

IMMIGRANT LATINA DOMESTIC WORKERS AND SEXUAL HARASSMENT

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My family's history is not uncommon. My ancestors immigrated from Central America to the United States in the mid 1960s through the early 1970s in search of a brighter future. Several of the women in my family accepted jobs as domestic workers when they first arrived in order to make ends meet. What they endured as immigrant domestic workers is a mystery to me, for they believe that certain things are better left unsaid.¹

Like many domestic workers, the women of my family chose not to define themselves by their jobs, but found their identities outside of the work they did. The women in my family found their identities through their families and their community. But in a new country, living with strangers far away from family and friends, life was extremely trying and lonely. Many of my aunts and other relatives do not want to recall that period of struggle in their lives. In all honesty, I did not even know how many of my aunts were domestic laborers until I began writing this paper, and started discussing this topic with them.

I never really thought much about domestic service as a point of research until August of 1993. In that year, I participated in a four and a half month study abroad program in South Africa, and stayed with a family who employed Beauty, a live-in domestic worker. Beauty was only a year or two younger than I at the time, but I soon realized how different her life was from my own. I became aware that race, class, and gender dynamics are intertwined in domestic la-

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1. See MARY ROMERO, *MAID IN THE U.S.A.* 7 (1992) (noting that many women expressed embarrassment at being identified by their work as housekeepers or cleaning ladies. Some women chose to keep that part of their lives somewhat secretive).

bor. Under the old apartheid pattern, African women stayed in the background, and did subsistence farming while the men went into the "white" cities to work.² This is no longer the case today.³ Most African women who are employed in South Africa today work either as domestic servants or as farm laborers.⁴ In a 1979 survey, it was revealed that domestic laborers in white households worked over sixty hours a week and made between sixteen and twenty United States dollars a week.⁵ Beauty barely made enough money to survive. She would try to save up her meager salary so she could afford the bus fare to the township where her family lived. On the weekends she was not at work she wanted to visit and spend time with her newborn baby. Beauty and I would try to communicate with my extremely poor Zulu and her shaky English. Beauty would tell me how lonely she was and how she wanted to be with her own family instead of living in the basement of her boss's house.

When I left the family I was staying with in South Africa, I decided to give Beauty some extra money to thank her for all the extra work she had done with me living in the house for several months. I gave Beauty the equivalent of fifty U.S. dollars. Beauty began to cry and she told me that she did not even make that amount of money in a month. I had had no idea what her salary was, and it became clear to me at that moment that there were many layers to Beauty's exploitation. Beauty is a poor, young, African domestic in South Africa, and economic opportunities were few and far between for her. In the United States, economic opportunities are also divided along racial lines, making the situation for domestics in the United States not very different from the opportunities, or lack of opportunities, faced by Beauty.⁶

2. See INTERNATIONAL DEFENSE AND AID FUND FOR SOUTHERN AFRICA & THE UNITED NATIONS CENTRE AGAINST APARTHEID, WOMEN UNDER APARTHEID 38 (1981) ("African women want employment. There are no conventions and traditional taboos that restrain them from working outside the home ... Underemployment among African women is a result of land hunger, insufficient utilization of human and natural resources, and discrimination against women on grounds of both sex and race.") *Id.* at 37, quoting H. J. SIMMONS, AFRICAN WOMEN: THEIR LEGAL STATUS IN SOUTH AFRICA (HURST 1968).

3. *Id.* (noting that African women were faced with the prospect of trying to find employment in the bantustans or joining the migrant laborers in the cities).

4. *Id.* at 40 (stating that the 1970 census showed that thirty-eight percent of African women work as domestics and that thirty-five percent work as farm laborers).

5. JACKLYN COCK, MAIDS AND MADAMS: A STUDY IN THE POLITICS OF EXPLOITATION 165-66 (1980) (explaining that according to a 1976 census, domestic employees on farms, one of the largest areas of employment for African women, received an average of 16 U.S. dollars per week including rations).

6. ROMERO, *supra* note 1, at 71 (stating that race, class and gender stratification typifies domestic service, creating an occupation that is over-represented by minority and immigrant women).

Latinas today constitute the largest category of women entering the domestic labor force in the United States.⁷ Many of these women are undocumented workers.⁸ Undocumented⁹ Latina domestic workers endure low wages and hostile working environments.¹⁰ Employers commonly threaten to deport undocumented domestic workers if they refuse to do more work, reject sexual advances, or attempt to return home.¹¹ These workers are vulnerable to employer exploitation.

This article analyzes the connection between immigration status, domestic labor, and sexual harassment. The main focus is on Latina immigrant women who perform domestic labor. Other groups of women are also included in the analysis to illustrate the common issues women face in this profession, as well as the unique issues that Latina immigrant women face in the workplace. The article then examines the various remedies available to undocumented domestic workers who experience sexual harassment, and analyzes several proposals to alleviate the problem of exploitation in the workplace.

The first section of this article examines the interconnection existing between race, class, and domestic labor. The second section provides a general history of immigration law, and discusses the impact that various immigration laws have had on persons of color seeking entry into the United States. The third section of the paper analyzes the various types of sexual and economic exploitation that undocumented Latina domestic workers endure in order to secure employment and stabilize their immigration status. The fourth section examines the case law which is beginning to address the issue of sexual

7. U.S. CENSUS BUREAU, CENSUS OF THE POPULATION AND HOUSING: PROVISIONAL ESTIMATE OF SOCIAL, ECONOMIC AND HOUSING CHARACTERISTICS 25-30 (1990).

8. ROMERO, *supra* note 1, at 71 (commenting that Caribbean and Latin American immigrant women, many of whom are undocumented, work in private households throughout the United States).

9. I choose to use the term "undocumented worker" to refer to immigrants in the United States without legal documentation. This term is preferred over the pejorative "illegal alien". See Patrick J. McDonnell, *Marchers Assail Bias Against Immigrants*, L.A. TIMES, May 29, 1994, at A1. Many banners fronted the slogan "No Human Being is Illegal" at a march in opposition to California's Proposition 187, the anti-immigrant legislation which has been hotly debated.

10. See ROMERO, *supra* note 1, at 92 (commenting that maids in El Paso receive little, if any, vacation and no benefits. Live-in domestics are usually paid no more than forty dollars a week and day workers rarely receive minimum wage).

Immigrants almost universally receive lower wages than native-born workers and housewives rarely obey the law or pay even minimum wage. This dual wage system functions to depress wages for both foreign-born and native-born people of color.

11. ROMERO, *supra* note 1, at 92 (noting as an example, Isabel Garcia-Medina, a Latina domestic, who was threatened by her employer. Ms. Garcia-Medina's employer threatened to report her to the INS when she refused to clean the house and iron two big plastic bags of clothes for five dollars).

harassment for undocumented domestic workers. The fifth section focuses on the connection between immigration and domestic labor, and illustrates how issues of immigration, domestic labor and sexual harassment are intertwined for undocumented Latina domestic workers. The final portion of the article analyzes various recommendations to empower undocumented domestic workers and protect them from sexual and economic exploitation.

I. RACE, CLASS, AND DOMESTIC LABOR

Domestic service creates a unique social setting in which people from different social, economic, racial and ethnic backgrounds interact in an informal and intimate setting.¹² This social setting must be studied because it raises a challenge to any feminist notion of sisterhood.¹³ Domestic service accentuates the contradiction of race and class in feminism, with the privileged women of one class using the labor of another class of women to escape aspects of sexism.¹⁴ A growing number of middle-class and upper-middle class women escape the "double day" syndrome¹⁵ by hiring poor women of color to do housework and child care.¹⁶ Professor Audrey Macklin discusses this shift in housework and child care from white women to women of color.¹⁷ She tells the story of Mary and Delia. Mary is a career-minded lawyer and Delia is a Filipina domestic working for the family. Mary's segment of the story is as follows:

12. See ROMERO, *supra* note 1, at 72 (remarking that whites are often raised with the notion that women of color will care and clean for them); see also Bonnie Thornton Dill, "The Means To Put My Children Through": *Child-Rearing Goals and Strategies Among Black Female Domestic Servants*, in FEMINIST FRONTIERS II: RETHINKING SEX, GENDER AND SOCIETY 58 (Laurel Richardson & Verta Taylor eds., (1989) (stating that "unlike many other occupancies, domestic work brings [employers and employees] together in a closed and intimate sphere of human interaction").

13. ROMERO, *supra* note 1, at 15 (explaining that a growing number of employed middle-class women escape the double-day syndrome by hiring poor women of color to do the housework and child care).

14. See ROMERO *supra* note 1, at 15 (quoting David Katzman on the ability of "middle-class women, the employers [to gain] freedom from family rules and household chores ... by the employment of a servant" The domestic's work allows the middle class women to take on traditional male roles in the work force because the traditional female roles are already provided for at home).

15. See Julianne Malveaux, *Marketplace Disparities Can Be Fixed By Shopping Smarter*, PORTLAND OREGONIAN, June 3, 1993, at C11 (stating that "women who both work in the labor market and have families shoulder a 'double day'").

16. See ROMERO, *supra* note 1, at 15 (quoting David Katzman, who analyzed this class contradiction, and stated that middle-class women gain "freedom from family roles and household chores and assum[e] or confir[m] social status by the employment of a servant." The middle-class women's liberty is achieved at the expense of working-class women. Working class women are forced to work and assume the tasks beneath, distasteful to, or too demanding for the family members).

17. Audrey Macklin, *Foreign Domestic Worker: Surrogate Housewife or Mail Order Servant?*, 37 MCGILL L.J. 681 (1992).

"Not again," Mary thinks to herself. But that's not what she said. No, when the senior partner came into her office and casually asked her to stay late to help out on the closing, she said "Okay." She might have even managed to smile. Not that she agreed with any enthusiasm, mind you. Mary is tired, she wants to get out of the office, go home, spend time with Dan and the kids. But that's not how you make partner in the firm. Mary already knows about the dreaded "mommy track" and she knows what it means: being left out, left behind, not really being part of the firm. Oh sure, they let you in the door, give you an office, then shut you out of the "corridors of power." The rules to this boys' game are the same as they ever were. It's not as if you can't be [a] successful downtown lawyer and have a family, you just have to make sure you have a wife at home if you want to make it work! ... [t]he nanny is only supposed to work until 6:30 p.m. Of course, since she and Dan have a "live-in," it's not as if the nanny is going anywhere - - she lives downstairs. "I'll just give Delia a call and see if she wouldn't mind staying with Emma and Joey for a few extra hours."¹⁸

Mary assumes that Delia will be willing to work later and be with her children so that she can further her career and prove that she is not on the "mommy track". Mary uses her own privilege¹⁹ to recreate the gender hierarchy in her home, handing off her burdens to a woman of color. Class, race, ethnic, and gender hierarchies are recreated in the home and create oppressive working environments.²⁰ The interaction between race, gender, socioeconomic class, and immigration status in the domestic labor force allows one to view the treatment of women in this profession as more than simply a function of their gender.²¹ When race and class issues are involved, gender is only one of several indicators of a person's power or status in this society.²²

Census figures show that the percentage of women employed in the domestic labor market has decreased steadily since the turn of

18. *Id.* at 682-83.

19. *See* Dill, *supra* note 12, at 59 (remarking that middle-class or upper-class women have the luxury of providing a higher quality of life for their children than their lower-class employees can).

20. *See* ROMERO, *supra* note 1, at 15 (discussing how women who move into the male-dominated work force and take on "male" roles recreate the gender hierarchy at home by hiring a domestic to be a pseudo-wife).

21. *See* Nancy Ann Root & Sharyn A. Tejani, *Undocumented: The Roles of Women in Immigration Law*, 83 GEO. L.J. 605, 607-08 (1994) (stating that immigration laws impact the lives of immigrant domestic women because of their status, their race, and their gender. Each of these factors poses its own unique issues).

22. *Id.* at 607.

the century.²³ Even though the percentages have decreased, the racial and ethnic composition has remained much the same.²⁴ Women of color and immigrant women are still over-represented in the occupation.²⁵ It seems that the racial and ethnic stratification present in domestic service at the turn of the century still exists today.²⁶ There has been a shift, however, from native-born to foreign-born women of color in the domestic labor force.²⁷ In El Paso, Texas, for example, the hiring of maids from Mexico is so common that locals refer to Monday as the border patrol's "day off" because the agents ignore the women crossing the border to return to their employers' homes after their weekend off.²⁸

One explanation for the shift from native-born to foreign-born women of color entering into domestic service is that domestic work is thought of more and more as a "low-skill, low-status occupation, and young women, especially black women, are increasingly shying away from it."²⁹ It is also important to note that most of the work that immigrant women perform is the work that others refuse to accept.³⁰ Many American workers would be reluctant to sacrifice their privacy and independence and live in someone else's home.³¹ Many Americans would see the work as demeaning or as a form of servitude.³²

Domestic service has long been described as an entry level position

23. ROMERO, *supra* note 1, at 71 (explaining that in 1900, 28.7 percent of women in the work force were employed in the domestic labor market, however, by 1970 the amount of women working as domestic laborers had decreased to only 5.1 percent).

24. ROMERO, *supra* note 1, at 71.

25. ROMERO, *supra* note 1, at 71.

26. See ROMERO, *supra* note 1, at 71 (noting the shift from African American women as domestics to Latinas, who are the largest group of women entering domestic service today).

27. ROMERO, *supra* note 1, at 86-87 (stating that the proportion of native-born African American women in domestic service decreased from thirty-six percent in 1960 to eighteen percent in 1970 to only five percent in 1980).

28. ROMERO, *supra* note 1, at 1.

29. Allyson Sherman Grossman, *Women in Domestic Work: Yesterday and Today*, MONTHLY LAB. REV., Aug. 1980, at 17.

30. Root & Tejani, *supra* note 21, at 613 (noting that women who work in private homes are less likely to earn minimum wage or receive health benefits).

31. See Kathleen A. DeLaney, *A Response to "Nannygate": Untangling U.S. Immigration Law to Enable American Parents to Hire Foreign Child Care Providers*, 70 IND. L.J. 305, 321 (explaining that the pay and benefits offered have not been equal to the level of responsibility and personal sacrifice required from live-in workers). See also ROMERO *supra* note 1, at 27.

32. See ROMERO *supra* note 1, at 27 (noting that sweeping and scrubbing floors are tasks assigned to humiliate and punish inmates in the army, prisons, orphanages, and mental hospitals).

for foreign-born women and their children which offers social mobility to move on to higher-status and better-paying jobs.³³ For example, white, European immigrants were able to use domestic service as a transitional occupation.³⁴ For women of color, though, this occupation does not provide a bridge or transition to other, better jobs.³⁵ Women of color experience domestic service as an "occupational ghetto".³⁶ One explanation for this phenomenon is that race and gender domination have been characteristics intrinsic to domestic service.³⁷ The domestic situation is a microcosm in which to study how gender, class, and racial inequalities are reproduced and reinforced.³⁸

The total number of undocumented women who perform domestic service is difficult to discern.³⁹ The main reason for this is that domestic service is a part of the "underground economy."⁴⁰ Employers do not report undocumented workers to the IRS or to the Immigration and Naturalization Service (INS), making sources of statistical information unreliable.

II. A HISTORY OF IMMIGRATION LAW REGARDING PEOPLE OF COLOR

The history of immigration law in the United States provides an interesting backdrop from which to analyze this country's views of race and class, which are often reflected in laws concerning immigration.⁴¹ One example of this connection is the laws concerning denial

33. ROMERO, *supra* note 1, at 27 (commenting that domestic work has been seen as a bridging occupation which provides immigrant women with an exposure to the modern world while giving them an environment which is protective and supervised).

34. ROMERO, *supra* note 1, at 27 (explaining that domestic work for European immigrants was a transitional occupation because these women could learn about the norms and values of the middle-class in the United States which then gave them the ability to become upwardly mobile in this society).

35. ROMERO, *supra* note 1, at 27.

36. ROMERO, *supra* note 1, at 27.

37. ROMERO, *supra* note 1, at 27.

38. ROMERO, *supra* note 1, at 27 (commenting that researchers have analyzed the ideas of transition and bridging as means to describe domestic service). Harold Wool argued that the low status of domestic labor was a result of women of color entering into the occupation. This theory has been criticized by Martin and Segrave who were able to show that domestic service has always been a low-status occupation despite the entry of women of color. Women of color and immigrants remained in domestic service because they had no alternatives. See LINDA MARTIN & KERRY SEGRAVE, *THE SERVANT PROBLEM: DOMESTIC WORKERS IN NORTH AMERICA* 70 (1985).

39. ROMERO, *supra* note 1, at 10.

40. ROMERO, *supra* note 1, at 10.

41. See Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 B.Y.U.L. REV. 1139, n.* (1993) (noting that the title of the article translates to "The forgotten ones" in reference to the disenfranchisement of immigrants of color in the United States).

of benefits to undocumented people in the United States.⁴² Such laws began taking form when people of color began immigrating to the United States in large numbers from developing nations.⁴³

During the settlement of the colonies, immigrants arrived freely, limited only by the cost of travel, diseases, and the harsh environment found in the colonies.⁴⁴ In the years before the American Revolution, immigrants came to the colonies from England, France, Germany, Holland, Spain, and Portugal.⁴⁵ During this period, slaves from Africa were also forcibly brought to this country.⁴⁶ The only immigration restrictions at this time were on criminals and public charges.⁴⁷ These restrictions illustrated the hostility felt towards newcomers by colonists who had only just arrived themselves.⁴⁸ Immigration was, however, still favored to the extent that the colonies needed more people for labor and development.⁴⁹

It is important to note that extensive federal legislation dealing with immigration was not enacted for some time.⁵⁰ At first it was unclear whether the federal government was given the authority by the Constitution to regulate immigration.⁵¹ Also, unrestricted immigration was still desirable as a means for obtaining labor and achieving

42. See Jennifer M. Bosco, Note, *Undocumented Immigrants, Economic Justice, and Welfare Reform in California*, 8 GEO. IMMIGR. L.J. 71, 72 (1994) (discussing California's current laws dealing with undocumented people. Under current law, undocumented immigrants are only eligible for emergency medical services, WIC, the school lunch and breakfast program, Headstart, federal housing and social service block grants). Governor Wilson of California has suggested that Congress should create a legal resident card and require it of everyone seeking government benefits. He has also suggested that there be a constitutional amendment that would deny citizenship to any child born in the United States whose parents are not legal residents. See also Nona Yates, *The Great Divide; Where They Stand*, L.A. TIMES, Nov. 30, 1993, at A20.

43. See Jennifer M. Bosco, Note, *Undocumented Immigrants, Economic Justice, and Welfare Reform in California*, 8 GEO. IMMIGR. L.J. 71, 72 (1994).

44. See STEPHEN H. LEGOMSKY, IMMIGRATION LAW AND POLICY 108 (1992) (noting that after surviving innumerable hardships involved in crossing the ocean, many immigrants succumbed to new diseases and hardships found in the United States).

45. *Id.* at 109.

46. *Id.* at 72.

47. *Id.*

48. See MALDWYN ALLEN JONES, AMERICAN IMMIGRATION 126 (1992 ed.) (discussing the history and evolution of 'nativism' in America, as a prejudice against foreigners, rooted in a "deep-seated antipathy based upon emotions of fear and hatred.").

49. *Id.*

50. LEGOMSKY, *supra* note 44, at 109.

51. See DAVID WEISSBRODT, IMMIGRATION LAW AND PROCEDURE 4 (1992) (looking at the history and legislative intent of the Constitutional framers to determine if the federal government had the authority to regulate immigration).

growth as a nation.⁵² Discontent with an open immigration policy increased with the tremendous rate of immigration and with the change in the composition of immigrants.⁵³ Between 1820 and 1880, political and economic conditions brought over 2.8 million Irish immigrants to the United States.⁵⁴ German Catholic immigrants also came during the 1840s.⁵⁵ American society did not accept the Irish Catholics and Germans, and movements to limit immigration began to form.⁵⁶

After the Civil War, federal law began to reflect the growing desire to restrict immigration of certain groups.⁵⁷ In 1875, Congress passed the first restrictive statute for immigration, barring convicts and prostitutes from admission.⁵⁸ The 1875 Act also attempted to deal with the problem of Chinese labor in the West.⁵⁹ Imported Chinese labor had been used since 1850, and the tension between the Chinese workers and the settlers of European descent ran high.⁶⁰ Congress adopted a law outlawing so-called "coolie-labor" contracts and immigration for lewd and immoral purposes.⁶¹ In 1882, Congress took even stronger action in the Chinese Exclusion Act, the nation's first racist, restrictive immigration law.⁶² The Act suspended all immigration of Chinese laborers for ten years and forbade any court to admit Chinese people for citizenship.⁶³ The Chinese Exclusion Act was finally repealed in 1943.⁶⁴

Immigration was now seen as a threat to the United States economy, and Congress began expanding the list of "undesirable classes" hoping to upgrade the quality of immigrants and to limit overall en-

52. *Id.*

53. *Id.*

54. *Id.* at 5.

55. *Id.*

56. See ROGER DANIELS, *COMING TO AMERICA*, 235-68 (1990) (reporting that destroying Catholic property, such as convents, was so common that insurers refused to sell policies to Catholics).

57. WEISSBRODT, *supra* note 51, at 6.

58. WEISSBRODT, *supra* note 51, at 6.

59. WEISSBRODT, *supra* note 51, at 6.

60. See Sucheng Chan, *European and Asian Immigration into the United States in Comparative Perspectives*, in *IMMIGRATION RECONSIDERED* 38 (1989) (claiming that the bias is evidenced by historians' classification of Asian immigrants as sojourners as opposed to immigrants, thereby writing them out of U.S. immigration history).

61. *Id.*

62. WEISSBRODT, *supra* note 51, at 7.

63. Chinese Exclusion Act, ch. 126, 22 Stat. 58, 58-61 (1882); Chan, *supra* note 60, at 62.

64. Chan, *supra* note 60, at 62. Congress finally repealed the Act as a gesture of goodwill towards China, which was a World War II ally.

try.⁶⁵ Despite these efforts to decrease the flow, immigration continued to flourish in the United States during this time.⁶⁶ By 1920 nearly 14 million out of the 105 million people living in the United States were foreigners.⁶⁷

From this wave, Japanese immigrants experienced the worst state and federal antagonism. The Gentleman's Agreement of 1907, an accord between the United States and Japan to restrict Japanese migration, effectively ended the influx of Japanese nationals to the United States.⁶⁸ California state law reinforced this anti-Japanese sentiment by prohibiting Japanese immigrants from owning property or leasing farmland.⁶⁹

After World War I, Congress enacted the Quota Act,⁷⁰ which limited the number of immigrants allowed to enter the United States to three percent of their nationality already residing in the country.⁷¹ Three years later, Congress decided to lower the quota to two percent.⁷²

In 1942, California created the "Bracero Program,"⁷³ a Mexican labor program that allowed California agricultural employers to temporarily contract with approximately two million Mexican nationals for their labor in the fields.⁷⁴ The agricultural industry benefited from this cheap labor until 1964, long after World War I ended.⁷⁵ In spite of the Bracero Program, between 1939 and 1954, the INS de-

65. WEISSBRODT, *supra* note 51, at 7. The list of undesirables for immigration purposes included convicts, prostitutes, lunatics, idiots, those likely to become public charges, those with diseases, paupers, and polygamists.

66. DANIELS, *supra* note 56, at 274 (documenting the massive influx of immigrants at the turn of the century, and shortly thereafter).

67. DANIELS, *supra* note 56, at 274 (noting another 22 million people had at least one parent who was foreign-born).

68. DANIELS, *supra* note 56, at 255 (discussing how an agreement was reached to cease the issuance of passports to Japanese nationals).

69. JONES, *supra* note 48, at 227 (noting the barring of Japanese immigrants from owning land and from becoming citizens with the Alien Land Law). *See* Alien Land Act, 48 U.S.C. 1501-1507 (1913).

70. LEROY N. RIESELBACH, *THE ROOTS OF ISOLATIONISM* 10-11 (1966) (noting that participation in World War I created more opposition against foreign involvement by American people and created an isolationist mentality which impacted immigration laws).

71. WEISSBRODT, *supra* note 51, at 11 (noting that this type of calculation minimized immigration flow from northern and western Europe because of their low populations in the United States).

72. WEISSBRODT, *supra* note 51, at 11.

73. DAVID M. HEER, *UNDOCUMENTED MEXICANS IN THE UNITED STATES* 14 (1990). "Bracero" loosely translates to, "to shoulder the load".

74. HEER, *supra* note 73, at 14.

75. HEER, *supra* note 73, at 14 (commenting that the government faced pressure from American unions, which resulted in the end of the Bracero program).

ported three million undocumented and documented Mexican immigrants and U.S. citizens through an anti-Mexican campaign known as "Operation Wetback."⁷⁶

In 1986, Congress passed the Immigration Reform and Control Act (IRCA).⁷⁷ The Act focused almost exclusively on illegal immigration.⁷⁸ The IRCA dealt with undocumented aliens by imposing sanctions on employers, while simultaneously legalizing the status of undocumented entrants who had arrived prior to January 1, 1982.⁷⁹ The IRCA also included provisions prohibiting discrimination on the basis of national origin or citizenship.⁸⁰ Despite all of the provisions, the IRCA did not substantially restructure the immigration law as it pertained to immigrant and non-immigrant visas.⁸¹ The employer-sanction provisions of the Act penalize a person or entity who, for a fee, hires, recruits, or refers for employment an alien in the United States, knowing the alien is unauthorized, or who employs any individual without complying with the Act's employment verification system.⁸² Employers are also sanctioned if after hiring an alien, the employer continues to employ him or her knowing the alien has since become unauthorized.⁸³

In the last few years, newly enacted immigration legislation has been motivated by rising anti-immigrant sentiments in the United States. In 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA)⁸⁴ was passed. AEDPA is a comprehensive bill targeting terrorism and other crimes. The bill expands the grounds of deportability for immigrants convicted of crimes and narrows previous forms of relief.⁸⁵

The anti-immigrant sentiment also surfaced in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.⁸⁶ This Act, known as the "welfare reform" bill, made major changes in the

76. CAMILLE GUERIN-GONZALEZ, *MEXICAN WORKERS AND AMERICAN DREAMS* 138 (1994). The military partially aided in this mass expulsion.

77. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended at 8 U.S.C. §§ 1-1557 (1995)).

78. WEISSBRODT, *supra* note 51, at 22.

79. WEISSBRODT, *supra* note 51, at 22.

80. WEISSBRODT, *supra* note 51, at 23.

81. WEISSBRODT, *supra* note 51, at 23.

82. WEISSBRODT, *supra* note 51, at 23.

83. WEISSBRODT, *supra* note 51, at 23.

84. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (April 24, 1996).

85. *Id.*

86. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [hereinafter "Welfare Act"], Pub. L. No. 104-193, 110 Stat. 2105 (August 22, 1996).

public benefits available to legal immigrants. The Act makes even permanent residents ineligible for most federal benefits.⁸⁷ Congress intended for the Act to encourage self-sufficiency and remove the supposed "extra incentive" for migrating to the United States either legally or illegally.⁸⁸

The rise of anti-immigrant legislation continued with the enactment of the Illegal Immigrant Responsibility Act of 1996 (IIRAIRA).⁸⁹ IIRAIRA is a sweeping piece of immigration reform which focuses on the quick removal of undocumented immigrants. IIRAIRA allows for an increase in criminal penalties for immigration-related offenses and enhanced enforcement authority. The main objectives of the Act are to allow for expedited removal process upon entry, withdrawal of judicial review for certain forms of relief, expansion of the definition of aggravated felony, benefit limitations for non-citizens, and time limitations for filing asylum claims.⁹⁰ The implication of this new legislation will be far reaching and will have a negative impact on many non-citizens. Unfortunately, it is yet to be seen how these new provisions will be enforced through the Immigration and Naturalization Service and the courts.

III. SEXUAL AND ECONOMIC EXPLOITATION OF UNDOCUMENTED DOMESTIC WORKERS

Undocumented Latina domestic workers are faced with low wages and hostile working conditions. These women are vulnerable. "Employers can, and do, exploit undocumented workers by paying them substandard or illegally low wages and blocking their attempts ... to improve conditions in the workplace."⁹¹ Undocumented Latina

87. See Welfare Act § 400 (stating that federal benefits such as food stamps and supplemental security income (SSI) will no longer be available to many legal immigrants).

88. *Id.* (noting that Congress expressed concern with the rise in applications for federal benefits during the last ten years from non-citizens, including refugees and elderly persons). Congress expressed this concern even though recent evidence suggests that this rise have declined. See Social Security Administration, *Lawfully Resident Aliens Who Receive SSI Payments, December 1995* 2 (Feb. 1996). It appears that the real reason that Congress enacted this welfare legislation was economic. The estimated savings which the government will have over the next six years by reducing coverage for legal immigrants is \$23.7 billion dollars. See Correspondence from Congressional Budget Office to Senator Pete Domenici, Chairman of the Senate Budget Committee (Aug. 1, 1996).

89. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009, Div. C (Sept. 30, 1996).

90. See *id.*

91. Peter Margulies, *Stranger and Afraid: Undocumented Workers and Federal Employment Law*, 38 DEPAUL L. REV. 553, 554 (1989).

workers are especially vulnerable to sexual harassment.⁹² Suzanne Goldberg describes a possible work environment in which an undocumented Latina domestic would be placed.

Pia, a thirty-five year old woman from El Salvador, has lived and worked in California for the last few years. She speaks minimal English and does not have a green card or other documentation allowing her to remain legally in the United States. She has family in El Salvador and some cousins and other relatives living and working (as household workers and day laborers) in the vicinity. She lives with a young white professional couple and their three small children. She earns low wages (\$80 per week) and has no Social Security, workers' compensation, or unemployment coverage. She has Sunday off each week, although the employers will occasionally ask her to work when they have another engagement that day... She would like to obtain legal documentation, then find other work and arrange for her family to immigrate. She has never been physically or sexually assaulted by the father of the children she cares for, but he and his friends have alarmed her with their sexual suggestion.⁹³

In the hypothetical that Goldberg creates, Pia does not experience a sexual assault, but is concerned about the sexual suggestions that her employer makes. Goldberg goes on to describe that Pia "fears sexual exploitation by her male employer and his friends, having heard stories ranging from requests for stripteases to actual rape."⁹⁴ In Goldberg's scenario, none of Pia's colleagues reported to the police their stories of abuse.⁹⁵

Even though Pia's story is hypothetical, it is very useful in gaining an understanding of the fears and sexual exploitation undocumented domestic workers face. Unfortunately, there are not many reported cases of sexual abuse experienced by undocumented workers, mainly because undocumented workers depend upon their employers for their livelihood.⁹⁶ Consequently, they feel vulnerable to their employers' demands and fear being deported back to their native land.⁹⁷

Goldberg notes that Pia experienced economic necessity, which

92. Suzanne Goldberg, *In Pursuit of Workplace Rights: Household Workers and a Conflict of Laws*, 3 YALE J.L. & FEMINISM 63, 85 (1990).

93. Goldberg, *supra* note 92, at 63.

94. Goldberg, *supra* note 92, at 63.

95. Goldberg, *supra* note 92, at 82.

96. Goldberg, *supra* note 92, at 82.

97. Goldberg, *supra* note 92, at 82.

also can trap women into exploitative positions.⁹⁸

Pia feels she cannot financially afford to be jobless, even for a few weeks. Also, although she has occasionally tried to find a better paying job which would offer more security and benefits, she has not succeeded either for lack of documentation or, she senses, because of generalized discrimination by employers against foreigners.⁹⁹

Understanding the concept of economic necessity is vital to understanding the issues facing undocumented domestic workers.¹⁰⁰ Many cannot afford the luxury of quitting their current jobs to find better employment.¹⁰¹ Even though there are networking systems in the domestic service field, undocumented workers are at a disadvantage because of their lack of documentation.¹⁰² Undocumented domestics make employment decisions which reflect their concerns about immigration status, language ability, sexism, racism, poverty, family, and other factors that shape their lives.¹⁰³ Many times this balancing of concerns results in women feeling compelled to remain in abusive environments.

Why, then, do undocumented immigrant women go into domestic service if they are paid low wages and fear sexual advances? Many undocumented domestics feel their risk of entrapment by the INS is considerably lower in a private home than it is in a public place such as a factory.¹⁰⁴ In addition, the wages and working conditions would not necessarily be better for an undocumented female worker in a public place of employment. Undocumented immigrant women often work in conditions far worse than, and for wages that are below, those offered to immigrant men or non-immigrants.¹⁰⁵

98. Goldberg, *supra* note 92, at 82.

99. Goldberg, *supra* note 92, at 81 (commenting that Pia also fears her employers might fire her to hire another woman with legal residential status).

100. Goldberg, *supra* note 92, at 81.

101. Goldberg, *supra* note 92, at 81.

102. Goldberg, *supra* note 92, at 81 (adding that Pia may also be at a disadvantage because of generalized discrimination by employers against foreigners).

103. Goldberg, *supra* note 92, at 82.

104. Goldberg, *supra* note 92, at 81 (stating "Pia" felt safer working in a private residence than in a public place).

105. Maria L. Ontiveros, *To Help Those Most in Need: Undocumented Workers' Rights and Remedies Under Title VII*, 20 N.Y.U. REV. L. & SOC. CHANGE 607, 618 (1993-1994). See Leo L. Lam, Comment, *Designer Duty: Extending Liability to Manufacturers for Violations of Labor Standards in Garment Industry Sweatshops* 141 U. PA. L. REV. 623 (1992) (explaining that the garment industry is a labor-intensive industry which is home to small sewing factories that operate under substandard working conditions). The typical garment worker is usually a Latina or an Asian female immigrant who moved to a big city in the United States in search of economic opportunity. These garment laborers work in sweatshops, which regularly violate both wage or child labor and safety or health laws. *Id.* Shop owners often pay their workers, a majority of whom are women, less

Exploitation of undocumented domestic workers is accepted by our society. Society expects undocumented workers to accept the least desirable jobs for the least amount of pay. They are expected to put up with abusive working environments and no benefits. The mentality seems to be, if the aliens do not like it, they can leave. According to INS official James Smith, "It's human nature—the abuse and exploitation."¹⁰⁶

Mary Romero also recounts an incident she witnessed with an undocumented domestic worker and the sexual remarks she encountered:

I was shocked at my colleague's treatment of the sixteen-year-old domestic whom I will call Juanita. Only recently hired, Juanita was still adjusting to her new environment. She was extremely shy, and her timidity was made even worse by constant flirting from her employer. As far as I could see, every attempt Juanita made to converse was met with teasing so that the conversation could never evolve into a serious discussion. Her employer's sexist, paternalistic banter effectively silenced the domestic, kept her constantly on guard, and made it impossible for her to feel comfortable at work.¹⁰⁷

Romero describes how Juanita's employer would attempt to break the tension in difficult situations with flirtatious and sexist remarks to Juanita.¹⁰⁸ In the situation Romero recounts, there is no mention of a sexual assault, but the sexual remarks commonly made created an uncomfortable working environment for Juanita. Because of the lack of reporting among undocumented workers, it is hard to analyze any statistical data.

IV. CASE LAW ADDRESSING SEXUAL HARASSMENT OF UNDOCUMENTED WOMEN

There are several cases in which undocumented workers who were sexually harassed brought suit and won. One of the first such cases brought, *United States v. Davila*,¹⁰⁹ involved two undocumented women who were sexually assaulted by two border patrol officers.¹¹⁰ The officers stopped an automobile containing two United States

than half of the federal minimum wage. *Id.* at 633.

106. Quintanilla & Copeland, *Mexican Maids: El Paso's Worst-Kept Secret*, in *Special Report: The Border*, EL PASO HERALD POST, Summer 1983, at 84.

107. ROMERO, *supra* note 1, at 2.

108. ROMERO, *supra* note 1, at 3 (explaining that the employer felt he was aiding Mexican women from Juarez by helping them cross the border and employing them in his home).

109. 704 F.2d 749 (5th Cir. 1983).

110. *Id.* at 751.

Army privates and two Mexican women.¹¹¹ The car entered the country illegally.¹¹² The border patrol officers kept the two women in their custody and "exacted a price for their liberty."¹¹³ That price was sexual intercourse.¹¹⁴ The private, who was engaged to one of the Mexican women, filed charges with the INS after he discovered what had happened.¹¹⁵ Both officers were charged with sexually abusing the two Mexican women and with conspiring to deprive the women of their liberty by coercing sexual favors from them.¹¹⁶ The border patrol officers were found guilty of the charges.¹¹⁷ The Fifth Circuit Court found a high degree of corroboration in the testimony of the soldiers and the women surrounding the stop and the sexual assault.¹¹⁸ This degree of corroboration was more than sufficient to allow a reasonable jury to identify the defendants as the perpetrators.¹¹⁹

There are two interesting aspects about this case. First, this case deals with border patrol officers. This triggers the protections embodied in the idea of "under color of any law."¹²⁰ The officers not only violated the law by coercing sexual intercourse from the undocumented women, but they used their positions as governmental officials to do so.¹²¹ This is obviously distinguishable from a situation where an employer coerces sexual acts from an undocumented domestic. In the first situation, the wrongful use of a governmental position is an issue, whereas in the second situation there is no such issue. The second interesting point about this case is that one of the women's fiancé was the person who filed the claim with the INS.¹²²

111. *Id.*

112. *Id.*

113. *Id.*

114. *Davila*, 704 F.2d at 751 (stating the incident occurred at an apartment owned by Davila, one of the defendants).

115. *Id.* (stating one of the Mexican women, Alicia Ortiz, told her fiancé, Warren Palmer, about the incident, and he filed a claim).

116. *Id.*

117. *Id.*

118. *Id.* at 751-52 (stating that the Mexican women were able to identify the outside of the apartment where they were taken and where the incident occurred. The apartment was leased to Davila, and the women described the interior of the apartment with accurate detail and without having to enter it again. This description was corroborated by defendant Davila's wife, who was out of town on the date of the incident).

119. *Id.* at 752.

120. See 18 U.S.C. § 242 (stating "whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States" shall be guilty of an offense against the United States).

121. *Davila*, 704 F.2d at 751.

122. *Id.*

He was a private in the military and a United States citizen.¹²³ One of the likely reasons this case went to litigation is that the women had a support network of United States citizen contacts to help them bring suit. Most undocumented domestic workers do not have such support networks.¹²⁴ Many times undocumented domestics feel isolated and are uninformed about their rights under United States law.¹²⁵

Mary Romero discusses this feeling of isolation experienced by many undocumented workers in domestic service.¹²⁶ Romero notes how Juanita, the undocumented worker whom she met while staying at a colleague's house, experienced this alienating feeling.¹²⁷ "Juanita lowered her head and in a sad, quiet voice told me how isolated and lonely she felt in this middle-class suburb literally within sight of Juarez."¹²⁸ Romero explains that Juanita's isolation and loneliness were in response to the norms and values surrounding domestic service.¹²⁹ Many domestics experience isolation even though they work in large households.¹³⁰ Live-in Latina immigrant domestics are separated from family and friends, living with employers who consider them to be invisible. Undocumented Latina domestic workers experience culture shock and language barriers.¹³¹ All of these factors create a feeling of isolation, which can and does inhibit many undocumented domestics from challenging exploitative work environments.¹³²

*EEOC v. Hacienda Hotel*¹³³ raises other interesting issues surrounding undocumented women workers and sexual harassment. Hacienda Hotel is a case in which the EEOC alleged that the hotel general manager, executive housekeeper, and chief of engineering engaged in unlawful employment practices against female housekeeping department employees.¹³⁴ The unlawful employment practices included sexually harassing women, terminating them when they became pregnant, failing to accommodate their religious be-

123. *Id.*

124. ROMERO, *supra* note 1, at 6.

125. ROMERO, *supra* note 1, at 92.

126. ROMERO, *supra* note 1, at 4.

127. ROMERO, *supra* note 1, at 3.

128. ROMERO, *supra* note 1, at 3.

129. ROMERO, *supra* note 1, at 3.

130. ROMERO, *supra* note 1, at 3.

131. ROMERO, *supra* note 1, at 4 (stating that communication between immigrant domestics and their employers was impossible due to social isolation and language barriers).

132. ROMERO, *supra* note 1, at 4.

133. 881 F.2d 1504 (9th Cir. 1989).

134. *Id.* at 1507.

liefs, and retaliating against them for opposing Hacienda's discriminatory practices.¹³⁵ The suit involved five current and former Hacienda maids, all but one of whom were undocumented workers.¹³⁶

When some of the women became pregnant, comments such as "that's what you get for sleeping without your underwear," "stupid women who have kids," "dog," "whore," and "slut" were made by the managing staff of the hotel.¹³⁷ Other comments such as "women get pregnant because they like to suck men's dicks" were also made to pregnant workers.¹³⁸ These women workers were also terminated due to their pregnancies, after being informed that they were too fat to clean rooms.¹³⁹ On many occasions, the chief of engineering threatened to have workers fired if they did not submit to his sexual advances.¹⁴⁰ The chief of engineering also made sexually harassing comments to the women domestics at the hotel.¹⁴¹ Mercedes Flores, one of the immigrant domestics who brought suit, stated that the chief of engineering regularly offered her money and an apartment to live in if she would "give him [her] body".¹⁴² He also assured her that she would never be fired if she would have sex with him.¹⁴³

The Ninth Circuit Court found that Hacienda's practice of terminating pregnant employees violated Title VII and that the hotel was liable for sexual harassment by its supervisors.¹⁴⁴ This factual situation is different from that experienced by undocumented live-in workers who work in private homes. The women in the Hacienda Hotel had each other for support and corroboration.¹⁴⁵ The stories of each of the women strengthened the story of each individual woman. Domestics working in private homes do not have other people to validate or strengthen their stories, and are isolated from other indi-

135. *Id.*

136. *Id.*

137. *Id.* Theodora Castro, one of the women involved in the case, was subjected to such remarks from both the executive housekeeper and the chief of engineering.

138. *Hacienda Hotel*, 881 F.2d at 1508 (noting that Flora Villalobos had this comment directed at her during her pregnancy).

139. *Id.* (stating that Leticia Cardona was informed during her seventh month of pregnancy that she was too fat to clean rooms and was terminated even though she was willing and able to work and had a note from her doctor indicating she would be able to continue her duties until two or three weeks before her estimated delivery date).

140. *Id.* at 1508.

141. *Id.* (stating that the chief of engineering commented that Villalobos had "such a fine ass. It's a nice ass to stick a nice dick into. How many dicks have you eaten?").

142. *Hacienda Hotel*, 881 F.2d at 1508.

143. *Id.*

144. *Id.* at 1519.

145. *Id.* at 1508.

viduals who would be willing and able to attest to their exploitation.¹⁴⁶ Typically, it is the undocumented domestic worker's word against their employer, who usually appears to be an upstanding member of society.¹⁴⁷

Harassment of immigrant women is common.¹⁴⁸ One District Attorney's office and a community group in a Northern California town concluded, based on their investigation in a local case of sexual abuse, that such episodes happen quite often.¹⁴⁹ For instance, Maria de Jesus Ramos Hernandez,¹⁵⁰ who traveled from Mexico to the United States to work for a chiropractor, in order to raise money for an operation to cure her daughter's birth defect.¹⁵¹ Almost immediately, her employer began to sexually abuse her.¹⁵² She did not immediately report the attacks or run away because she was alone and isolated, with no place to go. She felt she "could not deny him pleasure ... because of what he paid her."¹⁵³ Ramos Hernandez did not immediately report the abuse for many reasons.¹⁵⁴ She was afraid that the doctor would kill her (and no one would even notice she was missing); she had no money, identification, or knowledge of English; she did not think that the police would believe her word against that of a doctor; and she felt that she would be blamed.¹⁵⁵

Ramos Hernandez's story is similar in many ways to the abuse that other immigrant women face working in the home. Her story helps explain why undocumented women are unable to take action to end the harassment they experience. To respond aggressively to the harassment, they must confront their learned cultural values, including self-blame and passivity. Their inability to understand the situation is

146. ROMERO, *supra* note 1, at 3-4.

147. See Doreen Carvajal, *For Immigrant Maids, Not a Job But Servitude*, N.Y. TIMES, Feb. 25, 1996, at A1 (reporting the story of Erelkina Flores, who sued an employer after the employer accused her of stealing four hundred dollars, and subjected her to a strip search); see also ROMERO, *supra* note 1, at 4 (stating that hiring immigrant domestics was viewed as charity by American middle class persons).

148. Suzanne Espinoza, *Remembering the Pain: Female Immigrants Tell of Abuse*, S.F. CHRON., Mar. 9, 1993, at A11, A12 (noting the frequency of human rights violations against immigrant women in the United States and reporting on the seven-hour conference held to call attention to the problem).

149. Carla Marinucci, *Despair Drove Her to Come Forward*, S.F. EXAMINER, Jan. 10, 1993, at A11.

150. *Id.*

151. *Id.* (Maria's one year old daughter had pyloric stenosis, which caused constant vomiting and kept her from properly digesting food, resulting in a weight of only twelve pounds).

152. *Id.* (stating her employer was violent and warned her that resistance would "get her sent to Tijuana," where she would be gang raped by men).

153. *Id.*

154. Marinucci, *supra* note 149, at A11.

155. Marinucci, *supra* note 149, at A11.

further complicated because their cultures have different views of sexuality, which may not include the concept of sexual harassment.¹⁵⁶

Maria Ontiveros noted that the race and gender of immigrant women shape and enhance the harasser's actions.¹⁵⁷ Harassers choose these women because they lack power relative to other workers, and because they are often perceived as passive and unable to complain.¹⁵⁸ Racism and sexism blend together in the mind of the harasser, so that comments made and actions taken against the immigrant women workers embody unique characteristics of their racially stereotyped sexuality.¹⁵⁹ In many ways undocumented working women are targets of discriminatory harassment because of their race.¹⁶⁰

V. THE CONNECTION BETWEEN IMMIGRATION AND DOMESTIC LABOR

Many undocumented domestics try to get their immigration status legalized through employer sponsorship.¹⁶¹ They realize that their illegal status makes them vulnerable to exploitation.¹⁶² If undocumented domestics were legally allowed to work in the United States, they would have more leverage against abusive employers. Threats of deportation would no longer have value.

Romero illustrates this exact point:

Isabel Garcia-Media recalled an employer who threatened to call the immigration when she refused "to clean her house and iron two big plastic bags full of clothes - do everything for \$5." She responded by pulling out her resident alien card and telling the employer to call whomever she wanted.¹⁶³

In Goldberg's hypothetical account of Pia, an undocumented domestic worker, she also recounts why Pia wanted to obtain legal documentation.¹⁶⁴ Legal documentation would enable her to bring family from El Salvador to the United States, and secure her job with

156. Marinucci, *supra* note 149, at A11.

157. Ontiveros, *supra* note 105, at 612.

158. *Id.*

159. *Id.* at 818-19. For example, harassment aimed against African American women has incorporated images of slavery, degradation, sexual availability, and natural lasciviousness. Asian American women have been portrayed by their harassers as exotic, submissive, and naturally erotic. Latinas have been perceived as naturally sexual and available. *Id.* n.103.

160. *Id.*

161. Delaney, *supra* note 31, at 315.

162. Delaney, *supra* note 31, at 315.

163. ROMERO, *supra* note 1, at 92.

164. Goldberg, *supra* note 92, at 80.

her employer.¹⁶⁵ She wanted employment stability because she feared her employer might fire her and hire another woman with legal documentation. She also wanted legal documentation to preserve the possibility of finding better work.¹⁶⁶

Since legal documentation is so desirable, why are more employers of domestic workers not putting in the paperwork? Many employers fear liability for not paying taxes or providing benefits to their undocumented domestic workers throughout the years.¹⁶⁷ Also, the immigration process is extremely long and burdensome.¹⁶⁸ It is possible to sponsor a housekeeper for an immigrant visa (green card), but the process is so lengthy under the present law that most immigration lawyers advise against beginning the process.¹⁶⁹ Sponsoring a household worker for an immigrant visa requires three steps: 1) obtaining a certification from the Department of Labor that there are no qualified U.S. workers to fill the job; 2) obtaining approval of a visa petition from the INS; and 3) obtaining the issuance of the immigrant visa from the Department of State.¹⁷⁰ It is important to note that if undocumented individuals work in the United States without authorization, they are barred from adjusting their status in the United States and must leave the country in order to obtain a green card based upon employer sponsorship.¹⁷¹ The best estimates available state that it will take ten to fifteen years under the current system for a domestic worker, beginning the process today, to obtain a green card.¹⁷² Employers should also know that they cannot lawfully employ an undocumented worker until she obtains an immigrant visa or employment authorization from the INS.¹⁷³

During this long process, an undocumented worker risks seizure and deportation.¹⁷⁴ The sponsoring employer also risks investigation, prosecution, and fines between \$250 and \$2000.¹⁷⁵ Consequently,

165. Goldberg, *supra* note 92, at 80.

166. Goldberg, *supra* note 92, at 80.

167. Goldberg, *supra* note 92, at 80 (commenting that Pia's employers were hesitant to deal with the INS concerning Pia's immigration status).

168. Goldberg, *supra* note 92, at 73.

169. Noel Anne Ferris, *Immigration Requirements for Household Employees*, in EMPLOYING DOMESTIC HELP: TAX, IMMIGRATION AND INSURANCE OBLIGATIONS 483 (PLI Litig. & Admin. Practice Course Handbook Series No. H4-5186, 1993).

170. *Id.* at 483-85.

171. *Id.*

172. *Id.*

173. *Id.*

174. M. Isabel Medina, *In Search of Quality Childcare: Closing the Immigration Gate to Childcare Workers*, 8 GEO. IMMIGR. L.J. 161, 168 (1994).

175. *Id.*

many undocumented workers feel trapped in an abusive working environment while awaiting their legal documentation. Some domestic workers have endured harsh working situations for years simply to obtain a green card. If an undocumented domestic worker chose to leave her employer, she would give up her opportunity for a green card.¹⁷⁶

Many employers use their ability to help an undocumented domestic worker get her green card to exploit the worker and coerce her into doing more work or performing sexual favors.¹⁷⁷ Employers' rewards and inducements often bind the worker in an emotional and economic trap.¹⁷⁸ Simply the promise to help an employee get a green card obligates the worker beyond the boundaries of the contractual work arrangement.¹⁷⁹ One woman recalled trying to leave a live-in job once she had obtained a green card. "The employer would break down crying, begging her to stay, telling her it was unfair to leave after all they had done for her."¹⁸⁰

Another problematic issue for undocumented domestics working in private homes is that penalties for employers are minimal and often not enforced.¹⁸¹ Many immigration attorneys inform their clients that those who hire undocumented workers do violate an immigration law, but not a criminal law.¹⁸² This is a civil violation similar to a traffic violation.¹⁸³ It becomes obvious that the immigration laws are not strictly enforced, particularly against employers of nannies or household workers.¹⁸⁴

Generally, families in the United States have escaped liability under immigration sanction provisions (such as the IRCA). Congress recognized the widespread practice of employing undocumented household and child care workers, and stated that small-scale violators should not be sanctioned.¹⁸⁵ Consequently, the INS has released statements indicating that it will not pursue families illegally hiring

176. Delaney, *supra* note 31, at 315.

177. ROMERO, *supra* note 1, at 121.

178. ROMERO, *supra* note 1, at 121.

179. ROMERO, *supra* note 1, at 121.

180. Maria Laurino, *I'm Nobody's Girl: New York's New Indentured Servants*, THE VILLAGE VOICE, 31, at 17-18, 20-22, 24 (19XX).

181. Medina, *supra* note 174, at 168.

182. See Medina, *supra* note 174, at 168.

183. Medina, *supra* note 174, at 168.

184. See Medina, *supra* note 174, at 168 (stating one attorney advised a client that this law was not strictly enforced against employers of nannies or household workers).

185. DeLaney, *supra* note 31, at 316.

household workers.¹⁸⁶

Professor M. Isabel Medina brought this issue to light in her discussion of Nora and Hedda, a hypothetical employer and immigrant domestic, respectively.¹⁸⁷ Nora visited an attorney and was informed that the process for petitioning for Hedda is both long and cumbersome and not really necessary, because the INS will not prosecute these types of violations. The story continues as follows:

Nora is torn. She wants to obey the law, but she also wants to secure for her child the best care she can afford. To Nora the choice is clear. Nora and Hedda start the visa application process ... It is almost a year after the filing of the application that the DOL [Department of Labor] issues the certification to Hedda ... Hedda and Nora have a seven to ten year wait for the visa. During this time, Nora risks investigation, prosecutions and fines ... Hedda risks seizure and deportation. Nora's baby risks losing the continuity of care with a trusted and loved caretaker.¹⁸⁸

It seems that the current system not only exploits undocumented domestic workers, but also hinders their opportunities to be productive members of our society. The next section of this paper will analyze recommendations to change and improve the current system so that undocumented domestic workers will not be trapped in sexually, emotionally or economically abusive work environments in order to remain in the United States.

VI. RECOMMENDATIONS

A wide variety of suggestions have arisen from the dilemma of undocumented domestics. Many of these solutions are for the ease and peace of mind of the employer. The domestic becomes somehow invisible in the discussion. It seems that an employer-centered approach to this problem would only perpetuate the discrimination and isolation that undocumented domestics experience. Solutions which focus on the needs and concerns of the exploitable domestic have to be at the center of the discussion in order for the exploitation to be addressed.

Many scholars in this field suggest that there be a liberal immigration policy which would allow immigrant domestics to work legally.¹⁸⁹

186. DeLaney, *supra* note 31, at 316.

187. Medina, *supra* note 174, at 168.

188. *Id.*

189. See Ontiveros, *supra* note 105, at 608-12 (arguing that the current structure of labor and immigration laws do not allow undocumented workers remedies against employers who exploit them); but see Margulies, *supra* note 91, at 555 (arguing that granting undocumented workers

There are two guiding objectives: first, to facilitate workers' coverage under relevant employment laws, and second, to minimize the decrease in job supply while enforcing the financial obligations of those who can afford to pay them.¹⁹⁰ Another goal is to reduce the vulnerability and exploitability of immigrant women, particularly those who lack legal paperwork or residence documentation.¹⁹¹

One proposal which liberalizes immigration law would exclude household workers under the IRCA, thereby permitting employers to hire such workers legally.¹⁹² Under this type of proposal, employers would be required to pay taxes for undocumented domestic workers.¹⁹³ This type of proposal has both positive and negative effects for an undocumented domestic worker.

On the positive side, the undocumented domestic worker no longer fears being fired for lack of documentation. The domestic worker will probably have a greater sense of security and will almost entirely overcome her increased difficulty in requesting changes in employment conditions. On the negative side, sexual harassment practices are not stopped in any significant way under this type of proposal. An undocumented domestic will not receive any of the benefits given to documented workers under this proposal.¹⁹⁴ Benefits such as social security, unemployment, and disability will not apply to undocumented workers until the IRCA is changed.¹⁹⁵ Due to this, employers may not be willing to give undocumented domestics raises or vacation time because they feel that they are already paying taxes on the domestics' behalf.¹⁹⁶ It is important to note that a law designed to help women must do more than provide special immigration benefits, it must also guarantee increased wages and benefits for those engaged in work traditionally performed by women.¹⁹⁷

Another possibility is for household workers to organize.¹⁹⁸ Household workers confront a daunting challenge in the very idea of organizing for change by seeking "rights, privileges, and protections associated with the workplace in a sphere governed by personal and

access to comprehensive remedies for violations of employment law would reduce demand for such workers).

190. Goldberg, *supra* note 92, at 78.

191. Goldberg, *supra* note 92, at 93-94.

192. Goldberg, *supra* note 92, at 79.

193. Goldberg, *supra* note 92, at 79.

194. Goldberg, *supra* note 92, at 79.

195. Goldberg, *supra* note 92, at 79.

196. Goldberg, *supra* note 92, at 75.

197. See, e.g., Root & Tejani *supra* note 21, at 614-15.

198. Goldberg, *supra* note 92, at 75.

familial values."¹⁹⁹ Domestic workers have a generalized distrust of professional women's and feminist organizations' efforts of assistance.²⁰⁰ There is also a widespread mistrust of lawyers which impedes organizational efforts by outsiders.²⁰¹ Because of these ideological conceptions, workers' organizations are more of an historical phenomenon than a reality.²⁰²

Scholars such as M. Isabel Medina suggest that a more effective method of preventing abuse of undocumented workers is to more strictly enforce existing labor laws,²⁰³ such as the Occupational Safety and Health Act,²⁰⁴ the Fair Labor Standards Act,²⁰⁵ social security laws, unemployment insurance laws, the Age Discrimination in Employment Act,²⁰⁶ and Title VII.²⁰⁷ It is contended that stricter enforcement of these laws would "reduce the incentive for employers to hire undocumented workers and to protect against their exploitation."²⁰⁸ Enforcement of these laws, especially Title VII, would be problematic for undocumented domestics. Title VII is effective only in establishments with twenty-five or more employees.²⁰⁹ Undocumented domestic workers often do not work in an establishment where there are twenty-five workers because they work in a home. Title VII, which protects against sexual harassment, therefore does not protect most undocumented domestics. It is apparent that undocumented workers are not adequately protected under current laws. New legislation needs to be implemented which would empower and protect

199. Goldberg, *supra* note 92, at 75.

200. Chaney & Castro, *A New Field for Research and Action*, in MUCHACHAS NO MORE 4 (1989).

201. Gerald Lopez, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 5 (1989) (arguing that this distrust is particularly prevalent among women of color.) "Instead of using law and lawyers, most low income women of color apparently often deal with oppressive circumstances through their own stock of informal strategies." *Id.* at 8.

202. Goldberg, *supra* note 92, at 75.

203. See Medina, *supra* note 174, at 173 (arguing that such a policy would shift the burden from employee to employer and reduce employer discrimination).

204. 29 U.S.C. § 651 (1994).

205. 29 U.S.C. § 201 (1994).

206. 29 U.S.C. § 621 (1994).

207. 42 U.S.C. § 2000(e) (1994). Under Title VII, traditional remedies designed for documented workers might not apply to undocumented workers because of a poor fit between the legal doctrine and their status. Undocumented workers cannot be reinstated because they cannot legally work here. Additionally, backpay and front pay generally have been limited to people available to work. Undocumented workers may be considered *de jure* unavailable. Nonetheless, it is clear that the purposes underlying Title VII remedies apply equally to undocumented workers and in most cases do not undermine IRCA. For this to happen, however, the current doctrine must be liberally construed or additional remedies must be created. See Ontiveros, *supra* note 105, at 608.

208. Medina, *supra* note 174, at 173.

209. 42 U.S.C. § 2000(e) (1994). See also Margulies, *supra* note 91, at 577.

undocumented domestic workers who are the most vulnerable to economic and sexual exploitation.

Obviously, undocumented workers are at risk for abuse. One solution to prevent the abuse is to facilitate and streamline the legal immigration of domestic workers. This would ensure that immigrant workers who are hired would receive competitive salaries and fair treatment because they would no longer be "indentured" to the employer who sponsored them for legalization, and would be free to seek better employment if they choose.²¹⁰ This proposal would enable undocumented domestics to work legally, and to have the mobility to leave exploitative work environments.

VII. CONCLUSION

The situation which undocumented domestics face is complex because issues of racism, sexism, classism and nationalism are all involved. Undocumented domestics are extremely vulnerable to exploitation both sexually and economically. The current immigration system must be changed so that undocumented domestic workers will have opportunities to work without the fear of deportation and abuse. The services they provide are in grave demand.²¹¹ Accordingly, the women who give these services should be given the dignity they deserve to work and live.

Immigration laws must be changed so that undocumented domestic workers have viable legal options for immigration which do not trap or coerce them into exploitative jobs. These workers need mobility so that they have the opportunity to leave exploitative work environments. If the focus is switched from the needs of the employers to the needs of the exploited worker, issues such as sexual harassment can be properly addressed.

210. Goldberg, *supra* note 92, at 174.

211. Medina, *supra* note 174, at 197 (stating that United States Department of Labor statistics indicate that the U.S. market has a shortage of domestic childcare providers); *see also* David McGree, *Reopening Liberty's Arms: Steps Toward Open Immigration*, 4 KAN. J.L. & PUB. POL'Y 127, 128 (1994) (reporting that about one and a half million households hire immigrants as nannies or housekeepers).