: FUNDAMENTALS FOR STRENGTHENING IMMIGRANT WORKERS' RIGHTS	685
A. <i>Protection for Immigrant Workers Could Stimulate Economic Growth</i>	685
VIII. TAKING ADVANTAGE OF POLITICAL AND LEGAL AVENUES	688
A. <i>Human Rights and Immigrant Workers</i>	688
B. <i>Freedom of Association is Critical</i>	689
C. <i>Temporary Guest Worker Programs</i>	690
IX. CONCLUSION	692

I. INTRODUCTION

Globalization—one of the greatest buzzwords of this nascent century—initiated the mingling of economies around the world.¹ However, globalization is not limited to cars and food, but also applies to labor. In the past half-century migration of individuals based principally on the desire to find work increased.² More and more individuals crossed borders and seas in search of work.³ This diaspora resulted in certain industries having a workforce comprised almost entirely of immigrant workers.⁴

Not surprisingly, this pattern was not confined to the United States. The European Union and several developing nations experienced a similar shift in the members of their available

1. See THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* (Farrar, Straus & Giroux 2000) (1999) (one writer's analysis of this "new" economic paradigm).

2. CONG. BUDGET OFFICE, *A DESCRIPTION OF THE IMMIGRANT POPULATION* 1 (2004).

3. See Neha Misra, *The Push & Pull of Globalization: How the Global Economy Makes Migrant Workers Vulnerable to Exploitation*, 14 HUM. RTS. BRIEF 2, 2 (2007) (stating that "[t]he demand for cheap labor is a crucial pull factor for labor migration.").

4. See Randy Capps et al., *A PROFILE OF THE LOW-WAGE IMMIGRANT WORKFORCE* 7 (2003), available at http://www.urban.org/UploadedPDF/310880_lowwage_immig_wkfc.pdf (listing occupations with large amounts of low wage immigrant workers including private household services, farming, forestry, fishing, precision production, crafts and repair, machine operators, and administrative support).

labor pool.⁵ However, the industries and jobs filled were not the same within the countries, and the immigrants that arrived to fill those jobs were from different countries.⁶ Businesses' focus on creating revenue, keeping costs low, and maximizing profits further fueled this transition.⁷ Today, as ever, labor constitutes a large portion of most firms' costs.⁸ Industries within the United Kingdom, Ireland, and France similarly have relied on cheap labor provided by immigrants.⁹

The United Arab Emirates (U.A.E.) provides an interesting example of this pattern progressing outside the United States or the European Union.¹⁰ Despite a common reliance on immigrant labor, however, these countries deal with the issue of immigrant workers' rights differently.¹¹ The level of protection in certain countries, such as the United States and the United Kingdom, differs from what an ordinary citizen of these respective states would expect. The enforcement of labor laws in the U.A.E. sits in contrast to that of United States or United Kingdom authorities,

5. See Kirsty Walker, *Influx of Eastern European Workers Has Driven Up Unemployment Rate*, MAIL ONLINE, Nov. 28, 2006, <http://www.dailymail.co.uk/news/article-419291/Influx-Eastern-European-workers-driven-unemployment-rate.html> (last visited Apr. 4, 2009).

6. See *Migrant Workers: What We Know*, BBC NEWS, Aug. 21, 2007, <http://news.bbc.co.uk/1/hi/uk/6957171.stm> (last visited Apr. 4, 2009) (describing how immigrant workers migrate to countries with varying types of labor shortages) [hereinafter *Migrant Workers*].

7. See David Bacon, *The Other Face of Globalization*, TRUTHOUT, Nov. 21, 2006, available at <http://www.truthout.org/article/david-bacon-the-other-face-globalization> (detailing how transnational corporations generally seek out the cheapest labor markets).

8. See ALAN HUFF, PUTTING COST BACK INTO PRICING: CALCULATING OVERHEAD PERCENTAGES, http://www.missouribusiness.net/docs/calc_overhead_percentage.asp (last visited Apr. 4, 2009) (defining direct and indirect labor costs and explaining how they figure into a percentage of any business' overhead).

9. See Nicholas Watt, *Migrant Workers from East Helping to Boost EU's Fortunes*, *Says Report*, THE GUARDIAN, Feb. 9, 2006, available at <http://www.guardian.co.uk/world/2006/feb/09/eu.politics1/print> (discussing how Eastern European immigrants have migrated to Western European countries resulting in economic growth).

10. *Dubai Skyscrapers: Monument to Worker's Exploitation*, ASIA NEWS, Nov. 14, 2006, <http://www.asianews.it/index.php?l=en&art=7743&size=A> (last visited Apr. 4, 2009).

11. See *infra* notes 139–46 and accompanying text (explaining the labor law of the U.A.E.).

but certain deficiencies exist in the enforcement of the West's labor laws as well.¹² Additionally, it is argued that the American judiciary has limited the rights of certain types of immigrant workers.¹³

This Comment explores the treatment of immigrant workers in these countries by comparing the laws governing and the rights afforded to their respective immigrant labor forces. It also examines ideas critical to the strengthening of immigrant workers' rights within these states.

This Comment begins by outlining the definition of immigrant worker and clarifying differences, if any, between "documented" and "undocumented" workers. Next, this Comment discusses the individual countries and compares their respective laws. This Comment will also describe the significant hurdles, if not complete barriers, governments have erected in the vindication of even the most basic rights. Finally this Comment proposes what could be done to better effectuate immigrant workers' rights.

II. BACKGROUND: WHAT IS AN IMMIGRANT WORKER?

Analysis of the rights afforded to immigrant workers requires determination of what constitutes an "immigrant worker" or a "migrant worker." International law, through the Migrant Workers Convention of December 1990, defines migrant worker as a person "engaged in a remunerated activity in a State of which he or she is not a national."¹⁴ The International Labour Organization (ILO) uses the term "migrant for employment" and focuses its definition on the overall goal of

12. See discussion *infra* pp. 33–40 (describing the dismal conditions experienced by immigrant workers in the U.A.E. despite its labor laws).

13. See, e.g., *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 535 U. S. 137, 150-52 (2002) (holding that undocumented employees cannot recover monetary damages for labor law violations); *cf.* *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001) (finding that individuals have no private right of action to bring disparate impact claims directly under Title VI of the Civil Rights Act of 1964).

14. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, art. 2, U.N. Doc. A/45/49 (Dec. 18, 1990) [hereinafter International Migration Convention].

immigrant-employment.¹⁵ Under the ILO, a migrant for employment is a person “who migrates from one country with a view to being employed otherwise than on his own account.”¹⁶

In the United States, different legislation affects notions of what can be considered an immigrant worker. Statutes indirectly related to employment or workers’ rights influence what constitutes an immigrant generally and therefore how an immigrant worker is treated.¹⁷ However, some statutes, such as the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), speak directly to immigrant labor.¹⁸ AWPA construes migrant worker as “an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.”¹⁹ The AWPA excludes temporary nonimmigrant aliens authorized to work under a temporary work visa.²⁰

The U.A.E. labor laws do not explicitly define immigrant worker or migrant worker.²¹ The U.A.E. adopts those definitions espoused by international law.²²

The most relevant definition, however, concerns what can be considered an immigrant worker or migrant worker for purposes of this Comment. In reviewing the definitions employed by

15. Convention Concerning Migration for Employment, art. 11, July 1, 1949, 72 U.N.T.S. 1952 (currently ratified by forty-seven countries, but not by the United States).

16. *Id.*

17. *See, e.g.*, Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, 3360, 3368 (1986) (defining “unauthorized alien” and making the employment of unauthorized aliens illegal); Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, 1259–68 (1996) (authorizing the removal of immigrants deemed to be alien terrorists); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996) (detailing criminal sanctions for illegal entry into the United States and restricting government benefits illegal immigrants are eligible to receive).

18. 29 U.S.C. § 1802(8) (2000).

19. § 1802(8).

20. § 1802(8).

21. *See* Federal Law No. 8 for 1980, On Regulation of Labor Relations (U.A.E.), art. 1 (defining relevant terms but not immigrant worker or migrant worker) [hereinafter U.A.E. Fed. Law No. 8].

22. *See id.* art. 13 (establishing that immigrant workers entering into the U.A.E. must be documented and have travelled from another country).

various bodies, a common thread in each is that a foreign national travels to a different country for the purposes of obtaining employment.²³ There is a temptation to import some restriction predicated on the existence of documents.²⁴ That is, to further refine the definition by adding the words ‘documented’ or ‘undocumented.’ As this Comment will demonstrate, documents seldom factor into how immigrant workers are treated. Practically speaking, being documented does not afford an immigrant worker substantially more rights than undocumented workers, neither in the United States nor abroad.²⁵ Distinguishing immigrant workers based on whether they possess certain documents borders on an arbitrary classification. Thus, for purposes of this Comment, an immigrant worker is a person who migrates from one country to another for the purposes of being employed, regardless of documentation. In this context, immigrant worker will also encapsulate migrant worker. Additionally, individuals, origins, and work performed will help define immigrant worker, generally, and within each country or region examined.

III. THE AMERICAN DREAM: IMMIGRANT WORKERS IN THE UNITED STATES

A. *The Immigrant Workers*

Immigration is a part of American life. It could be argued—and often is—that immigration is responsible for America itself.²⁶ According to the most recent census, approximately

23. United Nations Educational, Scientific and Cultural Organization (UNESCO), Glossary of Migration Related Terms: Migrant, http://portal.unesco.org/shs/en/ev.php-URL_ID=3020&URL_DO=DO_TOPIC&URL_SECTION=201.html (last visited Feb. 19, 2009).

24. See INTERNATIONAL ORGANIZATION FOR MIGRATION, HUMAN RIGHTS INSTRUMENTS, <http://iom.ch/jahia/Jahia/about-migration/migration-management-foundations/rights-obligations-migrants/human-rights-instruments/cache/offonce;jsessionid=E9A4C9E28F9076B5AC51CA667E23E6ED.worker02#> (last visited Feb. 19, 2009) (noting that international human rights conventions distinguish between documented and undocumented migrant workers).

25. See *infra* notes 148–64 and accompanying text.

26. Charles Hirschman, *The Impact of Immigration on American Society: Looking Backward to the Future*, Social Science Research Council, July 28, 2006, available at

2009] *IMMIGRANT WORKERS—U.S., E.U. & U.A.E.* 659

thirty to thirty-three million immigrants live in the United States.²⁷ Over two-thirds of the foreign-born population live in one of six states: California, Florida, Illinois, New Jersey, New York, and Texas.²⁸ In California, 26.2% of the population is foreign-born.²⁹ Mexicans constitute the highest percentage of the foreign-born population at 29.5%, while China and the Philippines are a distant second and third at 4.9% and 4.4% respectively.³⁰

Despite making up only 11% of the total population, immigrants comprise 14% of the labor force and 20% of the low-wage labor force.³¹ Latin America provides more than half of the foreign-born labor force, and about 22% is Asian.³²

Factors contributing to workers' migration include poverty and political instability in home countries.³³ Workers' remittances sent home account for large portions of certain countries' gross domestic products.³⁴ In some cases, the remaining nonimmigrants have no other source of income.³⁵ Some argue that the North American Free Trade Agreement (NAFTA) allowed cheap agricultural products to flow from the United States into Mexico, which displaced Mexican farmers

<http://borderbattles.ssrc.org/Hirschman/printable.html>.

27. U.S. Dep't of Commerce, *THE FOREIGN-BORN POPULATION IN THE UNITED STATES*, (2000), available at <http://www.census.gov/prod/2000pubs/p20-519.pdf>; see also AFL-CIO, *Immigrant Workers at Risk: The Urgent Need for Improved Workplace Safety and Health Policies and Programs*, Aug. 2005, available at http://www.aflcio.org/aboutus/laborday/upload/immigrant_risk.pdf.

28. AFL-CIO, *supra* note 27.

29. CONG. BUDGET OFFICE, *A DESCRIPTION OF THE IMMIGRANT POPULATION* 8 (2004).

30. *Id.* at 7–8.

31. Rebecca Smith et al., *Low Pay, High Risk: State Models for Advancing Immigrant Workers' Rights*, 28 N.Y.U. REV. L. & SOC. CHANGE 597, 597 (2004).

32. U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, *FOREIGN-BORN WORKERS: LABOR FORCE CHARACTERISTICS IN 2007* 1 (2008), available at <http://www.bls.gov/news.release/pdf/forbrn.pdf>.

33. Smith et al., *supra* note 31, at 597.

34. Richard Lapper, *US Migrant Workers Send Home \$62.3 bn*, FIN. TIMES, Mar. 15, 2007, http://www.ft.com/cms/s/0/f94e4d5c-d32b-11db-829f-000b5df10621.html?ncklick_check=1 (last visited Apr. 4, 2009).

35. Elisabeth Malkin, *Mexicans Miss Money from Relatives Up North*, N.Y. TIMES, Oct. 26, 2007, at A1.

into urban areas.³⁶ Increased competition for the urban jobs decreased associated wages and caused Mexican workers to migrate north across the border in search of jobs.³⁷

B. The Awaiting Jobs (and Abuses)

Migration northward from Mexico into the U.S. exposes the workers to dangerous and life-threatening conditions.³⁸ These people, despite crossing into the U.S. from Mexico are not only Mexicans, but nationals of other states using the United States' border with Mexico as a conduit.³⁹ This fact came to national attention after September 11 when many immigration reformists cited the relative ease of crossing the border as a cause of increased threats of terrorism.⁴⁰ The immigrant workers that survive the heat stroke, drowning risks, and murder threats⁴¹ fill low-paying and dangerous jobs in construction, manufacturing, farming, and meat and poultry processing.⁴² Foreign-born workers are drastically overrepresented in the service occupations and the construction and maintenance occupations.⁴³ Indeed, "[t]he industries in which immigrants are overrepresented are also known for

36. Misra, *supra* note 3, at 2.

37. *Id.*

38. See Smith et al., *supra* note 31, at 598 (citing causes and statistics related to the deaths of people trying to enter the United States from Mexico).

39. See, e.g., *U.S. Announces End of 'Catch and Release': Chertoff Says New 'Detain' Policy Means All Non-Mexicans Will be Returned Home*, WORLDNETDAILY, Aug. 23, 2006, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=51650 (last visited Apr. 4, 2009) (announcing the end of Homeland Security's policy of releasing non-Mexican illegal immigrants caught trying to cross the U.S.-Mexico border).

40. See, e.g., Faye Bowers, *U.S.-Mexican Border as a Terror Risk*, THE CHRISTIAN SCIENCE MONITOR, Mar. 22, 2005, at 1 (discussing the American officials' belief that terrorists are planning to use the U.S.-Mexican border as an entry point); see also Kevin Mooney, *Texas Sheriffs Say Terrorists Entering US from Mexico*, STUDENT NEWS DAILY, Aug. 21, 2006 (last visited Apr. 4, 2009) http://www.studentnewsdaily.com/daily-news-article/texas_sheriffs_say_terrorists_entering_us_from_mexico/ (confirming fears that Arabic-speaking individuals, likely to be terrorists, are learning Spanish and integrating into Mexican culture before paying smugglers to bring them into the United States).

41. Linda Kane, *Rescuing the Hopeless*, CUSTOMS & BORDER PROTECTION TODAY, May 2003, available at <http://www.cbp.gov/xp/CustomsToday/2003/May/hopeless.xml>.

42. U.S. DEPT OF LABOR, *supra* note 32, at 2.

43. See *id.*

2009] *IMMIGRANT WORKERS—U.S., E.U. & U.A.E.* 661

frequent violations of hour, wage, and overtime payment laws.”⁴⁴ For example, the working conditions and harsh treatment received by immigrant workers in the notoriously dangerous meat and poultry industry are well documented.⁴⁵ Furthermore, while the overall number of workplace fatalities dropped in the ten-year period from 1992 to 2002, the number of fatalities for foreign-born workers increased by an astounding 46%.⁴⁶ Not surprisingly, about two-thirds of these fatally injured workers were Latino.⁴⁷ The potentially life-saving work-place training, if employers bother with it at all, is often cursory or vitiating by language and literacy barriers.⁴⁸ A lack of adequate protective equipment and knowledge of workers’ rights, further increases the chance of serious injuries.⁴⁹

In addition to dangerous working conditions, immigrant workers face long hours at substandard wages, set too low to attract native workers, but appealing to immigrant workers with few options.⁵⁰ Moreover, these wages do not include overtime, as employers paying these wages have chosen to not pay overtime.⁵¹ In other instances, employers use threats of deportation or similar retaliatory action to prevent immigrant workers from associating and forming unions.⁵²

Some firms have been emboldened by recent Supreme Court decisions to preemptively “bust” any unions organized by

44. Smith, et al., *supra* note 31, at 600.

45. See HUMAN RIGHTS WATCH, BLOOD, SWEAT, AND FEAR: WORKERS’ RIGHTS IN THE U.S. MEAT AND POULTRY PLANTS 11, 16 (2004) (citing Upton Sinclair’s *The Jungle* and Eric Schlosser’s *Fast Food Nation*, books which illustrate how processing plants treat their workers and products).

46. AFL-CIO, *supra* note 27, at 3.

47. *Id.*

48. See, e.g., NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH PROJECT, *IMMIGRANT WORKERS AT RISK: A QUALITATIVE STUDY OF HAZARDS FACED BY LATINO IMMIGRANT CONSTRUCTION WORKERS IN THE TRIANGLE AREA OF NORTH CAROLINA* 5-7 (2000).

49. *Id.* at 10–11.

50. See M. Isabel Medina, Wal-Mart, Immigrant Workers and the U.S. Government—A Case of Split Personality?, 39 Conn. L. Rev. 1433, 1448–49 (2007).

51. *Id.* at 1456 (explaining Wal-Mart’s choice not to pay overtime wages).

52. Rebecca Smith, *Human Rights at Home: Human Rights as an Organizing and Legal Tool in Low-Wage Worker Communities*, 3 STAN. J. C.R. & C.L. 285, 292 (2007).

immigrant workers, some of whom may be undocumented.⁵³ The foundation for these abuses is general discrimination against immigrant workers. Such discrimination is evident in behavior like restricting the languages spoken at the workplace or exploiting social and cultural differences.⁵⁴

C. The Laws and Rights of the Immigrant Workers in the U.S.

In the United States, several laws provide workers with protection against unpaid wages, dangerous working conditions, and other abuses.⁵⁵ Federal statutes related to labor, and workforce treatment comprise a large portion of the U.S. Code and Federal Register.⁵⁶ For example, the Fair Labor Standards Act (FLSA) mandates that employers pay at least a minimum wage and overtime for hours worked in excess of forty.⁵⁷ The Occupational Health and Safety Act (OSHA) authorizes the Secretary of Labor to set mandatory health and safety standards for employers.⁵⁸ Migrant workers are further protected by specific laws within the Migrant and Seasonal Agricultural Workers Protection Act (AWPA) that requires employers to pay migrant workers their wages when due.⁵⁹ The United States' labor laws generally apply to workers regardless of their immigration status.⁶⁰ However, while the opportunity for

53. See *Workers, Know Your Rights; Supreme Court Ruling Does Not Strip Undocumented Workers of their Labor Rights*, LA PRESA SAN DIEGO, Aug. 2, 2002, <http://www.laprensa-sandiego.org/archieve/august02-02/workers.htm> (last visited Apr. 5, 2009).

54. *Id.* at 603–04.

55. See, e.g., Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–02 (2000); Occupational Safety & Health Act, 29 U.S.C. § 651 (1994).

56. See, e.g., 29 U.S.C. § 202(a) (2000); 29 C.F.R. § 1902.1(a) (2008).

57. 29 U.S.C. §§ 206–07 (2000).

58. 29 U.S.C. § 655(a) (2000).

59. 29 U.S.C. §§ 1801 & 1822(a) (2000).

60. WAGE & HOUR DIV., U.S. DEP'T OF LABOR, FACT SHEET #48: APPLICATION OF U.S. LABOR LAWS TO IMMIGRANT WORKERS: EFFECT OF HOFFMAN PLASTICS DECISION ON LAWS ENFORCED BY THE WAGE AND HOUR DIVISION 1 (2008) (stating that the *Hoffman* decision does not exclude all undocumented workers from having rights under U.S. labor laws other than the NLRA); see also Press Release, U.S. Equal Employment Opportunity Comm'n, EEOC Reaffirms Commitment to Protecting Undocumented Workers from Discrimination (June 28, 2002), available at <http://www.eeoc.gov/press/6-28-02.html>.

2009] *IMMIGRANT WORKERS—U.S., E.U. & U.A.E.* 663

redress may exist on paper, obstacles have been erected to hinder vindication of these rights.⁶¹

IV. THE EUROPEAN UNION: DIFFERENT WORKERS, SAME NIGHTMARE

The European Union (EU) originally consisted of six members: Belgium, France, Germany, Italy, Luxembourg, and the Netherlands.⁶² Over the years the European Union has grown to include other countries, and after the most recent additions, it now consists of twenty-seven member states.⁶³ Over the past thirty years, increased EU membership led to increased intra-EU migration and an increase in the diversity of the immigrants as well as the complexity of their legal status.⁶⁴ The total number of nonnationals living in the European Union in 2004 was around 25 million, or just below 5.5% of the total population.⁶⁵ The largest members of the EU exhibit a positive migration balance, that is, they accept more immigrants than they lose.⁶⁶

In 2004, ten new states joined the EU.⁶⁷ At that time, the fifteen incumbent states were “[w]orried about the potential of being overwhelmed by workers moving from poorer, new

61. See Konard Batog, *Immigration Policy v. Labor Policy: An Analysis of the Application of Domestic Labor Laws to Unauthorized Workers*, 3 LOY. U. CHI. INT’L L. REV. 117, 121–22 (2005–06) (discussing several cases where undocumented workers were denied remedies under both federal and state labor laws).

62. Europa: Key Facts and Figures about Europe and the Europeans, The European Union — A Growing Family, http://europa.eu/abc/keyfigures/growingfamily/index_en.htm (last visited Apr. 4, 2009).

63. Europa: Key Facts and Figures about Europe and the Europeans, The European Union — A Success Story, http://europa.eu/abc/keyfigures/successstory/index_en.htm (last visited Apr. 4, 2009).

64. EUROPEAN PLATFORM FOR MIGRANT WORKER’S RIGHTS, THE RIGHTS OF MIGRANT WORKERS IN THE EUROPEAN UNION, 2006 SHADOW REPORTS FOR ESTONIA, FRANCE, IRELAND AND THE UNITED KINGDOM 16 (2006).

65. EUROSTAT, STATISTICS IN FOCUS: NON-NATIONAL POPULATIONS IN THE EU MEMBER STATES 1 (2006).

66. Rainer Muenz, *Europe: Population and Migration in 2005*, MIGRATION INFORMATION SOURCE, June 2006, <http://www.migrationinformation.org/Feature/display.cfm?ID=402> (last visited Apr. 4, 2009).

67. Europa, *supra* note 62.

Member States to richer, old ones[.]”⁶⁸ In order to protect their economies, several of the founding countries such as France and Germany restricted immigration of immigrants from the new member states by including so-called “transitional” clauses in their treaties with the new members.⁶⁹ Such transitional clauses usually last seven years.⁷⁰ Some countries, like the United Kingdom and Ireland, chose not to restrict access to the new members in 2004.⁷¹ This trend repeated itself in 2007 after Bulgaria and Romania became EU members.⁷² Restrictions aside, the “old” countries did experience a rise in immigration since the addition of the new members in 2004.⁷³ However, immigration to restriction-free states was larger than anticipated.⁷⁴ For example, in 2006, immigration from Eastern Europe into Great Britain totaled more than 200,000 individuals.⁷⁵ The greatest number of immigrants hailed from Poland, Lithuania, and Slovakia.⁷⁶ Statistics indicate that over 80% of the workers migrating to the United Kingdom are under thirty-four years of age.⁷⁷ Most immigrant workers took jobs in administration and business, as well as hospitality and catering.⁷⁸ This trend is not confined to the United Kingdom. Ireland, which maintained its borders without restrictions after 2004, also has seen the growth of its immigrant workforce.⁷⁹ In

68. Catherine Drew & Dhananjayan Sriskandarajah, *EU Enlargement in 2007: No Warm Welcome for Labor Migrants*, MIGRATION INFORMATION SOURCE, Jan. 1, 2007, <http://www.migrationinformation.org/Feature/print.cfm?ID=568> (last visited Apr. 4, 2009).

69. *Id.*

70. *Id.*

71. *Id.* tbl. 1.

72. *Id.* The United Kingdom and Ireland joined the ranks of countries imposing restrictions in 2007. *Id.* tbl. 1.

73. *Id.* (citing facts and statistics from Austria as an example).

74. *Id.*; see also Migrant Workers, *supra* note 6 (both citing larger-than-predicted immigration into the UK).

75. Watt, *supra* note 9; see also Richard Ford, *Britain is Taking in 20,000 New EU Migrant Workers Each Month*, THE TIMES (London), Feb. 28, 2007, at 24.

76. *Id.*

77. Migrant Workers, *supra* note 6.

78. Ford, *supra* note 75, at 24.

79. Declan Moylan, *Immigration has replaced emigration as a feature of Irish life*, MASON HAYES & CURRAN, Mar. 2006, <http://www.mhc.ie/filestore/documents/>

fact, even before the addition of these new member states in 2004, certain countries experienced an increase in immigrant labor.⁸⁰ For example, at the turn of the century, Italy's immigrant workers comprised a large portion of its low-skilled labor force.⁸¹ Interestingly, Sweden, which also decided to not impose restrictions, did not experience a similar increase.⁸²

The immigrant workers in the European Union, like their counterparts in America, find themselves subject to abuses at the hands of unscrupulous employers.⁸³ "Throughout Europe, migrants are vilified, abused and confined to the margins of societies" despite providing "essential labour in low-skilled industries such as construction, agriculture and domestic work."⁸⁴ One of the more common abuses is the nonpayment of wages, either through outright refusals to pay for time worked or through unauthorized or dubious deductions.⁸⁵ One such deduction is for the "accommodations" provided by the employers.⁸⁶ An undercover journalist describes these accommodations:

Immigration_has_replaced_emigration_as_a_feature_of_Irish_life_by_Declan_Moylan_March_2006.pdf (last visited Apr. 5, 2009).

80. See Charalambos Kasimis, *Migrants in the Rural Economies of Greece and Southern Europe*, MIGRATION INFORMATION SOURCE, Oct. 2005, <http://www.migrationinformation.org/Feature/display.cfm?ID=337> (last visited Apr. 4, 2004).

81. Marco Trentini, *Demand for Immigrant Workers Increases*, EIRONLINE Nov. 28 2000, <http://www.eurofound.europa.eu/eiro/2000/11/feature/it0011362f.htm> (last visited Apr. 4, 2009).

82. Drew & Sriskandarajah, *supra* note 68 (citing a heavily regulated Swedish labor market and language factors as reasons why the EU labor migration did not affect Sweden).

83. Press Release, Amnesty Int'l, Europe: Migrant Workers' Denied Fundamental Rights (Apr. 29, 2005), *available at* <http://www.amnesty.org/en/library/asset/EUR01/005/2005/en/dom-EUR010052005en.pdf>.

84. *Id.*

85. *Migrant Workers 'Being Exploited'*, BBC NEWS, Sept. 4, 2007, <http://news.bbc.co.uk/2/hi/business/6977500.stm> (last visited Apr. 4, 2009); *see also* Audrius Lelkaitis, *Joining the Immigrant Underclass*, BBC NEWS, Apr. 25, 2007, http://news.bbc.co.uk/2/hi/uk_news/6593469.stm (last visited Apr. 4, 2009) (chronicling the trials of being a low-skilled immigrant worker in the United Kingdom, including, poor housing and working conditions, and below-poverty level wages).

86. Lelkaitis, *supra* note 85.

My room slept 12 men and women. Another 10 workers lived in several rooms upstairs. Another three were crammed in a camper van nearby, and all of us shared three toilets and two showers. The beds were so close my neighbors had a nasty habit of throwing their hands at me in their sleep. Every evening, mature women had to put on their nightclothes facing semi-naked men. It was demoralizing and degrading.⁸⁷

Working conditions present another common characteristic of the immigrant workers' plight.⁸⁸ Across the EU, immigrant workers must deal with substandard health and safety conditions both on the job and at home.⁸⁹ Workers must share sleeping areas, bathrooms, and kitchens designed for fewer inhabitants.⁹⁰ Even the cars and buses hauling the workers to and from the jobs are dangerously overcrowded.⁹¹

Immigrant workers in the European Union must also contend with sharp practices by agencies trying to arrange employment for the workers.⁹² For a nontrivial fee, these employment agencies, or so-called "gangmasters," arrange labor

87. *Id.*

88. See, e.g., Jane Ellis, *Gangmaster Authority Exposes Violations in Raid on Packaging Site*, PACKAGINGNEWS, Dec. 19, 2007, <http://www.packagingnews.co.uk/news/774125/Gangmaster-Authority-exposes-violations-raid-packaging-site> (last visited Apr. 4, 2009) (describing working conditions); see also Iñigo Isusi & Antonio Corral, *Immigrants Benefit Economy but Experience Poor Working Conditions*, EUROFOUND, Feb. 19, 2007, <http://www.eurofound.europa.eu/ewco/2007/01/ES0701039I.htm> (last visit Apr. 4, 2009) (referring to poor working conditions of immigrants).

89. MARRIT VARTIA-VÄÄNÄNEN ET. AL., EUROPEAN AGENCY FOR HEALTH AT WORK, LITERATURE STUDY ON MIGRANT WORKERS 24, 29, 32, 37 (Eusebio Rial González & Xabier Irastorza eds.), available at http://osha.europa.eu/en/publications/literature_reviews/migrant_workers. see also Claire Bigg, *Russia: Migrant Workers Struggle to Build Lives Amid Poverty, Abuse*, RADIO FREE EUR./RADIO LIBERTY, Nov. 8, 2005, <http://www.rferl.org/content/Article/1062756.html> (last visited Apr. 4, 2009) (documenting the workers' substandard living conditions and susceptibility to corruption amid the construction boom in twenty-first century Moscow).

90. See, e.g., Hsiao-Hung Pai, *Inside the Grim World of the Gangmasters*, THE GUARDIAN, Mar. 27, 2004, available at <http://www.guardian.co.uk/uk/2004/mar/27/china.immigration> (describing the conditions in a workers bedroom, bathroom, and kitchens).

91. See *id.* (indicating the overcrowded conditions on a minibus transporting workers).

92. See *id.* (documenting the excessive fees charged to an immigrant worker in the United Kingdom by a recruiter).

2009] *IMMIGRANT WORKERS—U.S., E.U. & U.A.E.* 667

for industries such as manufacturing, farming, and fishing.⁹³ Some governments heavily regulate and scrutinize these gangmasters.⁹⁴ Despite this regulation, however, gangmasters continue to prey on immigrants trying to find work.⁹⁵ On top of the initial fee they charge the immigrants, these middlemen withhold pay and arbitrarily deduct from workers' wages.⁹⁶ Additionally, the gangmasters charge fees for lodging, travel, and acquiring necessary documents.⁹⁷

A. *European Labor Laws*

The EU follows a comprehensive system of labor law and work organization.⁹⁸ This system addresses areas such as employer insolvency and what constitutes a workday.⁹⁹ Additionally, the International Labour Organization provides protection for all workers, immigrant or otherwise, by providing

93. See Michael Wynn, *Regulating Rogue? Employment Agency Enforcement and Sections 15–18 of the Employment Act 2008*, 28 INDUS. L. J. 64, 70–71 (2009).

94. GANGMASTERS LICENSING AUTH., MISSION STATEMENT, <http://www.gla.gov.uk/index.asp?id=1012760> (last visited Apr. 4, 2009); see also Gangmasters (Licensing) Act, 2004 (Eng.) (empowering the GLA to license gangmasters, listing offenses gangmasters must not commit, and providing an enforcement mechanism should these offenses be committed); George Reynolds, *Two UK Food Processors Face Illegal Labour Prosecution*, FOOD PROD. DAILY, Mar. 2, 2007, <http://www.foodproductiondaily.com/Processing/Two-UK-food-processors-face-illegal-labour-prosecution> (documenting a United Kingdom regulator's prosecution and investigation of gangmasters).

95. See Pai, *supra* note 90 (documenting ways in which gangmasters take advantage of immigrants seeking employment).

96. *Id.* (“The middleman made unexplained deductions from time to time, and we could never tell whether we would get paid for the next day. We . . . worked on Christmas Day, for which we didn't get paid. It was so horrible because we depended on our jobs to pay rent and food. In the end, the middleman refused to pay us at all; not a penny.”).

97. *Id.* (“When the shift finished at 11:30pm, we went out to the gate to wait for the minibus to collect us. It was a half-hour wait in the cold rain. We were all annoyed at the fact that £2 is being deducted daily for transport from our wages.”).

98. Marley S. Weiss, *Reflection on Labor/Employment Developments in the European Union*, ABA 8, <http://www.abanet.org/labor/lel-annualcle/08/materials/data/papers/128.pdf> (last visited Apr. 4, 2009); see also Federation of European Employers, EU and International Law: Employment and Social Affairs, <http://www.fedee.com/international.html> (last visited Apr. 4, 2009) (listing various EU Directives applicable to employment).

99. Federation of European Employers, *supra* note 98.

two fundamental standards related to migrant workers: Convention No. 97 of 1949 concerning Migration for Employment and Convention No. 143 of 1975 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.¹⁰⁰ Convention No. 97 contains provisions dealing with employment conditions, hours of work, association, and discrimination.¹⁰¹ Convention No. 143 deals with immigrant workers in abusive situations and the treatment afforded to them.¹⁰² Convention No. 143 also sought to safeguard immigrant workers' cultural rights and to "preserve their national and ethnic identity and their cultural ties with their country of origin."¹⁰³

The ILO stresses that member states must implement and respect fundamental workers' rights within the ILO framework.¹⁰⁴ By ratifying the conventions of the ILO, a country binds itself to ensuring that employers within the country respect the rights of the workers as needed by law, regulation, and prosecution.¹⁰⁵ The problem arises in that the EU is not a single state, and member states must implement the EU labor directives into their respective bodies of law.¹⁰⁶ Each country

100. Int'l Labour Org. [ILO], *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*, C143 (June 24, 1975), available at http://www.unhcr.org/refworld/category_LEGAL,ILO,,3ddb6ba64,0.html [hereinafter C143]; ILO, *Convention concerning Migration for Employment*, C97 (Jan. 7, 1949), available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddb64057&skip=0&query=Convention%20concerning%20Migration%20for%20Employment> [hereinafter C97].

101. C97, *supra* note 100, arts. 6–10.

102. C143, *supra* note 100, arts. 1–10.

103. *Id.* art. 12.

104. See ILO, *Declaration on Fundamental Principles and Rights at Work* (June 1988), available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=425bbdf72&skip=0&query=Declaration%20of%20fundamental%20principles%20and%20rights%20at%20work> [hereinafter ILO Declaration].

105. *Id.*

106. EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS, ENFORCEMENT OF EC LAW, available at <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/enforcementofeclaw.htm> ("In the EU Member States, the administrations responsible for enforcing laws on employment and industrial relations include both general bodies, in the form of labour ministries, and specialist bodies—for example, health and safety inspectorates and equal opportunity commissions.").

carries the burden of investigating and enforcing potential violations, albeit with certain guidelines from the EU.¹⁰⁷ As a result, violations that may be uncovered in one member state may be routine practice in another.¹⁰⁸ Complicating matters further, the EU's approach to immigrant workers' rights is subject to political influence and the independent national policies among the different member-states.¹⁰⁹

V. THE UNITED ARAB EMIRATES: A RUDE AWAKENING

Traditionally, the oil sector fueled the U.A.E.'s economy.¹¹⁰ However, in recent years, businesses in sectors such as retail trade, construction, and tourism have shown growth by double digit percentages.¹¹¹ Immigrant workers, mainly from the Indian subcontinent and south Asia, constitute approximately 95% of the U.A.E.'s workforce.¹¹² In fact, only about 20% of the U.A.E.'s population are citizens.¹¹³ It is recognized that the U.A.E.'s booming construction industry depends heavily on an immigrant workforce.¹¹⁴ Over half a million migrant construction workers live and work in the U.A.E.¹¹⁵ These workers are almost exclusively illiterate males between eighteen

107. *Id.*

108. EUROPEAN PLATFORM FOR MIGRANT WORKER'S RIGHTS, *supra* note 64, at 16–17 (describing how EU member states often have conflicting agendas and approach the problem of migrant workers differently).

109. *Id.*; see also *Latvian Firm Tests EU Labor Laws*, BBC NEWS, Jan. 9, 2007, available at <http://news.bbc.co.uk/2/hi/europe/6245551.stm> (describing a case in which a Latvian firm offers Latvian pay and conditions for work done in Sweden).

110. See UAE Oil and Gas, Introduction, http://www.uae.gov.ae/Government/oil_gas.htm#Introduction (last visited Apr. 4, 2009).

111. Human Rights Watch, *Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates*, HUM. RTS. WATCH, Nov. 2006, at 21 [hereinafter Human Rights Watch U.A.E. report].

112. *Dubai Skyscrapers: Monument to Workers' Exploitation*, ASIANEWS, Nov. 14, 2006, <http://www.asianews.it/index.php?1=en&art=7743>; see also Human Rights Watch U.A.E. report, *supra* note 111, at 6 (stating that approximately 95% of the workforce is migrant).

113. Human Rights Watch U.A.E. report, *supra* note 111, at 21.

114. Natalie Huls, et. al., *International Legal Updates*, HUM. RTS. BRIEF, Winter 2007, at 49–50 (“Dubai’s booming construction and service industries are wholly dependent on unskilled, cheap migrant labor, primarily from South Asia.”).

115. Human Rights Watch U.A.E. report, *supra* note 111, at 21–24.

and sixty years of age from India, Pakistan, Bangladesh, and Sri Lanka.¹¹⁶ A large part of the labor force also includes female domestic workers, primarily from Sri Lanka.¹¹⁷

The average immigrant construction worker in the U.A.E. earns about \$175 a month, or less than 10% of the average per capita income in the U.A.E.¹¹⁸ Additionally, local recruiting agencies handle the distribution of the labor to the various employers, a practice similar to the gangmasters of the United Kingdom.¹¹⁹ The recruitment process begins in the workers' home countries.¹²⁰ Workers pay the agencies large fees up front, in the range of \$2,000–\$3,000, to obtain visa sponsorship in the U.A.E.¹²¹ The immigrant workers borrow the money for these fees from the agencies themselves, and the majority of their subsequent wages goes toward repaying this debt.¹²²

Unpaid wages constitute the most common complaint among immigrant workers in the U.A.E.¹²³ Withholding of wages amounts to common practice among employers.¹²⁴ Withholding of wages effects the immigrant's ability to survive, and more important, this denial of full wages has several downstream repercussions.¹²⁵ Withholding wages has come to be known as a custom among employers that is used to hold the immigrant workers hostage and prevent them from running away.¹²⁶

Upon arrival to the U.A.E., workers find accommodations lacking—typically labor camps set up at the outskirts of the

116. *See id.* at 22–23.

117. *Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates*, HUM. RTS. WATCH, Nov. 2007, at 15–16 [hereinafter *Sri Lankan Domestic Worker report*].

118. Human Rights Watch U.A.E. report, *supra* note 111, at 23.

119. *See id.* (noting the fees these immigrants paid to local recruitment agencies).

120. *Id.* at 26.

121. *Id.* at 23.

122. *Id.* at 27–29.

123. Human Rights Watch U.A.E. report, *supra* note 111, at 29.

124. *Id.*

125. *Id.* (“The impact on workers whose wages are withheld for even one month is very serious: they immediately fall into arrears on the debt they owe recruiting agencies in their home countries; they incur additional interest; and they are unable to send money home to their families, who depend on income earned in the UAE.”).

126. *Id.* at 30.

town.¹²⁷ A dwelling typically consists of a small room (twelve feet by nine feet) containing three to four bunk beds shared by as many as eight workers.¹²⁸ The workers use communal bathrooms and showers outside their rooms.¹²⁹

The working conditions are even worse.¹³⁰ Official statistics do not even come close to representing the total accidents, injuries, and fatalities that befall immigrant workers on these construction sites.¹³¹ Private research estimates that in 2004, 880 immigrant workers died as a result of on-the-job accidents in the U.A.E.¹³² Further, the immigrant workers toil in a climate where the mean maximum temperatures for half the year exceed ninety degrees Fahrenheit with over 80% humidity.¹³³ According to the World Safety Organization, heat-related illnesses are the most important health issue facing construction workers in the U.A.E.¹³⁴ Finally, the unending abuse and decrepit conditions become an intolerable situation for some, which leads them to commit suicide.¹³⁵

The treatment of immigrant domestic workers in the U.A.E. mirrors that of their counterparts in construction. About 70% of the registered Sri Lankan immigrant workers in the U.A.E. are domestic workers.¹³⁶ They, too, must also deal with gangmasters and exploitative recruitment agencies.¹³⁷ Immigrant domestic

127. *See id.* at 29.

128. *Id.* at 23–24.

129. *Id.* at 24.

130. *See id.* at 40 (noting the safety hazards of the working site).

131. *See id.*

132. *Id.* at 40 (citing *Site worker death toll exceeds 800*, No. 83 CONSTRUCTION WEEK, Aug. 6–19, 2005).

133. *Id.* at 41.

134. *Id.* (citing, *Many Victims of heatstroke are not being accurately diagnosed by A&E hospital staff*, No. 83 CONSTRUCTION WEEK, Aug. 6–19, 2005) (noting a statistic that about 5,000 workers suffering from heat-related illnesses were brought into a hospital in Dubai).

135. *E.g., id.* at 46–47 (recounting the story of one worker who, after falling behind on his debts and being denied his wages, hung himself from the ceiling of the bathroom at his camp).

136. Sri Lankan Domestic Worker report, *supra* note 117, at 16.

137. *See id.* at 22–38 (detailing how agents and subagents exploit workers with fees).

workers in the U.A.E. experience a unique abuse on top of the more common abuses like unpaid wages—physical and emotional abuse at the hands of their employers.¹³⁸

The U.A.E. has implemented a federal labor law applicable to the entire country.¹³⁹ The labor law includes articles on the recruitment of workers, maximum working hours, overtime, industrial health and safety, and personal health and disability benefits.¹⁴⁰ The labor law also outlines the penalties for violations including fines and imprisonment.¹⁴¹ The U.A.E. is a member of the ILO and has ratified six of the eight core conventions, including those covering working hours, forced labor, child labor, and discrimination.¹⁴²

Enforcement of the U.A.E. labor law rests with officials and inspectors of the Ministry of Labor who are given the status of “judicial officers for the purposes of the application of this Law [the labor law] and its executive regulations and orders.”¹⁴³ Some of the emirates have expanded upon this and established Permanent Committees on Labor Affairs to mediate labor disputes.¹⁴⁴ Moreover, the U.A.E. government requires employers to post bank guarantees as part of the procedure for obtaining a permit to sponsor immigrant workers.¹⁴⁵ In the

138. *Id.* at 55.

“The physical abuse women reported included beatings, deliberate burning with hot irons, kicking, slapping, and hair-pulling. Domestic workers told Human Rights Watch that their employers had beat them with their hands, slippers, rubber hoses, a vacuum cleaner, basins, wires, chairs, wooden planks, broomsticks, knives, an iron bar, and in one case, a cane.”

Id.

139. *See generally* U.A.E. Fed. Law No. 8, *supra* note 21.

140. *See id.* arts. 20, 91, 144–51.

141. *Id.* art. 181.

142. *See* UNITED NATIONS DEV. PROGRAMME, HUMAN RIGHTS PROFILES: UAE, <http://www.arabhumanrights.org/en/countries/humanrights.asp?cid=21> (last visited Apr. 5, 2009).

143. U.A.E. Fed. Law No. 8, *supra* note 21, art. 188.

144. Human Rights Watch U.A.E. report, *supra* note 111, at 54.

145. *Id.* at 55.

2009] *IMMIGRANT WORKERS—U.S., E.U. & U.A.E.* 673

event of nonpayment of wages, the government is authorized to liquidate these accounts in favor of the immigrant workers wages.¹⁴⁶

VI. SAME TREATMENT, DAY OR NIGHT

Despite being from different lands, the immigrant workers upon which the United States, the E.U., and the U.A.E. build their economies share common struggles.¹⁴⁷

A. *Abuses Occur Independently of Status*

A common position, especially in the United States, is that the perils previously discussed confine themselves to jobs performed by undocumented workers.¹⁴⁸ That is, abuses are limited to so-called illegal immigrants.¹⁴⁹ This position ignores several facts that indicate the “document-independence” of these abuses. That is, around the world, immigrant workers suffer abuses regardless of whether they migrated legally or not.¹⁵⁰ First, employers pay more attention to their bottom lines than to the existence of documents.¹⁵¹ Some argue that immigrants perform jobs that natives do not want, find demeaning, or simply refuse to do.¹⁵² On the other hand, the service, construction, and agriculture industries that rely on low wage workers employ a mix of documented and undocumented workers.¹⁵³ Additionally, employers discriminate against native workers because of the immigrant workers’ vulnerable legal

146. *Id.*

147. *See generally* notes 148–51 and accompanying text.

148. Stefanie Grant, *Migrant’s Human Rights: From the Margins to the Mainstream*, MIGRATION INFORMATION SOURCE, Mar. 1, 2005, available at <http://www.migrationinformation.org/feature/print.cfm?ID=291> (“Where a migrant enters another country illegally, or enters legally and subsequently loses legal status, vulnerability to abuse and exploitation increases.”); *see also* Smith, *supra* note 52, at 302–06.

149. *See* Bill Ong Hing, *The Case for Amnesty*, 3 STAN. J. CIV. RTS. & CIV. LIBERTIES 233, 236–37 (2007).

150. *See* Grant, *supra* note 148.

151. *See* Misra, *supra* note 3, at 2.

152. Rachel Bloomekatz, *Rethinking Immigration Status Discrimination and Exploitation in the Low-Wage Workplace*, 54 UCLA L. REV. 1963, 1972 (2007).

153. Smith, *supra* note 52, at 288.

status and different social institutions, which make them more susceptible to exploitation.¹⁵⁴ That is, employers prefer immigrant workers because they believe that they are less likely to complain or seek to negotiate about working conditions or wages.¹⁵⁵ Also, worldwide demand for cheap, immigrant labor exists and will continue to exist since much of the immigrant workforce performs such jobs simply because they must.¹⁵⁶ Finally, while undocumented immigrants are most vulnerable to workplace abuse, they are certainly not alone in their exposure to “low-road behavior by employers.”¹⁵⁷ “When a portion of the workforce . . . is exposed to daily threats to an already meager living standard and to their very lives, co-workers suffer, too.”¹⁵⁸

The EU countries hosting some of the more egregious immigrant worker abuses allow immigrants entry in accordance with economic needs.¹⁵⁹ Nevertheless, the lack of a single, clear definition of what constitutes an immigrant worker allows for their exploitation in some countries.¹⁶⁰ Exploitation results from the inherent nature of the labor markets within these countries or from an infrastructure insufficient to allow adequate assimilation into the host society.¹⁶¹ In the U.A.E., immigrant workers take out loans from recruiters to arrange the paperwork and fees for their employment visas.¹⁶² However, these visas

154. *Id.* at 287.

155. *Id.* at 288–89.

156. North Carolina Occupational Safety and Health Project, *Immigrant Workers at Risk: A Qualitative Study of Hazards faced by Latino Immigrant Construction Workers in the Triangle Area of North Carolina*, 1 (June 2000), available at <http://www.coshnetwork.org/sites/default/files/cpwrstudy.pdf>.

We work fast and hard. The whites are more likely to fight for their rights. The bosses know the Mexicans come here out of necessity and they require more work from us. . . The Mexicans will work for less... [sic] The companies take advantage . . . because they won't complain and they don't speak English.

Id. at 2.

157. Smith, *supra* note 52, at 294.

158. *Id.*

159. See, e.g., EUROPEAN PLATFORM FOR MIGRANT WORKER'S RIGHTS, *supra* note 64, at 59 (referencing problems in France).

160. See, e.g., *id.* at 82–83 (referencing the lack of a definition in the U.K.).

161. See generally *id.* at 55–57.

162. See *supra* notes 120–21 and accompanying text.

2009] *IMMIGRANT WORKERS—U.S., E.U. & U.A.E.* 675

offer little assistance to workers denied wages or subjected to dangerous living and working conditions, especially as routine confiscation of passports in direct violation of U.A.E. law has woven its way into the “business culture.”¹⁶³ In fact, the U.A.E. represents not only the document-independence of the workers’ abuses, but also the irrelevance of having migrated legally.¹⁶⁴

B. Inadequate Protection

Some argue that immigrant workers have adequate protection under the laws of their respective host countries.¹⁶⁵ This position errs in that it: (1) confuses rights with enforceable rights; (2) assumes that all workers recognize or understand their rights; and (3) assumes that workers will, in the end, exercise their rights.¹⁶⁶ Immigrant workers, because of legal, economic, or political obstacles, cannot rely on their host countries for protection of their labor and even human rights.¹⁶⁷ Putting these obstacles in separate categories, however, undermines the significant interplay between them.¹⁶⁸

United States immigration law comprises a substantial legal obstacle by limiting avenues for legal citizenship, for example.¹⁶⁹ Immigration laws reflect essentially a presumption that persons must be authorized by the U.S. government to work in the United States.¹⁷⁰ In fact, immigration law can be viewed as perpetuating the ill treatment of immigrant workers.¹⁷¹ The current framework for dealing with employment issues fails to allow and promote lawful employment-based flow of immigrants.¹⁷²

163. Human Rights Watch U.A.E. report, *supra* note 111, at 39; *see id.* at 16, 34.

164. *See generally id.* at 26, 38–39.

165. *See, e.g.,* Stella Jane Elias, “Good Reason to Believe”: Widespread Constitutional Violations in the Course of Immigration Enforcement and the Case for Revisiting Lopez-Mendoza, 2008 WIS. L. REV. 1109, 1122–23 (2008).

166. *See, e.g.,* Bloomekatz, *supra* note 152, at 1974.

167. *See* Human Rights Watch U.A.E. report, *supra* note 111, at 2, 6.

168. *See, e.g.,* Smith, *supra* note 52, at 287.

169. *See, e.g.,* 8 U.S.C. § 1182(a) (listing classes of inadmissible aliens).

170. *See* 8 U.S.C. § 1101.

171. Medina, *supra* note 50, at 1447–48.

172. *Id.* at 1448.

Immigrant workers face negative immigration consequences inapplicable to U.S. workers.¹⁷³ Even those workers with temporary visas or legal permanent residence are subject to deportation for minor criminal or domestic abuse violations.¹⁷⁴ Additionally, workers with temporary work visas, such as H-2A or H-2B, find themselves more susceptible to misconduct by unscrupulous employers, since the visa is tied to a particular employer.¹⁷⁵ Furthermore, the number of available temporary employment visas for immigrants pales in comparison to the demand for their labor.¹⁷⁶ This demonstrates one example of how immigration law can unite with economic factors to propagate exploitation of the immigrant worker.¹⁷⁷

The Immigration Reform and Control Act of 1986 (IRCA) makes it unlawful: (1) to hire, recruit, or refer for a fee an alien with the knowledge that the alien is an unauthorized alien; (2) to continue to employ an alien knowing that the alien is unauthorized; or (3) to fail to verify the legal status of all new employees.¹⁷⁸

Immigration laws such as IRCA played a key role in a Supreme Court decision that attempted to reconcile immigration and labor statutes.¹⁷⁹ In *Hoffman Plastic Compounds, Inc. v. NLRB*, the Supreme Court held that the National Labor Relations Board could not award back pay to an undocumented person for his employer's violation of the worker's rights under the National Labor Reform Act (NLRA).¹⁸⁰ Jose Castro, a Hoffman Plastic Compounds employee fired for attempting to

173. See 8 U.S.C. § 1182(a)(5)(a) (listing as inadmissible any alien who seeks to enter the United States for the purposes of performing skilled or unskilled labor, unless the alien meets certain requirements).

174. Bloomekatz, *supra* note 152, at 1973 n.40.

175. *Id.* at 1967, 1973–74; Southern Poverty Law Center, *H-2B Guestworkers Facing Rampant Abuse*, Apr. 16, 2008, <http://www.splcenter.org/news/item.jsp?aid=309> (last visited Apr. 5, 2009); see 8 C.F.R. § 214.2(g)(1)(B), 214.2(h)(6)(ii) (2006).

176. See Medina, *supra* note 50, at 1449–51; see also 8 U.S.C. § 1151(d).

177. See, e.g., Medina, *supra* note 50, at 1451.

178. 8 U.S.C. § 1324a(a)(1)–(2), (b)(1)(A)(2006).

178. 8 U.S.C. § 1324a(a)(1)–(2), (b)(1)(A)(2006).

179. Keith Cunningham-Parmeter, *Fear of Discovery: Immigrant Workers and the Fifth Amendment*, 40 CORNELL INT'L L.J. 27, 28 (2008).

180. *Hoffman Plastic Compounds, Inc. v. N.L.R.B.*, 533 U.S. 137, 140, 143 (2002).

2009] *IMMIGRANT WORKERS—U.S., E.U. & U.A.E.* 677

organize a union, brought suit against his former employer under the NLRA's provision against retaliatory termination.¹⁸¹ A majority of the Supreme Court reversed the board's awarding of back pay to Castro.¹⁸² The Supreme Court concluded that "awarding back pay in a case like this not only trivializes the immigration laws, it also condones and encourages future violations."¹⁸³

Moreover, the *Hoffman* decision weakened the ability of the labor laws to deter employers that might wish to exploit immigrant workers, especially undocumented workers.¹⁸⁴ As one commenter notes:

[F]orcing [Hoffman Plastics] to provide back pay to the aggrieved employee would have enforced the strictures of the NLRA and removed an incentive to hire unauthorized workers, rather than authorized workers, since they could engage in unlawful conduct towards the former without risking serious financial loss under the Court's construction of the relevant statutes.¹⁸⁵

In a similar vein, the *Hoffman* decision places immigrant workers, especially undocumented workers, in the precarious position of having to choose between enduring labor violations or coming forward and risking examination of their immigration status.¹⁸⁶ The apparent impunity for immigration-related questions has affected an already uneasy class of prospective plaintiffs who have ceased suing employers for fear of increased scrutiny of their immigration status.¹⁸⁷ Even documented immigrants are weary of such an intrusion.¹⁸⁸ Essentially, this

181. *Id.* at 140–41

182. *Id.* at 138.

183. *Id.* at 149.

184. *See generally* Medina, *supra* note 50, at 1458–59 (explaining that the *Hoffman* decision encourages lax enforcement of employer sanctions and worker protection laws).

185. *Id.*

186. *See* Cunningham-Parmeter, *supra* note 179, at 28–29 (arguing that the *Hoffman* decision will create a two-tiered workforce in which undocumented workers will live in the "shadow of the American legal system").

187. *Id.* at 30.

188. *Id.* at 44 ("In addition to causing unauthorized immigrants to abandon litigation, questions about status dissuade lawful permanent residents from going to court. . . . If litigating workplace claims entails extensive discovery about status, many of

economic and cultural vulnerability impedes the desire for immigrant workers to confront impositions on their rights. Immigrant workers require the fullest protection the labor laws have to offer. The *Hoffman* decision restricts this protection, arguably more than a majority of the Supreme Court thought possible.¹⁸⁹ After *Hoffman*, it is clear that immigration laws predominate over labor laws with respect to immigrant workers and confound the efforts of immigrants to obtain gainful, safe employment.¹⁹⁰ The future violations that worried the Court in *Hoffman* were violations by immigrant employees; however, the court placed too little value on deterring future violations by employers.¹⁹¹

Further, immigrant workers do not want to put their jobs on the line by attempting to vindicate their labor rights.¹⁹² Immigrant workers would rather be immigrant *workers* than “immigrants” and complaining is associated with removal.¹⁹³ Employers are cognizant of this fact.¹⁹⁴ Notably, some unscrupulous employers prefer hiring immigrants regardless of documentation, based on the belief that, due to their immigration status, the workers will not “rock the boat.”¹⁹⁵ As support for this belief, employers rely on the very reasons for inadequate protection espoused within.¹⁹⁶ Some of these reasons are: (1) many immigrant workers do not understand their

these legal immigrants will decline to sue in order to avoid answering invasive questions about their families and themselves.”).

189. See *id.* at 34–35, 42 (noting that “[t]he post-*Hoffman* expansion movement has been wide-ranging.”).

190. See, e.g., Marianne Staniunas, *All Employees Are Equal, But Some Employees Are More Equal Than Others*, 6 U. PA. J. LAB. & EMP. L. 393, 408–10 (2004).

191. See *id.* at 396, 408–09 (quoting Justice Breyer’s dissenting opinion in *Hoffman*).

192. Cunningham-Parmeter, *supra* note 179, at 28.

193. See *id.*

194. See generally 29–42 (describing employer practices post-*Hoffman*); see also Bloomekatz, *supra* note 152, at 1972–73 (noting that “[e]mployers appreciate that immigrants will work for lower pay and perform jobs under worse conditions than U.S. workers. . .”).

195. Bloomekatz, *supra* note 152, at 1972–74; Lora Jo Foo, *The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation*, 103 YALE L. J. 2179, 2183 (1994).

196. See *supra* notes 152, 174, 194 and accompanying text.

workplace rights; (2) immigrant workers are tied to their current job either via an employer dependent visa or simple necessity; (3) the difficulty immigrant workers have in finding new jobs; (4) the language barrier restricting the job market; and (5) the ineligibility of many immigrant workers to receive welfare or unemployment.¹⁹⁷ Thus, survival, both for those immigrants in the United States and for family “back home”, depends almost completely on the immigrant worker’s wages.¹⁹⁸

Following the Supreme Court’s *Hoffman* decision, the government entities responsible for enforcing labor law violations have sent an ambiguous message.¹⁹⁹ Despite all the statutory language, the government’s enforcement and employer sanctions have been characterized as “weak and torpid” and “do little to chill or stop employment of unauthorized aliens by American employers.”²⁰⁰

Two recent cases, one involving Wal-Mart and one involving Tyson Foods, are exemplary.²⁰¹ In the *Wal-Mart* case, the big box giant hired independent contractors who knowingly employed unauthorized immigrant workers to clean its stores.²⁰² As a sanction, the government accepted a (trivial) \$11 million fine, a consent decree, and Wal-Mart’s promise to establish a “compliance program.”²⁰³

In the *Tyson Foods* case, the government alleged that Tyson and its corporate executives “hired illegal alien workers for the purpose of commercial advantage and financial gain.”²⁰⁴ Even worse than the *Wal-Mart* effort, the prosecution of the *Tyson Foods* complaint resulted in a federal court dismissing most of

197. See Bloomekatz, *supra* note 152, at 1973–74.

198. See Malkin, *supra* note 35, at A1.

199. Medina, *supra* note 50, at 1458–59.

200. *Id.* at 1454.

201. See *id.* at 1446, 1448–49.

202. See Michael Barbaro, *Wal-Mart to Pay \$11 Million*, WASHINGTON POST, Mar. 19, 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A48612-2005Mar18.html> (stating that 12 contractors used by Wal-Mart pleaded guilty to immigration charges and paid \$4 million in fines).

203. *Id.* at 1453–54.

204. United States v. Tyson Foods, Inc., No. 4:01-cr-061, 2002 U.S. Dist. LEXIS 26896, at *5 (E.D. Tenn. May 22, 2002).

the thirty-six counts of the indictment.²⁰⁵ Both of these cases demonstrate the near futility of prosecuting federal offenses related to employment of immigrant workers.²⁰⁶ Ironically, these cases shifted the focus from the employers to the employees; deportation proceedings were commenced against the unauthorized immigrant workers in the *Wal-Mart* case.²⁰⁷

Globalization today affects more than just economies. People have become part of the accelerated pace concomitant with the freer flow of goods.²⁰⁸ Worldwide, immigrant workers in search of work travel to countries where they may not understand the language, laws, and customs.²⁰⁹ Once they reach their destination, immigrants unfamiliar with the legal system of their new country become especially vulnerable.²¹⁰ Therefore, insufficient protection of immigrant workers is not unique to the United States.²¹¹

The United Nations International Convention on the Protection of All Migrant Workers and Members of Their Families (ICMW) constitutes one of the most comprehensive treaty-based systems of protection for immigrant workers.²¹² The ICMW, however, incorporates not only labor rights, but extends to include notions of human rights, which helps to confront obstacles like racism and xenophobia.²¹³ The ICMW states that fundamental economic, social, and cultural rights

205. *See* *United States v. Tyson Foods, Inc.*, 258 F.2d 809, 812 (E.D. Tenn. 2003) (granting defendants' motion to dismiss based on refusal to interpret "identification documents" as listed in 18 U.S.C. § 1546(b) to include Social Security cards).

206. *See* *Medina*, *supra* note 50, at 1454.

207. Press Release, U.S. Immigration and Customs Enforcement, Wal-Mart Stores, Inc. Agrees to Pay a Record \$11 million to ICE to Settle Nationwide Worksite Enforcement Investigation (Mar. 18, 2005), *available at* <http://www.ice.gov/pi/news/newsreleases/articles/walmart031805.htm>.

208. Fernand de Varennes, *Strangers in Foreign Lands: Diversity, Vulnerability and the Rights of Migrants*, UNESCO (2003), http://www.unesco.org/most/paper_devarennes.pdf (last visited Apr. 5, 2009).

209. *Id.*; *see also* Grant, *supra* note 148.

210. de Varennes, *supra* note 208, at 8.

211. *Id.* at 7.

212. *Id.* at 9; *see generally* International Migration Convention, *supra* note 14 (applying to all migrant workers and members of their families during the entire migration process).

213. de Varennes, *supra* note 208, at 2.

apply to immigrant workers regardless of status.²¹⁴ The ICMW does, however, allow states to regulate or restrict the rights of certain specific categories of immigrants such as seasonal or temporary immigrant workers.²¹⁵ As its name implies, the ICMW goes beyond just the workers and offers protection to the workers' families. The "ICMW does not attempt to create new rights," rather it extends rights set forth in other U.N. documents."²¹⁶

The ICMW went into force after the twentieth ratification—by Guatemala in 2003—thirteen years after its passing.²¹⁷ Of the relatively few states that have adopted the ICMW, very few, if any, are major receiving countries.²¹⁸ By the same token, only forty-eight countries have ratified Convention No. 97, and even fewer, twenty-three, have ratified Convention No. 143.²¹⁹

Several obstacles to ratification of U.N. and ILO conventions protecting migrant workers have been proposed.²²⁰ For example, political factors surrounding the relatively low ratification of the ICMW include a lack of awareness and knowledge of the ICMW, as well as political nonpriority of the ICMW for governments.²²¹

214. International Migration Convention, *supra* note 14, arts. 8–56 (articles 8 through 35 cover immigrants regardless of status, while articles 36 through 56 apply to lawfully resident immigrants).

215. *Id.* arts. 57–63.

216. *Id.*

217. *Id.*

218. *See id.*

219. *See* Convention No. C097, INT'L LABOUR OFFICE (2002), http://www-ilo-mirror.cornell.edu/public/english/employment/skills/recomm/instr/c_97r.htm (last visited Apr. 4, 2009); *see also* C143, *supra* note 100 (last visited Apr. 4, 2009) (listing countries that have ratified this Convention). Convention No. 97 contains provisions regarding employment conditions, hours of work, association, and discrimination. *See generally* Convention Concerning Migration for Employment, *supra* note 15 (governing the employment of migrant workers). Convention No. 143 deals with immigrant workers in abusive situations and the treatment afforded to them. *See generally* C143, *supra* note 15 (governing the human rights of all migrant workers).

220. *See, e.g.,* EUAN MACDONALD AND RYSZARD CHOLEWINSKI, UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION, *THE MIGRANT WORKERS CONVENTION IN EUROPE: OBSTACLES TO THE RATIFICATION OF THE INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES: EU/EEA PERSPECTIVES* (2007) [hereinafter UNESCO Study].

221. *See de Varennes, supra* note 208, at 25–26.

In some cases, an incompatibility exists between the proposed Conventions and national law.²²² Admittedly, these incompatibilities are seldom insurmountable.²²³ In some cases, governments feel that current systems sufficiently protect immigrant workers, which obviates the need for ratification of another layer of protection.²²⁴

Some countries hesitate to ratify the ICMW because it extends rights to undocumented workers.²²⁵ Other countries view the rights detailed in the ICMW as encouraging, or even rewarding, “undocumented migrants’ violations of immigration laws.”²²⁶ Further, misconceptions among governments about the effects of the convention on their own labor markets and migration policies result in decreased ratification.²²⁷

Economically, “sending countries”—those that have a history of providing immigrant labor to other countries—worry that ratification would result in losing labor markets to nonratifying competitors.²²⁸ An offshoot of this obstacle is the governments’ fear that ratification precludes bestowing preferential treatment on citizens over immigrants.²²⁹ More innocuous reasons complicate ratification, including: lack of data, gaps between

222. See, e.g., UNESCO Study, *supra* note 220, at 54 (highlighting the inconsistency between the “group right” portion of the ICMW and the “indivisibility of the French people” which does not recognize any group-specific rights).

223. *Id.*

224. de Varennes, *supra* note 208, at 26; see also UNESCO Study, *supra* note 220, at 55.

225. Yau, *supra* note 198. Jennifer Yau, *Promise and Prospects of the UN’s Convention on Migrant Workers*, MIGRATION INFORMATION INSTITUTE, Mar. 1, 2005, <http://www.migrationinformation.org/feature/print.cfm?ID=288> (last visited Apr. 5, 2009).

226. *Id.*

227. de Varennes, *supra* note 208, at 25–26.

228. See *id.* Cf. UNESCO Study, *supra* note 220, at 58 (explaining the concern of ratifying states that the obligations imposed by the treaty, or “pull factor”, will unreasonably burden the national economy, placing the ratifying state at a relative disadvantage to nonratifying countries).

229. *Id.* But cf. RAY JUREIDINI, U.N. RESEARCH INST. FOR SOC. DEV., IDENTITIES, CONFLICT AND COHESION PROGRAMME PAPER NUMBER , MIGRANT WORKERS AND XENOPHOBIA IN THE MIDDLE EAST 2 (2003) (describing the political situation in Lebanon that facilitates the presence of undocumented Syrian workers and the restriction on Palestinian refugees from having certain occupations).

mandates, and parallel systems for protection found in the human rights arena.²³⁰ Considering the purported reasons and potential justifications of nonratification, the majority of reasons appear to be political and based upon “misinterpretations (or misrepresentations) of the relevant provisions in the ICMW.”²³¹

One commentator takes a different approach and argues that the instruments themselves are the problem.²³² Cholewinski contends that the conventions provide inadequate protection because labor migration has changed since the provisions were first adopted.²³³ In this sense, the conventions cannot be ratified because of intrinsic deficiencies within them.²³⁴ This argument quickly gains credibility when one considers that the most applicable conventions were adopted in 1949, 1975, and 1990.²³⁵ The evils of the human rights violations will be explored *infra*.²³⁶ Moreover, certain sections of the conventions carve out a great swath of rights reserved to the sovereigns, and include qualifying language that potentially deprives an immigrant of a purported right.²³⁷

The U.A.E., like the United States and Europe, lacks practical protection in line with its statutory claims of vindication.²³⁸ In fact, the U.A.E.’s treatment of immigrant

230. Grant, *supra* note 148.

231. UNESCO Study, *supra* note 220, at 88.

232. See Ryszard Cholewinski, *Protecting Migrant Workers in a Globalized World*, MIGRATION POL’Y INST., Mar. 1, 2005, <http://www.migrationinformation.org/feature/print.cfm?ID=293> (last visited Apr. 4, 2009).

233. See *id.* (citing the decreasing significance of the state in recruiting migrant labor, as well as the need for states to balance controlling illegal immigration with encouraging labor migration and immigrant protection, among other factors).

234. *Id.*

235. See Convention concerning Migration for Employment, *supra* note 15; see also C143, *supra* note 100; International Migration Convention, *supra* note 14.

236. See discussion *infra* “Temporary Guest Worker Programs.”

237. See, e.g., International Migration Convention, *supra* note 14, arts. 44, 79.

238. See Human Rights Watch U.A.E. Report, *supra* note 111, at 49–50 (proposes that U.A.E. laws are adequate on their face, but workers are inadequately protected as there is little evidence of enforcement); see also Ethnobarometer, *Immigration & Security: US/European Comparison*, http://www.ethnobarometer.org/index.php?option=com_content&view=article&id=10:immigration-a-security-useuropean-comparison&catid=4:current-projects&Itemid=3 (last visited Apr. 5, 2009) (noting that both the U.S. and Europe recognize this shortcoming and are attempting to

workers epitomizes one of the more common reasons behind substandard protection.²³⁹ That is, the U.A.E. fails to appreciate or promote the impact of basic human rights on the treatment of immigrant workers.²⁴⁰ Immigrant workers in the U.A.E. face abuse at the hands of their employers with insufficient assistance from the government in the enforcement of violations.²⁴¹ For example, the U.A.E. mandates that employers pay wages or be subject to fines or imprisonment.²⁴² While data is scarce, the Human Rights Watch failed to locate a single documented instance where an employer was sanctioned for failing to pay wages.²⁴³ U.A.E. law also allows liquidation of an employer's bank bonds in the case of nonpayment of wages.²⁴⁴ Again, the Human Rights Watch could not find a documented instance of an account liquidated to pay an employee.²⁴⁵ Further, Article 63 of U.A.E. labor law mandates a minimum wage; however, a minimum wage does not exist in the U.A.E.²⁴⁶ The U.A.E. does not allow the formation of labor unions and forbids strikes. The U.A.E. even goes so far as to allow employers to suspend striking workers without pay.²⁴⁷ Finally, the U.A.E. labor law explicitly excludes domestic workers from its scope of coverage.²⁴⁸

reconcile the seemingly incompatible goals that have precipitated it).

239. See *UAE: Draft Labor Law Violates International Standards*, HUMAN RIGHTS WATCH, Mar. 24, 2007, <http://www.hrw.org/en/news/2007/03/24/uae-draft-labor-law-violates-international-standards> (last visited Apr. 5, 2009).

240. *Id.*

241. See, e.g., *infra* notes 255–262 and accompanying text.

242. U.A.E. Fed. Law No. 8, *supra* note 21, arts. 56, 181.

243. Human Rights Watch U.A.E. report, *supra* note 111, at 55.

244. See Ministerial Resolution 218 for 2001, On the Executive Regulations to the Council of Ministers (U.A.E.); and Resolution 14 for 1999, Regarding the Bank Guarantee Referred to Under Council of Ministers Resolution 14 for 1999 (U.A.E.).

245. Human Rights Watch U.A.E. report, *supra* note 111, at 55.

246. U.A.E. Fed. Law No. 8, *supra* note 21, art. 63; Human Rights Watch U.A.E. Report, *supra* note 111, at 56.

247. Jason DeParle, *Fearful of Restive Foreign Labor, Dubai Eyes Reforms*, N.Y. TIMES, Aug. 6, 2007, available at <http://www.nytimes.com/2007/08/06/world/middleeast/06dubai.html?ex=1344052800&en=d25e2dabb528969d&ei=5088&partner=rssnyt&emc=rss>; U.A.E. Federal Law No. 8, *supra* note 21, art. 112.

248. U.A.E. Federal Law No. 8, *supra* note 21, art. 3(c).

2009] *IMMIGRANT WORKERS—U.S., E.U. & U.A.E.* 685

In sum, the countries receiving the greatest numbers of immigrant workers have not adopted a comprehensive system of protection for them.²⁴⁹ Therefore, the framework established for the benefit of immigrant workers does not, and arguably *cannot*, adequately protect them.

VII. SWEET DREAMS AHEAD: FUNDAMENTALS FOR STRENGTHENING IMMIGRANT WORKERS' RIGHTS

Several nongovernmental organizations, as well as human and workers' rights groups, have proposed means of changing laws and regulations.²⁵⁰ Numerous themes inhere within these proposals. Just as economic, political, and legal impediments hinder full and broad immigrant worker protections, economic, political, and legal changes are needed to ensure sufficient protection. Changes based on economics, human rights, collective bargaining, and temporary guest worker programs could lead to increased protection with minimal negative consequences.

A. *Protection for Immigrant Workers Could Stimulate Economic Growth*

Economics drives the labor migration.²⁵¹ Immigrant workers seek jobs, money, and lives that are potentially unattainable in

249. See de Varennes, *supra* note 208, at 9 (explaining that the ICMW promulgates a comprehensive system of migrant worker protection, however none of its ratifiers are from the Northern Hemisphere, where the greatest number of migrant workers exist); See *supra* text accompanying note 212.

250. See, e.g., Philip Alston, *Core Labour Standards and the Transformation of the International Labour Rights Regime*, 15 EUR. J. INT'L L. 457 (2004); Karen Fleshman, *Abrazando Mexicanos: The United States Should Recognize Mexican Workers' Contributions to Its Economy by Allowing Them to Work Legally*, 18 N.Y.L. SCH. J. HUM. RTS. 237 (2002); Bobbi-Lee Meloro, *Balancing the Goals of Free Trade with Workers' Rights in a Hemispheric Economy*, 30 U. MIAMI INTER-AM. L. REV. 433 (1998); MARTIN RUHS, TEMPORARY FOREIGN WORKER PROGRAMMES: POLICIES, ADVERSE CONSEQUENCES, AND THE NEED TO MAKE THEM WORK, PERSPECTIVES ON LABOR MIGRATION, INTERNATIONAL LABOR ORGANIZATION (2003), available at <http://www.compas.ox.ac.uk/downloads/Temporary%20foreign%20worker%20%20%20%20programmes.pdf>.

251. N. DIEZ GUARDIA & K. PICHELMANN, EUROPEAN ECONOMY, LABOUR MIGRATION PATTERNS IN EUROPE: RECENT TRENDS, FUTURE CHALLENGES 4 (2006), available at http://ec.europa.eu/economy_finance/publications/publication644_en.pdf.

their home countries.²⁵² By the same token, economics should be the foundation for any political and legal change sought to be implemented.²⁵³

One of the major views adopted by the “receiving societies,” especially the United States, is that immigrant workers rob native citizens of the low-skilled jobs available.²⁵⁴ A similar view is that immigrant workers drive down the wages for native workers.²⁵⁵ In this way, native citizens may feel that immigrant workers threaten their respective economies.²⁵⁶ The relationship between the economy and immigration is exceedingly complex. Not only do local practices affect the job market, but globalization, trade policies, and structural adjustment programs via the International Monetary Fund contribute to worker migration.²⁵⁷ In some cases, countries cannot sustain economic growth, which leads their nationals’ migrate to countries where the economic situation is not as bleak.²⁵⁸

Some research indicates that including workers’ rights in legislation could stimulate economies, not just in the receiving

252. See Library of Congress, Immigration/Migration: Today and During the Great Depression, Oct. 07, 2003, <http://memory.loc.gov/learn/lessons/98/migrate/essay.html> (last visited Apr. 5, 2009).

253. See Tom Barry, *The New Political Economy of Immigration*, DOLLARS AND SENSE, Feb. 2009, available at <http://www.dollarsandsense.org/archives/2009/0109barry.html> (postulating that closer links must be bridged between immigration policy and economic policy, in order to form a more successful policy based on rational assessment of cost-benefit analysis).

254. See, e.g., Bloomekatz, *supra* note 152, at 1964 (stating that immigrants take the jobs native workers do not want); Heather Stewart, *Migrant Workers: Don't We Love Them?*, THE OBSERVER, Nov. 27, 2005, at 8 (discussing how immigrants are seen as posing additional competition for low-paying jobs); Hing, *supra* note 149, at 236–37 (citing, as an example, a letter to the editor of a Boise, Idaho newspaper complaining of contractors willing to pay wages under the table to immigrant workers instead of hiring Americans).

255. POLITICAL RESEARCH ASSOCIATES, *Immigrants as a Threat to U.S. Workers*, in DEFENDING IMMIGRANT RIGHTS: AN ACTIVIST RESOURCE KIT 70, 70 (2007), available at <http://www.publiceye.org/ark/immigrants/pdf/defending-immigrant-rights/Section%203%20-%20Issues%20&%20Views.pdf>.

256. *Id.*

257. *Id.* at 72 (citing U.S. NETWORK FOR GLOBAL ECON. JUSTICE, FALSE PROFITS: WHO WINS, WHO LOSES WHEN THE IMF, WORLD BANK, AND WTO COME TO TOWN (1998), available at <http://rafaelporrata.com/pdf/False%20Profits%20Book.pdf>).

258. *Id.*

countries, but also in the sending countries.²⁵⁹ For example, in the United Kingdom—one of the EU countries that did not impose migration restrictions—there has been increased job growth and wage increase in the agricultural sector since countries joined the EU in 2004.²⁶⁰ In the United States, several studies have demonstrated the economic benefits of migration.²⁶¹ Other commentary questions the notion that immigration precipitated the deterioration of wages and suggests that immigrant workers were hired only after deunionization and restructuring degraded these jobs.²⁶² Therefore, employers, not the immigrant workers, initiated changes in the labor market and job structure.²⁶³

From a different angle, immigrant workers suffer higher than average workplace injuries and fatalities.²⁶⁴ The number of injuries, combined with the fact that immigrant workers have the lowest rates of healthcare coverage, results in huge costs for employers.²⁶⁵ These costs are distributed to society at large, when one considers that Medicaid and Medicare payments to

259. *See id.* at 73 (discussing the positive impact immigrants have on the U.S. economy) (citing *THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC AND FISCAL EFFECTS OF IMMIGRATION* (James P. Smith & Barry Edmonston eds., National Academy Press 1997)); *see also* Meloro, *supra* note 250, at 436 (arguing that the political stability associated with multilateral, agreed upon workers' rights would lead to increased economic investment); *see also* Stewart, *supra* note 254 (discussing the positive effects of immigration on EU nations).

260. Stewart, *supra* note 254.

261. *See, e.g.*, Virginia Postrel, *Yes, Immigration May Lift Wages*, N.Y. TIMES, Nov. 3, 2005, at C2 (citing a University of California, Davis study estimating "that immigration in the 1990's increased the average wage of American-born workers by 2.7 percent"); *see also* David Streitfeld, *Illegal--but Essential*, L.A. TIMES, Oct. 1, 2006, at A1 (discussing how U.S. industry and commerce have been aided by immigration).

262. *See, e.g.*, RUTH MILKMAN, L.A. STORY: IMMIGRANT WORKERS AND THE FUTURE OF THE U.S. LABOR MOVEMENT 114–15 (2006) (discussing how deunionization and the exit of domestic workers occurred before a rise in immigration).

263. *Id.* at 188.

264. AFL-CIO, *supra* note 27, at 1, 12.

265. *Id.* at 12 (citing an insurance study concluding that businesses pay nearly \$1 billion per week in direct costs alone such as overtime and workers' compensation to counteract workplace injuries and fatalities).

injured workers are federally funded.²⁶⁶ Moreover, immigrant workers are often paid “under the table,” insulating them and their employers from any tax consequences.²⁶⁷

VIII. TAKING ADVANTAGE OF POLITICAL AND LEGAL AVENUES

A. *Human Rights and Immigrant Workers*

The abuses suffered by immigrant workers can easily be considered human rights violations.²⁶⁸ Incorporating a human rights dimension could mitigate abuses against immigrant workers in ways that addressing those workers directly may not. First, human rights ideals, unlike labor laws, resist the temptation to create documented and undocumented subdivisions within an immigrant population.²⁶⁹ This becomes more important when governments begin separating citizens’ rights from immigrants’ rights.²⁷⁰ The term human rights does not differentiate citizens from noncitizens; rather, it mandates parallel treatment.²⁷¹ Second, human rights ideals appeal to citizens’ sense of morality and human dignity.²⁷² This could promote the personal issues associated with immigrants’ abuses, which, in turn, could overcome any political or economic reluctance to furthering immigrant workers’ rights.²⁷³ Third, human rights-based legislation benefits from a long history,

266. *Id.*

267. *See, e.g.*, Geoffrey Colvin, *Introducing the New Third Rail: Immigration*, FORTUNE, Jan. 12, 2004, available at http://money.cnn.com/magazines/fortune/fortune_archive/2004/01/12/357944/index.htm (“Employers who hire illegals pay them cash and thus evade employment taxes. They may also not report revenue from the work the illegals do and thus evade income taxes. Companies that compete with these employers must cut their own costs, mostly by paying their own workers (regardless of status) lower cash wages under the table, and the tax evasion spreads further.”).

268. Amnesty International Press Release, *supra* note 83.

269. *See, e.g.*, C97, *supra* note 100, art. 6 (stating that members of the Convention must not discriminate against lawful immigrants); *see also* Smith, *supra* note 52, at 296 (discussing these divisions in the context of the war on terrorism).

270. Smith, *supra* note 52, at 296 (“In the present era, the rights of immigrants or others who can somehow be linked to the war on terror, are frequently curtailed or eliminated altogether.”).

271. *Id.*

272. *Id.* at 298.

273. *See id.* at 306–09.

which should continue to supplement and guide international immigrant workers' law.²⁷⁴ International labor standards, such as the ICMW, Conventions 97 and 143, and the ILO's Declaration on Fundamental Principles and Rights at Work reference rights described in human rights laws.²⁷⁵

B. Freedom of Association is Critical

Among the most commonly lauded means of achieving increased workers' rights, immigrant or otherwise, is a worker's freedom to associate and bargain collectively.²⁷⁶ Union membership typically results in higher wages, better working conditions, and more benefits such as healthcare.²⁷⁷ Union contracts provide immigrant workers with protections otherwise unattainable.²⁷⁸

Freedom of association and the ability to collectively occupy such an important position in the realm of workers' rights that the ILO specifically states that its members "have an obligation arising from the very fact of membership in the Organization" to promote "freedom of association and the effective recognition of the right to collective bargaining."²⁷⁹

In the United States, the National Labor Relations Act exempts agricultural workers, domestic workers, and independent contractors.²⁸⁰ In some cases, employers thwart workers' attempts to organize through harassment, threats of

274. See PATRICK A. TARAN & EDUARDO GERONIMI, GLOBALIZATION, LABOUR AND MIGRATION: PROTECTION IS PARAMOUNT 13, 16 (2003) (discussing the International Bill of Human Rights).

275. *Id.*; see also International Migration Convention, *supra* note 14, arts. 8–16 (stating rights of migrant workers).

276. See Smith, *supra* note 52, at 292 (discussing how workers would choose to have unions, but some workers have limits on their freedom of association); see also People's Decade of Human Rights Education, *The Human Rights of Migrant Workers: The People's Movement for Human Rights Education*, <http://www.pdhre.org/rights/migrants.html> (last visited Apr. 5, 2009) (listing the right of freedom of association as a human right).

277. Smith, *supra* note 52, at 292; see also AFL-CIO, *supra* note 27, at 16.

278. AFL-CIO, *supra* note 27, at 16.

279. ILO Declaration, *supra* note 104.

280. 29 U.S.C.A § 152 (West 2000).

deportation, suspension, and termination.²⁸¹ Since *Hoffman*, undocumented workers would rather not risk unionization for fear of a fate worse than termination: deportation.²⁸² In the U.A.E., workers are not allowed to organize and form unions, regardless of occupation.²⁸³ Because the power inherent in a union of workers outweighs that of a single worker, collective bargaining and union representation provide arguably the strongest and most critical measure of protection for all workers, immigrant or otherwise. Any proposal purporting to increase immigrant workers' rights must include a provision for freedom of association.

C. *Temporary Guest Worker Programs*

The United States experimented with a guest worker program in the mid-20th century, but the Bracero program—implemented to address labor shortages in the United States after World War II—provides an example of what *not* to do.²⁸⁴ Half a century later in 2004, in an attempt to curb increased illegal immigration, President Bush proposed another large-scale guest worker program.²⁸⁵ The President's plan called for three-year work visas renewable for another three-year term.²⁸⁶

Guest worker programs have the potential to strengthen immigrant workers' rights by according specific rights to an identified group of people, while concurrently allowing a state to

281. Smith, *supra* note 52, at 292.

282. See *supra* text accompanying notes 174–84 (discussing how in *Hoffman* a worker was fired for attempting to organize a union, and many immigrants fear alleging workplace law violations because their immigration status will be looked into).

283. Human Rights Watch U.A.E. report, *supra* note 111, at 57.

284. Emily B. White, *How We Treat Our Guests: Mobilizing Employment Discrimination Protections in a Guest Worker Program*, 28 BERKELEY J. EMP. & LAB. L. 269, 273–76 (2007) (describing The Human Rights of Migrant Workers: The People's Movement for Human Rights Education conditions suffered by Mexican men during the Bracero program).

285. Press Release, Office of the Press Secretary, President Bush's Immigration Proposal--White House Fact Sheet (Jan. 7, 2004), available at <http://www.immigrationlinks.com/news/news1880.htm> [hereinafter President Bush's Guest Worker Proposal]; White, *supra* note 284, at 280 (quoting President Bush: "The system is not working. Our nation needs an immigration system that serves the American economy and reflects the American Dream.").

286. President Bush's Guest Worker Proposal, *supra* note 285.

regulate the number and type of immigrant workers that cross its borders.²⁸⁷ Further, guest worker programs also carry an economic benefit—maintaining a pool of immigrant workers available for jobs that cannot be filled by native workers.²⁸⁸

Guest worker programs are not without their obstacles and consequences.²⁸⁹ For one, immigrant workers' rights under a temporary guest worker program may not be as complete as those granted to permanent residents.²⁹⁰ In fact, in some cases guest worker programs may reflect decisions made solely to foster development of a cheap source of unskilled labor without consideration of rights or the ability to vindicate them.²⁹¹ This could lead to native workers strenuously opposing guest worker programs or circumventing the program.²⁹² Finally, most guest worker permits are time restrained.²⁹³

Despite these potential pitfalls, temporary guest worker programs can be an avenue of genuine change and progress with respect to immigrant workers' rights. At the very least, the change in status that accompanies the guest worker visa could extract the immigrant workers from the chasms created by decisions like *Hoffman*.²⁹⁴

287. See Ruhs, *supra* note 250, at 3 (stating that the policy decisions made in Temporary Foreign Worker Programs include what rights should be given to the foreign workers and the number of workers the country should admit).

288. See, e.g., Press Release, Office of the Press Secretary, Fact Sheet: Comprehensive Immigration Reform: Securing Our Border, (Apr. 24, 2006), available at <http://www.ilw.com/immigdaily/news/2006,0426-reform.shtm> (claiming that the guest worker program would “help meet the demands of our growing economy”); see also Kate Phillips, *Business Lobbyists Call for Action on Immigration*, N.Y. TIMES, Apr. 15, 2006, at A11 (discussing the potential of reviving a guest worker program).

289. See Press Release, Farmworker Justice Fund, The President's Temporary Foreign Worker Proposal is Ill-Conceived (Jan. 8, 2004), available at http://farmworkerlaw.org/news_item.2005-06-01.9386125809 (discussing some of the problems associated with President Bush's proposed foreign temporary worker program).

290. *Id.* (“[G]uestworkers, however, are subjected to a status that deprives them of meaningful economic bargaining power and, as nonvoters, of political representation or influence.”); see also White, *supra* note 284, at 279 (discussing rights not extended to H-2A workers).

291. White, *supra* note 284, at 289–90.

292. Ruhs, *supra* note 250, at 10.

293. President Bush's Guest Worker Proposal, *supra* note 285.

294. See *supra* text accompanying notes 174–84 (discussing problems related to

IX. CONCLUSION

Immigrant workers around the world dream a common dream: to find work, earn money, and provide a better existence for themselves and their families. These workers deserve the fullest measures of protection, but they do not receive it. Despite volumes and volumes of laws, codes, conventions, and statutes, immigrant workers face abuses that infringe on their human rights and basic economic right to work and get paid for that work. Xenophobia, misconceptions about economy, and less than supportive governments, including that of the United States, contribute to the evisceration of any rights bestowed on paper.

Nonetheless, creation of an adequate and sufficient system of protection is possible, provided societies are prepared to work for it. Just as the immigrant workers toil daily, so, too, must the governments that benefit from their labor. Certain political and legal changes, along with the economic changes that must accompany them, will do much to help immigrant workers. These changes taken together, however, will spark an even more beneficial change—a change in the way the receiving societies perceive immigrant workers. Until then, the dream will remain a nightmare.