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## Undocumented Domestic Workers: A Penumbra in the Workforce

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**UNDOCUMENTED DOMESTIC WORKERS:  
A PENUMBRA IN THE WORKFORCE**

**ABIGAIL ADELLE ROMAN\***

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\* St. Mary’s University School of Law, J.D., expected May 2021; The University of Texas at San Antonio, B.A., Psychology with a Minor in Legal Studies, December 2016. I would like to first extend my biggest gratitude to my mother. Mom, thank you for always being my cheerleader and for always encouraging me to chase my dreams. Without your guidance and unconditional support, I would not be where I am today. I want to also thank my “welo” for always being supportive and wanting to see his grandkids succeed. My passion and ambition stem from him always telling me to “échale ganas para seguir adelante miya.” I also want to extend my sincerest gratitude to the rest of my family and friends for always supporting me in my endeavors. Finally, I dedicate this Comment to not just domestic workers, but to all the working-class individuals who work endlessly to support their families. The hustle may never end, but justice and advocacy will always prevail.

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INTRODUCTION

“I think it is an injustice what happened to me . . . . All because I fell, I slipped.”<sup>1</sup> Picture this: you are an undocumented employee and you get injured not once, but *twice* at work.<sup>2</sup> You avoid confronting your boss for fear of deportation or retaliation.<sup>3</sup> Fortunately, your employer offers workers’ compensation and you seek the medical attention needed to treat the injury.<sup>4</sup> Throughout this process, the insurance investigator discovers you are using a false Social Security number to work.<sup>5</sup> As an undocumented worker,<sup>6</sup> your biggest fear has come to life and your

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1. Michael Grabell & Howard Berkes, *They Got Hurt at Work—Then They Got Deported*, NAT’L PUB. RADIO (Aug. 16, 2017, 5:00 AM), <https://www.npr.org/2017/08/16/543650270/they-got-hurt-at-work-then-they-got-deported/> [<https://perma.cc/6QP5-L4NV>] (articulating a woman’s thoughts when facing deportation after falling down and injuring herself at work).

2. *See id.* (illustrating the consequences an undocumented person can face when seeking required medical attention).

3. *See, e.g.*, Sarah Holder, *The Price of Domestic Workers’ Invisible Labor in U.S. Border Towns*, CITY LAB (June 25, 2018), <https://www.citylab.com/equity/2018/06/the-price-of-domestic-workers-invisible-labor-in-us-border-towns/563087/> [<https://perma.cc/49MF-DWA7>] (discussing the unfortunate truth about women working in-house jobs along the U.S.-Mexico border); *see also* Ivette Feliciano & Corinne Segal, ‘*You’re Mostly Isolated and Alone.*’ *Why Some Domestic Workers are Vulnerable to Exploitation*, PBS (Aug. 12, 2018), <https://www.pbs.org/newshour/nation/ai-jen-poo-domestic-workers-exploitation> [<https://perma.cc/KZ7E-4A6D>] (explaining how domestic workers are targets for abuse).

4. *See* Grabell & Berkes, *supra* note 1 (voicing an individual’s personal experience in being required to seek medical attention by their employer following an injury on the job).

5. *See id.* (portraying personal stories of undocumented individuals being discovered by a worker’s compensation insurance investigator after an injury on the job).

6. Although on the legal basis the correct term is “illegal alien” for individuals who are in the United States illegally, I chose to address them as undocumented individuals. “Undocumented individual[s]” is a more politically correct term when addressing these persons by their immigration

whole world unravels quicker than you can react.<sup>7</sup> As the process to send you back to your “country of origin” begins, you start to think, “what will happen to my family, and where will I go?” or, “I was just working to support my kids.”<sup>8</sup> These are real, unfortunate stories of both men and women who, like a majority of Americans, were just working and saving to provide a grounded future for their family.<sup>9</sup>

Now picture this: you are an undocumented *domestic worker* and your primary duty is caring for a sick client whose husband found out about your immigration status and is forcing you to have sexual relations with him in exchange for keeping quiet and not reporting you.<sup>10</sup> As a domestic worker, you are left in a vulnerable position if your immigration status is discovered.<sup>11</sup> You are subjected to sexual harassment by either your private employer or a relative of your employer; otherwise, you are threatened with deportation.<sup>12</sup> You fear making a police report about the abuse you are subjected to.<sup>13</sup> You feel like you are stuck in your job

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status. See, e.g., Hans A. von Spakovsky, “*Undocumented Immigrant*” is a Made-Up Term That Ignores the Law, THE HERITAGE FOUND. (July 30, 2018), <https://www.heritage.org/immigration/commentary/undocumented-immigrant-made-term-ignores-the-law/> [https://perma.cc/M6VY-6ECA] (commenting on the harmful label of immigrants as aliens).

7. See generally Olivia Sanchez, *Endless Fear: Undocumented Immigrants Grapple with Anxiety, Depression Under Trump*, USA TODAY (Aug. 27, 2019), <https://www.usatoday.com/story/news/nation/2019/08/25/undocumented-immigrants-struggle-mental-health-survival-mode/1816672001/> [https://perma.cc/M9UW-XB3R] (expressing the fearful thoughts that arise for undocumented immigrants).

8. See Grabell & Berkes, *supra* note 1 (sharing the anecdotal fears undocumented workers encounter when facing deportation); see also Sanchez, *supra* note 7 (depicting the anxiety and stress an undocumented individual faces in regard to deportation).

9. See Grabell & Berkes, *supra* note 1 (discussing the unfortunate reality many undocumented individuals face when their status is discovered through a worker’s compensation insurance investigator).

10. See Bernice Yeung, *Domestic Work is Intimate, Invisible - and a Risk for Sex Abuse*, REVEAL (Apr. 13, 2018), <https://www.revealnews.org/article/domestic-work-is-intimate-invisible-and-a-risk-for-sex-abuse/> [https://perma.cc/MQM5-NUR7] (echoing the fears and concerns surrounding the abuse many domestic workers experience).

11. See *id.* (amplifying the intensity of the vulnerable position domestic workers are often found).

12. See *id.* (depicting the shame society places on sexual violence victims in the domestic workplace).

13. See *id.* (stating how fearful domestic workers are and how they would rather stay quiet).

because you have no one to go to for legal help or there is no legal remedy available for you.<sup>14</sup>

In other words, if you get hurt while on the job working as a provider, housekeeper, or even a nanny, there is no legal remedy available for you.<sup>15</sup> Unfortunately, unlike in other fields, you cannot bring a claim under workers' compensation because your field of work does not bear any form of labor protection.<sup>16</sup> Federal labor laws and state laws have completely disregarded and failed to extend protection to you based on a long historical bias against domestic work.<sup>17</sup> This is one of many scenarios domestic workers experience within their field of work.<sup>18</sup>

While undocumented employees generally face the fear of deportation, domestic workers face much more than that.<sup>19</sup> They are subjected to responding to sexual advances and favors in exchange for the ability to work and stay in the United States.<sup>20</sup> Domestic workers face various hardships when it comes to being protected by local, state, and federal labor laws.<sup>21</sup> Domestic workers face this problem nationwide, but are more susceptible to such abuse when they work along the bordering cities in the United States.<sup>22</sup> More specifically, *female* domestic workers are subjected to hostile work environments and abusive situations with their

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14. *See id.* (explaining the stark reality surrounding the lack of legal protection for domestic workers). *But see, e.g.*, TEX. RIO GRANDE LEGAL AID, LEGAL ISSUES AFFECTING DOMESTIC WORKERS 66 (2013), [http://fuerzadelvalle.org/wp-content/uploads/2014/01/legal\\_issues\\_affecting\\_domestic\\_workers.pdf](http://fuerzadelvalle.org/wp-content/uploads/2014/01/legal_issues_affecting_domestic_workers.pdf) [<https://perma.cc/S69V-BDPX>] (outlining how limited federal labor laws narrowly extend to domestic service employees in Texas).

15. TEX. LAB. CODE ANN. § 406.091 (explaining how worker's compensation coverage extends to certain employees except "a person employed as a domestic worker or a causal worker engaged in employment incidental to a personal residence").

16. *See id.* (detailing the application of coverage available to certain employees).

17. *See* Feliciano & Segal, *supra* note 3 (providing a historical basis for lack of protection for domestic workers).

18. *See generally* Grabell & Berkes, *supra* note 1 (sharing common experiences domestic workers face).

19. *See* Feliciano & Segal, *supra* note 3 (referring to exploitation domestic workers experience due to their invisible role in the workforce).

20. *See* Yeung, *supra* note 10 (explaining how domestic workers' vulnerability subjects them to sexual abuse).

21. *See, e.g.*, Feliciano & Segal, *supra* note 3 (providing brief information on the lack of labor protections for domestic workers on both federal and state levels).

22. *See generally* Holder, *supra* note 3 (pointing to the abysmal treatment in the field of domestic work along bordering cities between the United States and bordering countries).

clients or relatives of their clients for whom they offer their care.<sup>23</sup>

Between the fear of being deported and lack of awareness of their rights, the fears of immigrant workers are undoubtedly widespread across the nation.<sup>24</sup> Centered on the U.S.-Mexico border, the fear of deportation is even greater.<sup>25</sup> Although both men and women face wage theft, on the job injuries, and exploitation, women appear to be more susceptible than men, especially in domestic work.<sup>26</sup> Since undocumented domestic workers have little to no labor protection in the workforce, it is imperative their voices are heard in light of today's societal opinion on undocumented individuals residing in the United States.<sup>27</sup> It is only humane to grant immigrants basic rights, especially when they work and contribute to the American economy.<sup>28</sup> More specifically, grant them rights to assert a claim against an employer both in the private and public sector when they are injured or suffer some form of workplace injury.<sup>29</sup> The question then becomes: what can we do to assist these women with legal representation by educating them of their rights?<sup>30</sup> These are considered fundamental rights.<sup>31</sup> Rather than be based on their status as

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23. See Yeung, *supra* note 10 (reporting a female's story regarding her employment experience as a domestic worker).

24. See generally Grabell & Berkes, *supra* note 1 (expounding the fears undocumented workers face when deciding to file a worker's compensation claim); see also Sanchez, *supra* note 7 (portraying the prevalent fear present for many undocumented immigrants).

25. See Holder, *supra* note 3 ("The fear is historic in this region and the policies of hate in this administration have reached new levels.").

26. See Diana Vellos, Article, *Immigrant Latina Domestic Workers & Sexual Harassment*, 5 AM. U. J. GENDER & LAW 407, 408 (1997) (analyzing how women are far more likely to be subjected to exploitation than men in these circumstances).

27. Teresita Perez, "Si Se Puede": A Phrase with a Rich History, CTR. FOR AM. PROGRESS (Sept. 22, 2008, 9:00 AM), <https://www.americanprogress.org/issues/race/news/2008/09/22/4950/si-se-puede/> [<https://perma.cc/JV9T-Y3UQ>] (discussing the symbolic nature of the phrase "Si se puede" when César Chávez advocated for fair wages and better working conditions for farm workers).

28. See Joan Monras et al., *Understanding the Effects of Legalizing Undocumented Immigrants*, IZA INST. OF LAB. ECON. (Apr. 2017), <http://ftp.iza.org/dp10687.pdf> [<https://perma.cc/2DFM-QCNE>] (identifying the economic benefits undocumented immigrants have on United States).

29. See Kevin Redmayne, *Bad Housekeeping: The Plight of Domestic Workers*, MEDIUM (May 7, 2017), <https://medium.com/@KevinRedmayne/bad-housekeeping-the-plight-of-domestic-workers-5cceb5d9b676> [<https://perma.cc/SY9A-E9GN>] (suggesting advocacy initiatives).

30. See *id.* (highlighting the perpetual need to protect domestic workers).

31. U.S. CONST. amend. XIV, § 1 ("[N]or shall any state deprive any person life, liberty, or property without due process of the law . . .").

immigrants, their rights should stem from their status as domestic employees.<sup>32</sup> This is a notion the United States should come to understand and accept.<sup>33</sup> No one who works and resides in the United States should be robbed of such rights.<sup>34</sup>

This Comment will touch on the infringement of an undocumented domestic worker's right to bring a personal injury claim in court and shed light on the lack of labor protections for domestic workers.<sup>35</sup> This Comment focuses on the irrelevancy of a domestic worker's immigration status when seeking damages for their work-related injury.<sup>36</sup> The centralized purpose of this Comment aims to understand why it is irrelevant to bring up an individual's immigration status in an employment related claim when federal and state enacted programs like the Fair Labor Standards Act (FLSA) and Texas Workers' Compensation Act (TWCA) allow for any person to submit a claim.<sup>37</sup> The word "person" is dissected to further establish that the word includes *any* individual who works in America, including a non-citizen.<sup>38</sup> This Comment is intended to promote the importance of advocating for undocumented domestic workers and remind them that they have a voice they can use in their place of employment.<sup>39</sup>

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32. Cf. Press Release, U.S. Equal Emp't Opportunity Comm'n, EEOC Reaffirms Commitment to Protecting Undocumented Workers from Discrimination (June 28, 2002), <https://www.eeoc.gov/eeoc/newsroom/release/6-28-02.cfm> [<https://perma.cc/6VR4-AGPW>] (stressing the agency's proactive measures to protect undocumented workers).

33. See *id.* (urging the government to root out discrimination against undocumented workers).

34. See generally *The Importance of Employment Laws*, BROWN & FORTUNATO L. FIRM (Jan. 13, 2016), <https://www.bf-law.com/the-importance-of-employment-laws/> [<https://perma.cc/95H8-ES9D>] (reiterating the importance of establishing labor rights).

35. See *Grocers Supply, Inc. v. Cabello*, 390 S.W.3d 707, 709 (Tex. App.—Dallas 2012, no pet.) (stating immigration status does not preclude the ability to obtain lost wages and lost earning capacity). But see *Republic Waste Servs., Ltd. v. Martinez*, 335 S.W.3d 401, 402 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (providing that immigration status is only relevant to calculate lost future income).

36. See *TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 241 (Tex. 2010) (referencing the Texas Supreme Court's acknowledgment that an immigrant worker's status is irrelevant in court).

37. *The National Domestic Workers Bill of Rights Ensures Domestic Workers Have Respect, Dignity, and Recognition*, NAT'L DOMESTIC WORKERS ALLIANCE, <https://www.domesticworkers.org/bill-rights> [<https://perma.cc/BW4A-KDAY>] (grappling with the basic rights and dignity domestic workers deserve notwithstanding their immigration status).

38. 42 U.S.C. § 2000e(a) (2012) (defining the word "person").

39. See, e.g., Gretchen Frazee, *What Constitutional Rights do Undocumented Immigrants Have?*, PBS (June 25, 2018, 5:08 PM), <https://www.pbs.org/newshour/politics/what-constitutional->

Lastly, this Comment will further discuss establishing an advocacy organization, Justice for Undocumented Domestic Workers (J.F.U.D.W.), to help advocate and promote the enactment of labor laws for undocumented domestic workers.<sup>40</sup> J.F.U.D.W. shall be founded by attorneys who have a passion for labor and employment rights to ensure a profound and powerful voice for undocumented domestic workers.<sup>41</sup> In addition, J.F.U.D.W. will work to establish a contract-based employment relationship between the domestic worker and their employer.<sup>42</sup> Although Vice President, and former Senator, Kamala Harris is working to establish labor protections through the *Domestic Workers Bill of Rights Act*, the rights of *undocumented* domestic workers are still a penumbra within the employment and labor law spectrum.<sup>43</sup>

## I. BACKGROUND INFORMATION

### A. *The Historical Influx and Demand for Immigrant Workers in the United States*

Agriculture was one of the most profound industries, providing opportunities for low-skilled workers to come to the United States and work for large farms.<sup>44</sup> The demand for immigrants to fulfill the low-skilled occupations resulted from the industrialization and agricultural

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rights-do-undocumented-immigrants-have [<https://perma.cc/7EEU-3K22>] (proclaiming the rights of undocumented domestic workers and the significance of speaking out on these injustices when they arise).

40. See *The Need for Social Justice*, INT'L LABOUR ORG., <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for-social-justice/lang-en/index.htm> [<https://perma.cc/WE7C-EZLS>] (promoting the structures and social dialogue needed to guarantee these fundamental rights for undocumented domestic workers).

41. See *generally id.* (expressing the fragility of this matter that requires the attention of dedicated and passionate attorneys to combat these issues).

42. See Robert Lynch & Patrick Oakford, *The Economic Effects of Granting Legal Status and Citizenship to Undocumented Immigrants*, CTR. FOR AM. PROGRESS (Mar. 20, 2013, 8:44 AM), <https://www.americanprogress.org/issues/immigration/reports/2013/03/20/57351/the-economic-effects-of-granting-legal-status-and-citizenship-to-undocumented-immigrants/> [<https://perma.cc/KC5L-4HFT>] (demanding the necessary stipulations to encourage a ripple effect to provide undocumented immigrants with the opportunity to become full and equal members of society).

43. See Holder, *supra* note 3 (relaying information on how domestic workers are considered invisible in the workforce).

44. See J. Craig Jenkins, *The Demand for Immigrant Workers: Labor Scarcity or Social Control?*, 12 INT'L. MIGRATION REV. 514, 515 (1978) (discussing the economic role immigrant workers from Mexico have on the U.S. labor market).



boom.<sup>45</sup> The increase in necessity for farm labor grew around the mid-1800s, during a time when advancements in transportation, refrigeration, and commercial farming were at their peak.<sup>46</sup> Due to a shortage of agricultural laborers, there was a large demand for immigrant laborers in the early 1900s.<sup>47</sup> In those desperate times, the Immigration Reform and Control Act of 1986 (IRCA) led to the legalization of many undocumented immigrants so they could work.<sup>48</sup>

The influx of both migrant and immigrant workers flourished the production of farming across the country.<sup>49</sup> The demand for immigrants led to massive economic growth.<sup>50</sup> The need for low-skilled workers, combined with an employer's ability to pay at a low wage, resulted in much controversy because of the inhumane and hostile work environment stemming from it.<sup>51</sup> Since these industrial employers saw the opportunity to pay at a low wage, they did not provide the best treatment to their workers.<sup>52</sup> The type of labor required by some of these low-paying positions target individuals who are amenable to working a highly fluctuating schedule.<sup>53</sup> However, due to the lack of standards with farm work and domestic work, the individuals were also susceptible to

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45. See Scott Coppa & Grace Girardot, *Unseen Hands: The History of Migrant Workers*, INST. FOR LATINO STUD. U. NOTRE DAME, Fall 2013, at 2 (describing the conditions which led to increased demand for low wage labor); see also Jenkins, *supra* note 44, at 515–16 (furthering the historical discussion regarding the demand for immigrant workers).

46. See *id.* (providing information on what contributed to the increased demand for laborers during the mid-1800s).

47. See *id.* (detailing historical information surrounding the influx of migrant and immigrant workers in the United States).

48. See Jorge Durand et al., *Mexican Immigration to the United States: Continuities and Changes*, 36 *LATIN AM. RES. REV.* 107, 122 (2001) (discussing the migration and legalization of many undocumented workers).

49. See Coppa & Girardot, INST. FOR LATINO STUD. U. NOTRE DAME, *supra* note 45, at 1–2 (explaining how large segments of the migratory workforce had a beneficial impact on the farming industry nationwide).

50. See *Gilded Age*, HIST. (Feb. 13, 2018), <https://www.history.com/topics/19th-century/gilded-age> [<https://perma.cc/PQ8B-QPLU>] (articulating the need for more unskilled workers during the industrialization era).

51. See *id.* (discussing the unfortunate truth about employers treating sweatshop workers unethically).

52. See *id.* (summarizing how employers took advantage of their employees because of their unskilled labor and how the employees continuously received unethical treatment).

53. See Redmayne, *supra* note 29 (exposing the exploitation of domestic workers regarding work hours and underpayment).

what is considered “superexploitation.”<sup>54</sup> “Superexploitation” is an expression that represents how undocumented workers are taken advantage of and exposed to unethical work conditions.<sup>55</sup> Notably, it was *undocumented* workers who were more susceptible to “superexploitation,” predominately due to the fact that they were afraid to speak up in fear of deportation.<sup>56</sup> Employers who knowingly employed undocumented individuals found it easy to not only provide mediocre work standards but also to underpay these individuals while violating work hour limitations.<sup>57</sup>

The demand for cheap labor transcended into the field of domestic work.<sup>58</sup> The field of domestic work has always been present in the United States.<sup>59</sup> Today, domestic work involves not only housework, but caregiving and childcare as well.<sup>60</sup> Domestic work is commonly perceived to be a field of work that is performed for the elite society of the United States.<sup>61</sup> Today, domestic work is widespread across various demographics and family dynamics.<sup>62</sup> Domestic work has been typically associated with migrants because of their need for money to support their

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54. See Jenkins, *supra* note 44, at 529 (explaining how fear made these undocumented individuals more susceptible to exploitation).

55. See *id.* at 528 (explaining how “superexploitation” is used to threaten undocumented workers); see also Karen Schwartz, *New Report Details Exploitation of Hotel Industry Workers*, N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/travel/new-report-human-trafficking-exploitation-of-hotel-industry-workers.html> [https://perma.cc/QY5R-28TH] (addressing how exploitation occurs even within the field of hotel workers).

56. See Jenkins, *supra* note 44, at 528 (depicting how immigration laws are used as a threat for superexploitation instead of eliminating illegal workers).

57. See *id.* at 528–29 (providing evidence of superexploitation through unfair wages and safety conditions for undocumented workers).

58. See Schwartz, *supra* note 55 (offering an example of wage and ethical violations within the domestic industry).

59. See Jenkins, *supra* note 44, at 524 (illustrating the demand for low wage workers as a result of domestic workers being unwilling to work in low-paying jobs).

60. See generally Martha Alter Chen, *Recognizing Domestic Workers, Regulating Domestic Work: Conceptual Measurement, and Regulatory Challenges*, 23 CAN. J. WOMEN & LAW 167, 167–69 (2011) (describing the type of work domestic workers perform as well as how they obtain clients).

61. See *id.* at 175 (2011) (analyzing the prevalence of domestic work in developing countries).

62. See *id.* (explaining how domestic work is now widespread across various demographics).

families.<sup>63</sup> Migrants were coerced into thinking domestic work was gratifying and well-ordered; however, that was only a surface perception.<sup>64</sup> In reality, domestic work is more exploitative in a physical and emotional aspect.<sup>65</sup> Evidently, it became easy to pay mediocre wages to domestic workers who could perform the tasks that their private employers were unwilling to do.<sup>66</sup>

The lack of labor protections for all members of society who work and contribute to the economy has changed; but domestic workers remain unprotected by labor laws.<sup>67</sup> The lack of protection for domestic workers stems from a historical background.<sup>68</sup> There is speculation that around the early 1900s, during the New Deal era, southern members of Congress were reluctant to provide labor protections for farm workers and domestic workers.<sup>69</sup> Congress intentionally left out domestic workers and farm workers from the right to earn minimum wage or receive overtime pay.<sup>70</sup>

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63. See, e.g., Vellos, *supra* note 26, at 408, 409 (showcasing the exploitation domestic workers face); see also Chen, *supra* note 60, at 168–69 (explaining the lack of protections for domestic workers).

64. See generally *Global History of Domestic Workers and Caregivers*, SOC. HIST. PORTAL, <https://socialhistoryportal.org/news/articles/307294> [<https://perma.cc/B9QA-BS84>] (giving a brief overview on how domestic workers were deluded into working for private homeowners).

65. See, e.g., Nancy Zarate Byrd, *The Dirty Side of Domestic Work: An Underground Economy and the Exploitation of Undocumented Workers*, 3 DEPAUL J. FOR SOC. JUST. 245, 246 (2010) (explaining the exploitation within the overlooked field of domestic work); see also Peter Margulies, *Stranger and Afraid: Undocumented Workers and Federal Employment Law*, 38 DEPAUL L. REV. 553, 554 (1989) (providing insight on the fear undocumented workers experienced).

66. See Chen, *supra* note 60, at 167 (“Domestic workers are those who work in the homes of others for pay, providing a range of domestic services: they sweep and clean, wash clothes and dishes; shop and cook; care for children or the elderly, sick, and disabled; or provide gardening, driving, and security services.”).

67. See generally Amy Hsin & Francisc Ortega, *What Explains the Wages of Undocumented Workers?*, ECONOFACT (July 24, 2019), <https://econofact.org/what-explains-the-wages-of-undocumented-workers> [<https://perma.cc/MMB5-J7UA>] (showing economic gain is correlative to providing work permits for undocumented persons).

68. See Ivette Feliciano & Corinne Segal, ‘You’re Mostly Isolated and Alone.’ *Why Some Domestic Workers Are Vulnerable to Exploitation*, PBS (Aug. 12, 2018), <https://www.pbs.org/newshour/nation/ai-jen-poo-domestic-workers-exploitation> [<https://perma.cc/KZ7E-4A6D>] (noting the historical reasoning for the lack of labor protections for domestic workers).

69. *Id.* (showing how the prejudicial bias against domestic work has influenced today’s labor laws).

70. See Alexia Fernandez Campbell, *Kamala Harris Just Introduced a Bill to Give Housekeepers Overtime Pay and Meal Breaks*, VOX (July 15, 2019, 4:20 PM),

The exclusion of basic rights and protections for farm workers and domestic workers stems from the fact that domestic workers at the time were largely African American, and it was a motivating factor in depriving workers of labor protections.<sup>71</sup> It is evident that the lack of protection towards domestic workers, as well as farm workers, was motivated by racial prejudice.<sup>72</sup> One would think there would now be protections for domestic workers and farm workers in today's era, but that is not the case.<sup>73</sup> This harsh reality places emphasis on why it is important to shed light on the lack of labor protections for domestic workers.<sup>74</sup> How can we expect to protect undocumented domestic workers when even citizens themselves are not protected?<sup>75</sup>

Today, immigrants are working across the nation in all sectors of the economy and as the work force grows, the need for workers increases; it is foreseeable that the demand for foreign workers will increase over time.<sup>76</sup> However, this does not mean the exploitation will end.<sup>77</sup> With the increased need for immigrant workers, there also comes the importance of these working individuals to be able to exercise their rights as employees to speak up when they get injured either by accident or negligence of an employer.<sup>78</sup> Unfortunately, the phrase

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<https://www.vox.com/2019/7/15/20694610/kamala-harris-domestic-workers-bill-of-rights-act> [<https://perma.cc/S7SG-8NV6>] (acknowledging the intentional exclusion of domestic workers by Congress).

71. See Feliciano & Segal, *supra* note 68 (addressing the lack of protection for domestic workers stemming from racism).

72. See Campbell, *supra* note 70 (providing historical evidence on how racism motivated the lack of labor protections).

73. See TEX. RIO GRANDE LEGAL AID, *supra* note 14, at 11 (explaining how there are minimal protections extended to domestic workers).

74. See generally Campbell, *supra* note 70 (addressing the need for domestic worker protections within our laws).

75. See *id.* (referencing the modification of federal laws which still leave domestic workers unable to obtain legal protection from employers).

76. See generally Nicole Prchal Svajlenka, *Immigrant Workers Are Important to Filling Growing Occupations*, CTR. FOR AM. PROGRESS (May 11, 2019, 9:00 AM), <https://www.americanprogress.org/issues/immigration/news/2017/05/11/431974/immigrant-workers-important-filling-growing-occupations/> [<https://perma.cc/RJV8-EXYH>] (portraying the heightened demand for immigrant workers in the United States).

77. Cf. Campbell, *supra* note 70 (reiterating the ongoing historical lack of protections for domestic and farming workers).

78. See, e.g., *Republic Waste Servs., Ltd. v. Martinez*, 335 S.W.3d 401, 411 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (explaining how the undocumented individual was able to get damages in a wrongful death suit, and the only reason their immigration status would be relevant

“superexploitation” is very much still applicable in today’s society.<sup>79</sup> Farm work and domestic work are still a penumbra compared to other types of employment, especially when it comes to legal protection.<sup>80</sup> Domestic work is essentially a field that sits as a loophole within the spectrum of employment that continuously permits unethical behavior to occur towards undocumented women.<sup>81</sup> It is an undeniable injustice that there are no legal repercussions for employers who exploit and abuse domestic workers.<sup>82</sup>

## II. DOMESTIC WORKERS SUBJECTED TO VULNERABILITY

It takes an angry, frustrated, and brave individual to stand up and speak out for a large class of individuals who are not given fair treatment and labor protections.<sup>83</sup> César Chávez paved the foundation for speaking out against employers, specifically in agricultural work.<sup>84</sup> His success on improving the treatment, pay, and working conditions for farm workers should add stamina to an undocumented domestic worker’s right to not only bring a retaliation and sexual harassment claim, but also a physical injury claim in court.<sup>85</sup> Contrary to some states, in Texas, an undocumented individual still reserves the right to seek workers’

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was to calculate lost future income); *see also* *Grocers Supply, Inc. v. Cabello*, 390 S.W.3d 707, 718 (Tex. App.—Dallas 2012, no pet.) (providing that an immigration status does not need to interfere with the ability to obtain lost wages and lost earning capacity).

79. *See* Jenkins, *supra* note 44, at 524 (depicting how potent the exploitation of immigrant workers is in the United States).

80. *See* Sarah Holder, *The Price of Domestic Workers’ Invisible Labor in U.S. Border Towns*, CITY LAB (June 25, 2018), <https://www.citylab.com/equity/2018/06/the-price-of-domestic-workers-invisible-labor-in-us-border-towns/563087/> [<https://perma.cc/49MF-DWA7>] (providing evidence of mistreatment and lack of legal remedies available to domestic workers).

81. *See* Yeung, *supra* note 10 (exposing the loophole in legal protections for domestic workers).

82. *See id.* (showing how the lack of legal repercussions transcends into abuse); *see also* Svajlenka, *supra* note 76 (discussing how there is a need for immigrant workers to continue to grow, but Trump’s administration demonizes immigrants).

83. *See* *The History of Si Se Puede*, UNITED FARM WORKERS, <https://ufw.org/research/history/history-si-se-puede/> [<https://perma.cc/8Z58-GFNF>] (sharing an example of a brave immigrant who advocated for the rights of farm workers).

84. *See id.* (recognizing the impact César Chávez had on agricultural protections for workers).

85. *See id.* (drawing attention to César Chávez’s resilience when advocating for farm workers’ rights to fair wages).

compensation for wages and medical treatment.<sup>86</sup> Documented or not, these women have the right to due process to sue for damages on a personal injury claim, just like men, regardless of whether they work for a company or as an independent contractor.<sup>87</sup> Undocumented workers should be able to seek legal help without fear of persecution or retaliation.<sup>88</sup>

The problem arises when employers take advantage of their employees by using their immigration status as a means to avoid creating employment contracts.<sup>89</sup> Why is a contract important to have, especially for these undocumented women?<sup>90</sup> An employment contract is important because many women work as in-house staff or domestic workers, and many homes and companies near the U.S.-Mexico border consider them household servants.<sup>91</sup> An enforceable contract is necessary to establish justice in the court system, for domestic work is not only considered a low-skilled labor market, but it is also an exploitative industry.<sup>92</sup> Many of these women work approximately sixty

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86. *See, e.g.*, Republic Waste Servs., Ltd. v. Martinez, 335 S.W.3d 401, 411 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (extending the rationale pertaining to relevancy of immigration status when calculating lost future income); *see also* Grocers Supply, Inc. v. Cabello, 390 S.W.3d 707, 718 (Tex. App.—Dallas 2012, no pet.) (explaining how the state can abide with IRCA and still allow for an undocumented individual to receive compensation in a tort claim). *See generally* *Employment Rights of Undocumented Workers*, TEX. L. HELP, <https://texaslawhelp.org/article/employment-rights-undocumented-workers> [<https://perma.cc/UUK4-2HB5>] (supplying general information on the rights that undocumented individuals have through several federal and state programs).

87. *See* Frazee, *supra* note 39 (discussing the rights undocumented individuals have in general, specifically the right to due process).

88. *Cf.* Holder, *supra* note 80 (arguing that these women have a voice and do not have to fear speaking out against their employer when they are faced with work-related issues).

89. *See, e.g.*, Kevin Redmayne, *Bad Housekeeping: The Plight of Domestic Workers*, MEDIUM (May 7, 2017), <https://medium.com/@KevinRedmayne/bad-housekeeping-the-plight-of-domestic-workers-5cceb5d9b676> [<https://perma.cc/SY9A-E9GN>] (offering no protection or safeguards from exploitation in these contracts).

90. *See generally id.* (explaining the harsh reality of many domestic workers who are not working under a legal contract).

91. The term “servants” is outdated and socially construed to demean the person doing the job. *See* Holder, *supra* note 80 (discussing the types of jobs that facilitate more exploitation of undocumented workers).

92. *See* Redmayne, *supra* note 89 (illustrating how exploitative the domestic work industry is by using the example of a housekeeper during the holiday season).

hours a week and are paid very little.<sup>93</sup> A true reality for women working these low-paying jobs is that they have no choice because they need to make ends meet.<sup>94</sup> For many working individuals, the responsibility to take care of and provide for their family outweighs the unethical treatment they may be subjected to.<sup>95</sup> This leaves many domestic workers feeling stuck in their field of work because of their need for income.<sup>96</sup> These workers are threatened with deportation for various reasons.<sup>97</sup> For example, the domestic worker may be subjected to the threat of deportation for refusing to perform work that extends beyond their capacity, denying to work more hours than they should, or far worse, rejecting sexual advances from their male employers.<sup>98</sup> Not only is it difficult to protect workers from exploitative conditions in a private home, it is also easier for an employer to threaten the worker when they get injured as a direct result of the employer's negligence and attempt to report the inhumane working conditions.<sup>99</sup> For these exact reasons, enforcing a contract between a domestic worker and their client will reduce the abuse domestic workers are subject to.<sup>100</sup>

#### A. *Domestic Workers Are Subjected to Sexual Harassment*

Unfortunately, many of these women are vulnerable and feel powerless to report work violence and injuries, but it is important to recognize these women have rights and their voices must be heard.<sup>101</sup> Domestic work is

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93. See, e.g., Vellos, *supra* note 26, at 407 (explaining that domestic workers put in more hours a week than an average documented person).

94. See *id.* at 407–08 (1997) (acknowledging how many women's need for money far outweighed the exploitation they faced).

95. See *id.* at 420 (1997) (indicating the reality that domestic workers face tolerating inhumane abuse because they need money).

96. See, e.g., Holder, *supra* note 80 (illustrating how domestic workers feel trapped by having little to no choices available to them).

97. See generally Yeung, *supra* note 10 (stating how the threat of deportation is the baseline for the exploitation domestic workers face).

98. See Vellos, *supra* note 26, at 409 (explaining how domestic workers feel obligated to work more than they should because they are afraid they will get deported).

99. Cf. Holder, *supra* note 80 (discussing the exploitation that occurs when employers knowingly employ undocumented workers).

100. See generally Redmayne, *supra* note 89 (concluding all domestic workers should have contracts with fair terms and conditions).

101. E.g., Vellos, *supra* note 26, at 425 (illustrating the story of one woman who was sexually abused and without the ability to report the attacks).

a field of employment often overlooked, but the issue of sexual harassment of domestic workers is one that cannot be ignored.<sup>102</sup> For many individuals, sexual harassment is a workplace hazard that is neither part of the job itself nor one that is anticipated.<sup>103</sup> Some domestic workers live in the homes of the individual they are taking care of or are even caring for the house itself.<sup>104</sup> Labor workers are more vulnerable and susceptible to sexual harassment because there are no asserted rights to protect their type of employment.<sup>105</sup> Federal labor laws are meant to protect workers from abuse, but the labor laws have failed to consider a very important and intimate field, such as domestic work.<sup>106</sup> Defining domestic work as an intimate field rests solely on the fact that some domestic workers take care of a particular demographic of clients, including caring for elderly and sickly individuals, taking care of children, and performing housework.<sup>107</sup> Many of their housework duties and responsibilities take place in a kitchen, bathroom, and bedroom.<sup>108</sup> Some domestic workers will also cook and clean for their clients and, sometimes, for the entire household.<sup>109</sup> This proves that domestic workers perform a multitude of tasks and duties.<sup>110</sup> Many individuals take advantage of the fact that these tasks can be hired out to others. This, in turn, enhances the importance of advocating for

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102. See Bernice Yeung, *Domestic Work is Intimate, Invisible - and a Risk for Sex Abuse*, REVEAL (Apr. 13, 2018), <https://www.revealnews.org/article/domestic-work-is-intimate-invisible-and-a-risk-for-sex-abuse/> [<https://perma.cc/MQM5-NUR7>] (discussing how sexual abuse is predominately what domestic workers endure).

103. See generally *id.* (showing how domestic workers are subjected to sexual abuse).

104. See *id.* (demonstrating one way it is easy for these women to encounter sexual harassment).

105. See generally *id.* (setting an example of why it is a necessity to establish rights for domestic workers); see generally *Legal Support for Workplace Justice*, JUSTICE WORK, <https://jatwork.org/> [<https://perma.cc/W34Z-NPH7>] (showing an example of an organization seeking to promote justice in the workplace).

106. See generally Yeung, *supra* note 102 (depicting domestic work as intimate because of how personal the work is).

107. See *id.* (explaining the demographic domestic workers typically work in).

108. See *id.* (acknowledging many of these tasks included cooking, cleaning, and taking care of children).

109. *Id.*; see Chen, *supra* note 60, at 167 (explaining that the work domestic workers perform is work that many of us already do on our own).

110. Yeung, *supra* note 102.



domestic workers' rights.<sup>111</sup>

*B. Sexual Harassment and Lack of Labor Protections*

Another issue for domestic workers facing sexual harassment at their place of employment is their employers are often private individuals or employ less than fifteen people.<sup>112</sup> Why is the number of employers in a workplace important? It is important because while Title VII establishes repercussions for sexual harassment, these provisions will not apply to employers when they have less than *fifteen* employees.<sup>113</sup> The minimum requirement places domestic workers at a disadvantage because the majority of them work as independent contractors.<sup>114</sup> Consequently, this creates one of the many gaps in labor protections for domestic workers.<sup>115</sup>

Moreover, one thing to consider is that sexual harassment towards domestic workers comes in different forms.<sup>116</sup> A survey of over 2,000 workers by the National Domestic Workers Alliance (NDWA) showed over 74% of domestic workers experienced emotional or verbal abuse and 66% experienced sexual abuse.<sup>117</sup> The survey showed undocumented workers feared that reporting such sexual harassment would infringe on their ability to remain in the United States because of concerns their employer would use their immigration status against them.<sup>118</sup> One individual's experience sheds light on why advocating for

111. *Cf. Id.* (explaining how domestic work is a field of work that gets easily undermined but is getting more publicity on the national stage).

112. 42 U.S.C. § 2000e-2 (2012) (outlining the protections guaranteed for employees in businesses with over fifteen employees); *see also* Yeung, *supra* note 103 (explaining the type of employment relationship domestic workers have with employers).

113. 42 U.S.C. § 2000e(b) (2012).

114. *See id.* (defining the requirements for an employer who falls under Title VII); *see also* Chen, *supra* note 61, at 172 (distinguishing the types of categories domestic workers fall into).

115. *See generally* Chen, *supra* note 60, at 172 (addressing how some labor workers may be protected but many are not).

116. *See generally* Yeung, *supra* note 102 (providing examples of what domestic workers endure when they work for private individuals).

117. *See The Human Trafficking of Domestic Workers in the United States*, NAT'L DOMESTIC WORKERS ALLIANCE, (2017) [https://www.domesticworkers.org/sites/default/files/bs\\_report2017.pdf](https://www.domesticworkers.org/sites/default/files/bs_report2017.pdf) [<https://perma.cc/2QF8-76V3>] (illustrating the amount of abuse domestic workers experience and the need to advocate for the rights of domestic workers).

118. *Id.* (indicating that 78% of domestic workers surveyed have had employers threaten to report them for deportation if they complain).

undocumented domestic workers and their rights in the labor force is imperative.<sup>119</sup>

Consider Myrla Baldonado, a domestic worker who came from the Philippines and experienced sexual harassment from the husband of a client she worked for.<sup>120</sup> The husband would make sexual innuendos and the harassment would go as far as him groping her at night in her bedroom.<sup>121</sup> For many women, talking about the sexual harassment they are subjected to as domestic workers is difficult; for some, it is embarrassing.<sup>122</sup> Some women even feel ashamed, fearful, and unsettled by the harassment they experienced.<sup>123</sup>

So, what can be done? Currently, there are organizations helping these women with their labor and employment conditions.<sup>124</sup> Some of these community organizations are: Adult and Youth United Development Association, Inc. (AYUDA), Fuerza del Valle Worker's Center, and Comité de Justicia Laboral.<sup>125</sup> Organizations like AYUDA help educate the women working in these harsh and hostile conditions on their right to speak up.<sup>126</sup> They serve as a "human resources" department for the women working in private facilities that do not provide a safe space to express grievances and conditions.<sup>127</sup> However, the hurdle does not stop there, especially when an injury is involved.<sup>128</sup> Fear of deportation and

119. *See generally* Yeung, *supra* note 102 (depicting true events and experiences one domestic worker endured while working for a private household).

120. *Id.*

121. *Id.*

122. *See id.* (stating how the vulnerability of these women is taken advantage of through the knowledge that women are too afraid to speak up).

123. *See generally id.* (articulating the story of a woman who had been a human rights activist in her home country and who was embarrassed to share what had been happening to her as a worker).

124. *See* Holder, *supra* note 80 (providing the options available for women to seek legal assistance).

125. *See id.* (naming some of the nonprofit organizations available in the bordering cities for undocumented immigrants).

126. *See About Us*, AYUDA, <https://www.ayuda.com/about-us/> [<https://perma.cc/QT4J-3RAG>] (identifying their mission to help vulnerable immigrants).

127. *Cf.* Holder, *supra* note 80 (describing how community-based organizations like AYUDA develop reports about the treatment of domestic workers).

128. *See* Michael Grabell & Howard Berkes, *They Got Hurt At Work—Then They Got Deported*, NAT'L PUB. RADIO (Aug. 16, 2017, 5:00 AM), <https://www.npr.org/2017/08/16/543650270/they-got-hurt-at-work-then-they-got-deported/> [<https://perma.cc/6QP5-L4NV>]

separation from their families causes these women to remain quiet and cure the injury themselves rather than report it and receive compensation.<sup>129</sup> Undocumented domestic workers should not have to succumb to this approach.<sup>130</sup> Justice does not discriminate on the basis of race, nationality, or sex, and these women have the personal and fundamental right to seek justice against their retaliating employers.<sup>131</sup> Just because there are individuals who perform domestic work or any work that is deemed “low-skill, low-status,” does not mean they are scum beneath our shoes.<sup>132</sup> They are living, breathing humans who deserve to be protected by the law.<sup>133</sup>

### III. CONSEQUENCES OF EMPLOYING UNDOCUMENTED INDIVIDUALS

#### A. *Paying Cheap Can Come at a Price*

Many employers are unaware that some of their employees may have a fake or stolen Social Security number used for the sole purpose of work.<sup>134</sup> However, some employers are aware of their undocumented employees, yet they continue to risk employing them.<sup>135</sup> We come to wonder why that is. Alternatively, many employers who discover the

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(detailing a domestic worker who was seriously injured on the job and how hospitalization and surgery led to deportation).

129. See generally Vellos, *supra* note 26, at 419 (stating how suppressing the abuse outweighs the possibility of getting deported).

130. Cf. *Id.* at 429 (explaining the concerns of the exploited that should be explored when addressing the issues related to undocumented domestic workers).

131. See *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1074 (9th Cir. 2004) (holding that immigrant employees may sue their employers without having their immigration status considered).

132. See Carolyn Bick, *Invisible Women: Domestic Workers Underpaid and Abused*, ALJAZEERA (Oct. 21, 2017), <https://www.aljazeera.com/news/2017/10/invisible-women-domestic-workers-underpaid-abused-171019104144316.html> [<https://perma.cc/5J38-C48W>] (describing the inhumane and slave-like conditions domestic workers in the United States endure).

133. See Vellos, *supra* note 26, at 432 (arguing domestic workers are humans who deserve justice and calling for immigration reform).

134. See *About E-Verify*, DEP'T OF HOMELAND SECURITY, <https://www.e-verify.gov/> [<https://perma.cc/J6K2-W742>] (providing the basic information an employer must use to verify an employee's eligibility to work).

135. Cf. *Social Security Number Verification Service Pamphlet*, SOC. SECURITY ADMIN., <https://www.ssa.gov/employer/ssnvspamphlet.htm> [<https://perma.cc/742A-NUAF>] (discussing the procedure employers must follow to verify an employee's Social Security number).

status of their employee find it necessary to report them immediately.<sup>136</sup> While understandably most employers do not want to risk putting their businesses on the line, they put their employee's life at risk as well.<sup>137</sup> Facing the challenges of today's society, a moral wedge exists between reporting the hardworking individual or not reporting them for the sake of cheap labor.<sup>138</sup>

Employers are required to confirm work authorization using Form I-9.<sup>139</sup> Interestingly, an employer cannot specify or over-analyze an individual's documents when authorizing work eligibility.<sup>140</sup> They could potentially be penalized for discrimination and being overly inquisitive on the documents.<sup>141</sup> Accordingly, an employer need only act in good faith when obtaining the documents and following the Form I-9 properly.<sup>142</sup> If the potential employee comes in with a stolen or false Social Security number and there is no knowledge of it, yet they proceed with the authorization process in good faith, that individual will likely not be held liable.<sup>143</sup> The difficulty comes when an employer has actual knowledge of the individual's immigration status and employs them

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136. *But see What to Do if Immigration Comes to Your Workplace*, NAT'L EMP. L. CTR., <https://www.nilc.org/wp-content/uploads/2017/07/EmployerGuide-NELP-NILC-2017-07.pdf> [<https://perma.cc/S6CP-VZRS>] (providing information to those employers who want to protect their undocumented employees).

137. *See id.* (providing a general idea on what to expect when Immigration and Customs Enforcement comes to the workplace).

138. *See generally* Deborah Dyson, *Legal Pitfalls of Hiring Undocumented Immigrants*, NOLO, <https://www.nolo.com/legal-encyclopedia/legal-pitfalls-hiring-undocumented-immigrants.html> [<https://perma.cc/3LA3-72U9>] (explaining the risks employers take when hiring undocumented individuals).

139. *See id.* (providing essential information for employers who are curious about the legal issues that surface when they hire an undocumented immigrant).

140. *See* Elizabeth Rogers, *Hiring Foreign Workers in the U.S.: First Things to Know*, NOLO, <https://www.nolo.com/legal-encyclopedia/hiring-foreign-workers-your-business-first-things-know.html> [<https://perma.cc/6EYV-XEC6>] (explaining how the "Anti-Discrimination Notice" on Form I-9 prohibits employers from specifying types of documents).

141. *See* Dyson, *supra* note 138 (discussing how employers who confirm the work authorization with Form I-9 must be careful to not over-examine the documents, for it can lead to discriminatory behavior towards the individual).

142. *See id.* (describing the criteria that determines whether an employer is liable for an employee's use of a false Social Security number).

143. *See id.* (presenting the issues that arise when an employer knowingly employs an undocumented individual).

anyway.<sup>144</sup> By having knowledge of a false Social Security number, the employer can be caught in some major legal issues which can lead to penalties and possible imprisonment.<sup>145</sup> However, the penalties do not always stop the employer from hiring an undocumented individual especially when it comes to domestic work.<sup>146</sup> Additionally, employers do not have to complete I-9 forms for domestic workers because they are considered contract laborers.<sup>147</sup> This further emphasizes the lack of legal standards for domestic workers.<sup>148</sup> It places the field of domestic work in a “double whammy” position where employers can intentionally employ an undocumented individual and subject them to illegal workplace conduct.<sup>149</sup> Overall, it is evident domestic workers are placed in a highly disadvantaged position when it comes to employment authorization procedures and labor laws.<sup>150</sup>

### B. Sponsorship

It is also true that many undocumented workers try to get their immigration status through employment sponsorship.<sup>151</sup> Employers know that sponsoring their undocumented employees poses a great risk

144. See Nancy Zarate Byrd, *The Dirty Side of Domestic Work: An Underground Economy and the Exploitation of Undocumented Workers*, 3 DEPAUL J. FOR SOC. JUST. 245, 264 (2010) (explaining how employers exploit individuals' immigration status as a means for cheap labor).

145. See Dyson, *supra* note 138 (outlining the legal penalties for employing undocumented workers without proper authorization).

146. See Tom Spiggle, *Why Workplace Abuse Plagues Undocumented Workers*, FORBES (Aug. 22, 2019, 10:19 PM), <https://www.forbes.com/sites/tomspiggle/2019/08/22/why-workplace-abuse-plagues-undocumented-workers/#7d873f6d49b2> [<https://perma.cc/96Q8-MDCR>] (stating how employers knowingly overlook the risk of hiring an undocumented individual in exchange for cheap labor).

147. See *Domestic Workers*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/who-needs-form-i-9/domestic-workers> [<https://perma.cc/G87H-ZFHX>] (explaining that a Form I-9 does not have to be completed for domestic workers).

148. Cf. Madeleine Joung, *Domestic Workers Aren't Protected by Anti-Discrimination Law. This New Bill Would Change That.*, TIME (July 15, 2019), <https://time.com/5626156/domestic-workers-anti-discrimination-law-ndwa/> [<https://perma.cc/PP3R-6J4L>] (reporting that domestic workers are not protected by anti-discrimination laws in the United States).

149. See Spiggle, *supra* note 146 (explaining how undocumented workers are caught in a catch-22 due to a lack of legal protections which facilitates abuse by employers).

150. See Joung, *supra* note 148 (expressing the difficulties created by the lack of legal regulations for domestic workers).

151. See Diana Vellos, Article, *Immigrant Latina Domestic Workers & Sexual Harassment*, 5 AM. U. J. GENDER & LAW 407, 426 (1997) (describing how employees can get a legal status in the United States through sponsorship).

to themselves as well.<sup>152</sup> The risk is that they could lose their employee by deportation if the sponsorship does not pull through, or the employer themselves will be sanctioned with penalties for not following federal hiring procedures.<sup>153</sup> To sponsor a domestic employee, the employer must follow several steps such as making sure there are no qualified U.S. workers to fill the job; if there are qualified U.S. workers, they must interview and hire them.<sup>154</sup> If there is not a U.S. citizen as a candidate for the position, then the employer can file a PERM application with the Department of Labor.<sup>155</sup> Secondly, the employer can file Form I-140 to get approval that the foreign worker is qualified.<sup>156</sup> Lastly, the employer must obtain the issuance of the immigrant visa from the Department of State.<sup>157</sup>

Notably, this process is not easy and can be time-consuming for the employer.<sup>158</sup> However, there can be years of delay in obtaining the visa for the employee, posing a risk of deportation between that period for the

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152. See *id.* (emphasizing the risk that exists even if an employer sponsors the employee).

153. See *H-1B Program*, U.S. DEP'T. LABOR, <https://www.dol.gov/agencies/whd/immigration/h1b> [<https://perma.cc/KS9J-KSCQ>] (providing information for employers who elect to sponsor an employee as well as the violations that they would need to avoid).

154. See, e.g., *Affidavit of Support*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/greencard/affidavit-support> (last updated Sept. 27, 2019) [<https://perma.cc/6V8T-299N>] (explaining the proper documents that need to be filed); accord *H-1B Program*, *supra* note 155 (providing information for the employer who sponsors an individual). Compare *United States Immigration: Green Cards*, DAVIS & ASSOC. (Jan. 18, 2018), <https://gldlaw.com/3-ways-gain-green-card-sponsorship/> [<https://perma.cc/N7CY-SYXT>] (extending the three steps for sponsoring an employee), with *Domestic Employee Visa in Los Angeles, CA*, IMMIGR. L. OFF. OF L.A., P.C., <https://www.immigrationhelpa.com/immigration-law/housekeeper-domestic-employee.html> [<https://perma.cc/Q7RR-C3XJ>] (depicting how similar the procedure is in California as it is in Texas, which means sponsoring an employee is not impossible).

155. See generally *Permanent Workers*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-united-states/permanent-workers> [<https://perma.cc/M37N-STRM>] (describing the various types of permanent worker visas).

156. See generally *I-140 Immigrant Petition for Alien Workers*, U.S. CITIZENSHIP & IMMIGR. SERVS. <https://www.uscis.gov/i-140> (last updated Apr. 16, 2020) [<https://perma.cc/L273-HUMM>] (instructing an employer to fill out the proper form to petition for their undocumented employee).

157. Cf. DAVIS & ASSOC. *supra* note 154 (explaining the necessary procedures for sponsoring an employee).

158. Cf. *Affidavit of Support*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/greencard/affidavit-support> (last updated Sept. 27, 2019) [<https://perma.cc/6V8T-299N>] (providing a breakdown for what sponsoring an individual entails).

employee.<sup>159</sup> The entire process can be timely and takes many years before the employee can obtain work authorization, much less a green card.<sup>160</sup> The length of the process discourages some employers from sponsoring employees.<sup>161</sup> Thus, the undocumented worker is left in fear of getting deported for “disobeying” their employer in any way.<sup>162</sup> The lack of compassion and reluctance to sponsor their employee, all while exploiting them by paying them below the legal minimum wage and providing a hostile work environment, are exact reasons why undocumented domestic workers deserve the right to bring a claim against their employer.<sup>163</sup>

### C. *Underground Economy and the Exploitation of Undocumented Workers*

What has occurred for decades within the United States continues to occur today in many different aspects.<sup>164</sup> More specifically, the employer continues to exploit their employees.<sup>165</sup> Employers pay their employees well below minimum wage and pose a barrier to their employee’s ability to move on to new employment.<sup>166</sup> Furthermore, employers use the threat of reporting the employees to Immigration and Customs Enforcement (ICE) as leverage.<sup>167</sup> Undoubtedly, there are numerous undocumented domestic workers who are working for employers that are aware of their immigration status, whom also continue

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159. See Vellos, *supra* note 151, at 427 (explaining how long the sponsorship process takes).

160. See *id.* (detailing how it can be a lengthy process for the sponsorship process to follow through).

161. See IMMIGR. L. OFF. OF L.A., P.C., *supra* note 156 (describing how long the sponsorship process can take).

162. See generally Spiggle, *supra* note 148 (stating how both men and women feel trapped by their status).

163. See Joung, *supra* note 148 (explaining how the lack of legal protection impacts domestic workers).

164. See Spiggle, *supra* note 146 (emphasizing the pervasive and perpetual exploitation of employees).

165. See Peter Margulies, *Stranger and Afraid: Undocumented Workers and Federal Employment Law*, 38 DEPAUL L. REV. 553, 554 (1989) (acknowledging that employers often exploit undocumented workers).

166. See *id.* at 555 (illustrating how employers can be controlling over their employees).

167. See *id.* at 567 (indicating how employees are threatened by their employers with deportation).

to employ and pay them.<sup>168</sup> For that reason, domestic service is considered to be a part of an “underground economy.”<sup>169</sup> What is an underground economy?<sup>170</sup> The meaning is derived from low socio-economic and undocumented individuals who work for an extremely low wage.<sup>171</sup> Underground economy is a fancy term for cheap labor not accounted for through the standard Internal Revenue Service review.<sup>172</sup>

The employment of undocumented domestic workers and prohibiting such conduct sets the foundation for the underground economy.<sup>173</sup> What encourages private individuals to employ domestic workers, even when they know their undocumented immigration status is not a secret?<sup>174</sup> The risk of breaking the law and employing an undocumented domestic worker is weighed against the economic benefits of paying for cheap labor.<sup>175</sup> It is an unfortunate, boundless cycle that adds foundation to the meaning of an underground economy.<sup>176</sup> The cycle starts with employers knowingly violating the law by employing undocumented individuals.<sup>177</sup> Then, it continues with the employers taking advantage of these undocumented domestic workers because they know the workers are willing to work regardless of the pay.<sup>178</sup> The undocumented employees either have no knowledge of the legal resources available to

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168. Cf. Spiggle, *supra* note 146 (demonstrating how easy it becomes for an employer to use their employee’s immigration status as an advantage for themselves).

169. See Byrd, *supra* note 144, at 247 (illustrating the economic impact of hiring undocumented domestic workers).

170. See *id.* (describing the concept of the underground economy in labor law).

171. See *id.* (sharing the status of individuals who are considered to be in the underground economy based on their race, gender, class, and citizenship status).

172. *Id.*

173. See 8 U.S.C. § 1324(a) (2018) (stating it is unlawful to employ an undocumented individual for work).

174. See Byrd, *supra* note 144, at 250 (comparing the pros and cons for employers hiring undocumented employees).

175. See *id.* (opining how employers reap the benefits of hiring and paying for cheap, low-skilled labor to escape the requirement of paying state employment taxes).

176. See *id.* at 256 (explaining that domestic work and the exploitation is an endless cycle that gets overlooked by labor laws).

177. See Spiggle, *supra* note 146 (commenting on some employers’ willingness to take the risk and hire undocumented individuals).

178. Cf. Amy Hsin & Francesc Ortega, *What Explains the Wages of Undocumented Workers?*, ECONOFACT (July 24, 2019), <https://econofact.org/what-explains-the-wages-of-undocumented-workers> [<https://perma.cc/MMB5-J7UA>] (emphasizing the difference in wages of undocumented workers).



them, or fear being deported.<sup>179</sup> In addition, undocumented employees cannot afford to lose their job because they are working to support their families.<sup>180</sup> Undocumented employees would rather tolerate the retaliation, low pay, and harsh working conditions to maintain their financial security.<sup>181</sup> Thus, an infinite cycle of an underground economy is created.<sup>182</sup>

#### IV. LABOR LAWS AND MINIMAL PROTECTION

##### A. Federal Labor Laws

There are very limited, if any, labor law protections granted by the state and federal government, adding to the definition of an underground economy.<sup>183</sup> The National Labor Relations Act (NLRA) is one example of very limited protections for workers.<sup>184</sup> The NLRA protects an employee's right to engage in collective bargaining and form or join labor organizations in order to protect against harmful acts in employment practices.<sup>185</sup> However, it is not known by many employers that the NLRA takes into consideration the rights of immigrant employees.<sup>186</sup> An employer cannot use an employee's immigration status against them when the employee chooses to participate in a union, especially when it

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179. See Byrd, *supra* note 144, at 247 (detailing how undocumented individuals are taken advantage of because of their lack of knowledge in being able to seek legal assistance).

180. See *id.* at 250 (referring to the reasons why workers remain silent).

181. See *id.* at 255 ("When asked why those types of conditions are tolerated, most women would say that they have no other choice.").

182. See *id.* (explaining the harsh employment conditions undocumented workers accept as a lesser of two evils).

183. Cf. TEX. RIO GRANDE LEGAL AID, LEGAL ISSUES AFFECTING DOMESTIC WORKERS 15 (2013), [http://fuerzadelvalle.org/wp-content/uploads/2014/01/legal\\_issues\\_affecting\\_domestic\\_workers.pdf](http://fuerzadelvalle.org/wp-content/uploads/2014/01/legal_issues_affecting_domestic_workers.pdf) [<https://perma.cc/S69V-BDPX>] (providing insight on the very minimal labor protections granted to domestic service employees).

184. NAT'L LAB. REL. BD., BASIC GUIDE TO THE NATIONAL LABOR RELATIONS ACT (1997), <https://www.nlr.gov/sites/default/files/attachments/pages/node-184/basicguide.pdf> [<https://perma.cc/NFM9-VGQP>] (highlighting how the act does not cover specific individuals, such as domestic servants).

185. See *generally id.* (providing a guide for employers and employees on their rights to collective bargaining).

186. *Immigrant Employee Rights Under the National Labor Relations Act*, NAT'L LAB. REL. BOARD, <https://www.nlr.gov/sites/default/files/attachments/pages/node-184/immigrantemployeeerightsonepagereenglishpdf21860.pdf> [<https://perma.cc/52RD-ZWV9>] (outlining the rights of immigrants to organize unions, talk about working conditions with co-workers, or take action to improve conditions).

pertains to working conditions.<sup>187</sup> One downside is not every immigrant is protected by the NLRA.<sup>188</sup> As continuously mentioned, domestic workers are not guaranteed protection under the NLRA.<sup>189</sup>

Other labor laws include the Occupational Safety and Health Act (OSHA), the Fair Labor Standards Act (FLSA), and Title VII of the Equal Employment Opportunity Commission.<sup>190</sup>

However, as mentioned, these protections range from minimal to essentially no protection for domestic workers.<sup>191</sup> OSHA for example, requires a minimum of ten employees in the workplace.<sup>192</sup> In retrospect, it is highly unlikely that a private homeowner will employ more than ten domestic employees.<sup>193</sup> The FLSA is a federal law that set a foundation on minimum wages, overtime, and the minimum age requirements for employers and employees.<sup>194</sup> Even though there is no minimum number of employees for an employer to be held liable under FLSA guidelines, there are a number of exemptions where employers do not need to comply with FLSA.<sup>195</sup> One of these exemptions applies to domestic employees.<sup>196</sup> Domestic employees are not protected under the FLSA,

187. *See id.* (advising an employee to submit a claim to the NLRA board when an employer retaliates).

188. *See generally* NAT'L LAB. REL. BD., *supra* note 184 (providing the term "employee" does not apply to agricultural laborers, domestic servants, and many others).

189. *See Jurisdictional Standards*, NAT'L LAB. REL. BOARD, <https://www.nlr.gov/rights-we-protect/law/jurisdictional-standards> [<https://perma.cc/6SE2-KDRS>] (recognizing a domestic worker who does not make anything close to \$50,000 will not fall under special categories).

190. *See generally* TEX. RIO GRANDE LEGAL AID, *supra* note 14, at 72–79 (defining each of the labor laws available in the labor force).

191. *E.g.*, Margulies, *supra* note 165, at 560 (arguing the rule may seem very harsh on employers, however due to the multitude of exemptions it does not adequately protect employees).

192. *See* 29 C.F.R. § 1904.1 (2020) (providing information on the requirements for an employer to be held liable under OSHA).

193. *Cf.* Chen, *supra* note 60, at 177 (stating the different categories of domestic workers and whether they are actually considered employees).

194. 29 U.S.C. §§ 206–207 (2012) (explaining what the Fair Labor Standards Act protects).

195. *See* 29 U.S.C. § 213 (2012) (listing the exemptions to which Section 206 and 207 of FLSA would not apply); *see also Fair Labor Standards Act (FLSA)*, EMP. L. HANDBOOK, <https://www.employmentlawhandbook.com/federal-employment-and-labor-laws/flsa/#targetText=Minimum%20Employees%20Required,in%20part%20from%20FLSA%20requirements> [<https://perma.cc/VV3K-2U4Z>] (explaining the possible loopholes for employers to avoid compliance with FLSA).

196. 29 U.S.C. § 213(a)(15) (2012) (showing domestic employees are one of few categories of employment that is not recognized under FLSA).

regardless of their immigration status.<sup>197</sup> As previously mentioned, Title VII is a far stretch in regard to protection for domestic employees.<sup>198</sup> Title VII requires there to be a minimum of *fifteen* employees in the workplace.<sup>199</sup> Additionally, the particular employment industry must be affecting commerce; thus, placing undocumented domestic workers at an ultimate disadvantage.<sup>200</sup>

The lack of labor laws available to protect undocumented domestic workers essentially places these employees in an “invisible labor” spectrum.<sup>201</sup> The capability of domestic workers to seek legal assistance, or help, through these federal and state labor laws is virtually non-existent.<sup>202</sup> Which means that their voices are not heard, their fear of deportation is ignored or threatened against them, and their faith in humanity is diminished.<sup>203</sup> Being labeled and categorized in an “invisible labor” spectrum is not only unjust, but inhumane.<sup>204</sup>

Employers want these individuals to do work that they refuse to do themselves, and then expect their employees to stay quiet when they are

197. *Id.*

198. 42 U.S.C. § 2000e (2012) (describing how Title VII protections are limited in application).

199. *See id.* (defining the term “employer” as a “person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks”).

200. *See id.* (explaining that the industry must be impacting commerce, creating a further restriction); *see also* Nancy Zarate Byrd, *The Dirty Side of Domestic Work: An Underground Economy and the Exploitation of Undocumented Workers*, 3 DEPAUL J. FOR SOC. JUST. 245, 246 (2010) (construing how disadvantaged domestic workers are within an economic perspective).

201. *See* Byrd, *supra* note 201, at 246–47 (depicting how an employee’s vulnerability to retaliation and lack of legal protection makes them look invisible in the labor force).

202. *Cf. Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*, OSCE (June 2010), <https://www.osce.org/files/f/documents/2/a/75804.pdf> [<https://perma.cc/GCA4-5BKU>] (“Domestic work is often not considered real work and is very closely linked to the concept of family; therefore, it is excluded from legal frameworks or can even be hard to include in standards regulating working conditions.”).

203. *E.g.*, Byrd, *supra* note 200, at 254 (“[U]ndocumented immigrant women are slaves to their citizenship status because, in their view, their choices are non-existent—they either endure substandard working conditions with low wages or face deportation. For the live-in worker, the danger of abuse and exploitation is even greater . . . .”); *see also* Margulies, *supra* note 165, at 560 (demonstrating the reality that domestic worker protections are almost non-existent due to exemptions within labor laws).

204. *Cf. OSCE, supra* note 202 (describing the factors, such as lack of law enforcement and regulations, which make domestic workers vulnerable to exploitation).

being taken advantage of.<sup>205</sup> What could be worse than domestic workers having minimal protection with labor laws?<sup>206</sup> Is it not bad enough that they get paid below the minimum wage standard and that their immigration status is being used as collateral by their employer?<sup>207</sup>

*B. Exploitation Affects Both Men and Women*

Moreover, not only do wage and status exploitations occur, but also sexual exploitation of female workers.<sup>208</sup> Some women face incidents of sexual abuse or assault.<sup>209</sup> However, many women refuse to report these incidents because there lies the notion of “economic necessity.”<sup>210</sup> These women come into the United States, willing to work low wage jobs because they are trying to support their family and make ends meet.<sup>211</sup> Thus, an economic necessity exists, leaving domestic workers in exploitative work conditions and fearful of threats of deportation.<sup>212</sup> It is heartbreaking that the women who choose the domestic employment route believe there is no “better” alternative.<sup>213</sup> The same applies to

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205. See generally Tom Spiggle, *Why Workplace Abuse Plagues Undocumented Workers*, FORBES (Aug. 22, 2019, 10:19 PM), <https://www.forbes.com/sites/tomspiggle/2019/08/22/why-workplace-abuse-plagues-undocumented-workers/#7d873f6d49b2> [https://perma.cc/96Q8-MDCR] (illustrating that while there are provisions in place to protect employees reporting discrimination from facing retaliation by their employers, such measures do not help undocumented employees who are about to be deported).

206. But see Benny Agosto Jr., et al., “*But Your Honor, He’s an Illegal!*”—*Ruled Inadmissible and Prejudicial—Can the Undocumented Worker’s Alien Status be Introduced at Trial?*, 17 TEX. HISP. J. L. & POL’Y 27, 41–50 (2011) (describing how immigration status is used against employees during court proceedings).

207. See *id.* (showing multiple cases from various states and circuits where immigration status was used intentionally for prejudicial purposes against undocumented parties).

208. See Vellos, *supra* note 151, at 418–20 (detailing the reality that female domestic workers face sexual abuse from their employers).

209. See Byrd, *supra* note 200, at 246 (explaining the unfortunate reality that women face abuse and exploitation); see also Vellos, *supra* note 153, at 418–20 (illustrating a hypothetical story that is similar to the experiences of female domestic workers).

210. See Vellos, *supra* note 151, at 418–20 (arguing there is an economic necessity for women to remain in harsh conditions because of their need for a job and money).

211. Cf. *Id.* (explaining the barriers that keep undocumented domestic workers from leaving abusive employers).

212. See *id.* at 420 (explaining that economic necessity will push domestic workers to tolerate harsh working conditions).

213. See generally Bernice Yeung, *Domestic Work is Intimate, Invisible—and a Risk for Sex Abuse*, REVEAL (Apr. 13, 2018), <https://www.revealnews.org/article/domestic-work-is->

men, who also work in the domestic field.<sup>214</sup> Domestic work does not necessarily refer to a maid or a housekeeper.<sup>215</sup> Though highly stereotypical, many men work in various domestic positions.<sup>216</sup> The reality is, the impact of employment retaliation is fairly universal in the category of sex.<sup>217</sup> Men and women who are undocumented face the same harsh treatment from their employers.<sup>218</sup> These undocumented men and women who get injured on the job would rather stay quiet than speak up and risk deportation.<sup>219</sup> Men who work in construction and other strenuous jobs are more prone to on the job injuries than women.<sup>220</sup> However, even if the level of injury for both of the undocumented gender working class are compared, they have one thing in common: the right to speak up and obtain damages related to their injury in court.<sup>221</sup>

### C. *The Domestic Workers Bill of Rights*

During the summer of 2019, Senator, and current Vice President, Kamala Harris and U.S. Representative Pramila Jayapal introduced the Domestic Workers Bill of Rights Act to expand labor protections to

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intimate-invisible-and-a-risk-for-sex-abuse/ [https://perma.cc/MQM5-NUR7] (describing how women feel stuck in their employment position).

214. See Martha Alter Chen, *Recognizing Domestic Workers, Regulating Domestic Work: Conceptual Measurement, and Regulatory Challenges*, 23 CAN. J. WOMEN & LAW 167, 169–70 (2011) (explaining how men complete domestic work in a less-exploitative aspect).

215. See *Domestic Employment*, TEX. WORKFORCE COMMISSION, <https://twc.texas.gov/domestic-employment> [https://perma.cc/W96M-8T6D] (labeling who is considered a domestic worker).

216. See Chen, *supra* note 214, at 168–69 (denying the stereotypical misconception that domestic work is a field dominated by women and recognizing the distinguished roles between men and women in the domestic field).

217. See *id.* at 169 (explaining the similar consequences female and male domestic workers face).

218. See generally *Gender Discrimination at Work*, EQUAL RTS. ADVOCS., <https://www.equalrights.org/issue/economic-workplace-equality/discrimination-at-work/> [https://perma.cc/Y93Z-TKG6] (describing how discrimination impacts both genders).

219. *E.g.*, Grabell & Berkes, *supra* note 128 (exposing the fear of reporting workplace injuries as an undocumented worker).

220. See Tom Musick, *As Construction Work Increases, so Do Dangers*, SAFETY + HEALTH (Mar. 26, 2017), <https://www.safetyandhealthmagazine.com/articles/15438-as-construction-work-increases-so-do-dangers> [https://perma.cc/R9CM-3WWH] (discussing the reality of construction being a dangerous job).

221. See generally *Republic Waste Servs., Ltd. v. Martinez*, 335 S.W.3d 401, 410–11 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (declaring the rights of undocumented workers in court).

domestic workers.<sup>222</sup> This legislation would amend federal labor laws to extend basic benefits, including protection, for domestic workers that only currently protected employees have.<sup>223</sup> The Act is not limited only to housekeepers but seeks to extend labor protections to caregivers and nannies.<sup>224</sup> The Act would guarantee paid time off and a written employment contract for domestic workers.<sup>225</sup> A written contract alone will give the domestic worker a voice and make the employer more susceptible to legal repercussions if there is a breach to the terms of the contract.<sup>226</sup> The Act seeks to encourage economic security for domestic workers.<sup>227</sup> This Act changes the way labor laws are implemented and impacts many people who may not realize they are entitled to protection under federal labor laws.<sup>228</sup> Additionally, the Domestic Workers Bill of Rights Act would seek to fight against congressional efforts to exclude domestic workers from labor protections.<sup>229</sup>

The Domestic Workers Bill of Rights Act would open the door to these hardworking individuals, but what about the domestic workers who are undocumented?<sup>230</sup> Though this Act does not mention anything regarding domestic workers and their immigration status, it is fair to assume that the protections would not cover undocumented domestic workers.<sup>231</sup> What the Act does not establish is what this Comment

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222. Alexia Fernandez Campbell, *Kamala Harris Just Introduced a Bill to Give Housekeepers Overtime Pay and Meal Breaks*, VOX (July 15, 2019, 4:20 PM), <https://www.vox.com/2019/7/15/20694610/kamala-harris-domestic-workers-bill-of-rights-act> [<https://perma.cc/S7SG-8NV6>].

223. *See id.* (stating that the bill would be a major change in providing domestic worker's labor protection).

224. *See id.* ("Domestic workers provide essential care and support to aging parents, people with disabilities, children, and homes.").

225. *See id.* (demonstrating how imperative it is for there to be a written contract between the domestic worker and their employer).

226. *See id.* (affirming how an employment contract would establish a gateway to seek compensation from an employer).

227. *See id.* (establishing how financial security is a main component of the proposed bill).

228. *See id.* (asserting that the bill seeks to establish justice for domestic workers that have been invisible within the labor market).

229. *See id.* (explaining that the act would establish a foundation for domestic worker's rights).

230. *See id.* (advocating for the rights of legal domestic workers).

231. *See, e.g., id.* (providing a breakdown of what the proposed bill would cover); *see also The National Domestic Workers Bill of Rights Ensures Domestic Workers Have Respect, Dignity*,

strives to create: a voice for *undocumented* individuals who work in the domestic field.<sup>232</sup> A common stigma for domestic workers is that they are undocumented immigrant women who resort to domestic work as an easy way to gain income.<sup>233</sup> As previously mentioned, domestic work is seen as a field that requires minimal skills and effort.<sup>234</sup> It does not help that undocumented workers are derived from various ethnicities and tend to have little to no education in conjunction with the inability to speak English, placing them at a higher disadvantage in the workforce.<sup>235</sup>

The effort to broaden labor protections for domestic workers is what makes the proposed legislation effective.<sup>236</sup> The Act is undoubtedly a first step to ensuring that domestic workers receive proper pay and are protected under federal labor laws.<sup>237</sup> However, even though the new law would implement minimum wage and overtime pay, undocumented workers will still find themselves underpaid.<sup>238</sup> Domestic work is undeniably an exploitive and underrepresented field, but imagine how the field is for those who are undocumented and perform the same work as *legal* citizens.<sup>239</sup> Though the Act provides domestic workers with

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*and Recognition*, NAT'L DOMESTIC WORKERS ALLIANCE, <https://www.domesticworkers.org/bill-rights> [<https://perma.cc/BW4A-KDAY>] (advocating to establish rights for *legal* domestic workers).

232. See Campbell, *supra* note 222 (showing how domestic workers deserve to be protected by labor laws); see also NAT'L DOMESTIC WORKERS ALLIANCE, *supra* note 233 (emphasizing the need to advocate for domestic workers).

233. See, e.g., Byrd, *supra* note 200, at 247 (explaining how domestic work is the only option for some women); see also Ivette Feliciano & Corinne Segal, 'You're Mostly Isolated and Alone.' *Why Some Domestic Workers Are Vulnerable to Exploitation*, PBS (Aug. 12, 2018), <https://www.pbs.org/newshour/nation/ai-jen-poo-domestic-workers-exploitation> [<https://perma.cc/KZ7E-4A6D>] (stating how stigmatized the domestic work field is); see also Chen, *supra* note 214, at 181 (stating how migrants are easily coerced into domestic work).

234. See discussion *supra* Section III (a); see also Chen, *supra* note 214, at 168 (providing examples of duties domestic workers complete).

235. See generally Hsin & Ortega, *supra* note 178 (breaking down the disadvantages domestic workers face).

236. See generally NAT'L DOMESTIC WORKERS ALLIANCE, *supra* note 231 (explaining the structure of the proposed Bill of Rights); see also Campbell, *supra* note 222 (discussing how the proposed Bill of Rights is essential to the workforce).

237. See Campbell, *supra* note 222 (outlining the protections for domestic workers under the Act).

238. See Feliciano & Segal, *supra* note 233 ("[The] annual median income for a home care worker, for example, is only \$13,000 per year.").

239. See generally Karen Schwartz, *New Report Details Exploitation of Hotel Industry Workers*, N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/travel/new-report->

dignity and respect, the issue still remains with *undocumented* domestic workers.<sup>240</sup> After all, an employer is under no obligation to keep quiet about their employee's immigration status.<sup>241</sup> This does not mean that undocumented domestic workers do not deserve the opportunity to receive that same respect and dignity.<sup>242</sup>

#### D. Domestic Workers Are "Persons" Under Title VII

It is important to dissect the term "person" to prove that "any person" includes any human being—regardless of their immigration status, race, gender, and sexual orientation.<sup>243</sup> For example, Title VII defines "person" as "one or more individuals, governments, governmental agencies, political subdivisions, labor unions . . . ."<sup>244</sup> The verbiage does not differentiate between undocumented or documented individuals, so why make it difficult for an individual—like a domestic worker—to assert a claim because of their status?<sup>245</sup> As mentioned previously, the difficulty arises with the fact that some domestic workers work for a private employer, such as a homeowner.<sup>246</sup> There is more difficulty in establishing whether there is an employer-employee relationship that is recognized under Title VII or any labor law.<sup>247</sup> Defining the term "person" goes hand in hand with how the status of an undocumented worker is irrelevant in court.<sup>248</sup> *TXI Transp. Co. v. Hughes*<sup>249</sup> sets the

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human-trafficking-exploitation-of-hotel-industry-workers.html [https://perma.cc/QY5R-28TH] (explaining how exploitation occurs in various employment avenues).

240. See NAT'L DOMESTIC WORKERS ALLIANCE, *supra* note 231 (emphasizing that the immigration status of a domestic worker is not mentioned).

241. See generally Spiggle, *supra* note 205 (shedding light on the reluctance of an employer to report their undocumented worker).

242. See generally *id.* (arguing for protections for undocumented domestic workers).

243. 42 U.S.C. § 2000e(a) (2012); see also 42 U.S.C. § 2000e-2 (2012).

244. 42 U.S.C. § 2000e(a) (2012).

245. *Id.*

246. See discussion *supra* Section III (a). See generally Feliciano & Segal, *supra* note 233 (explaining that many domestic workers in private homes are exempt from federal labor protections).

247. See Chen, *supra* note 214, at 169 (defining the types of employee-employer relationships domestic workers have).

248. See *TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 242 (Tex., 2010) (holding immigration status was irrelevant, more prejudicial than probative, and inadmissible impeachment evidence when used as a collateral matter).

249. *Id.* at 230.



foundation to that notion.<sup>250</sup> The Court addressed how bringing up an individual's immigration status is more prejudicial than probative.<sup>251</sup> An individual's immigration status can be considered irrelevant to the case with respect to the material issue, which is normally the dispute of damages over a personal injury claim in most cases.<sup>252</sup>

However, domestic workers also work for companies and hotels, not necessarily private employers.<sup>253</sup> This means it is highly probable that there is no formal contract set out between the domestic worker and their employer.<sup>254</sup> In turn, this means the domestic worker is subjected to more instances of retaliation and upsettingly low wages.<sup>255</sup> Aside from being subjected to low wages, domestic workers are often coerced into living in the home of the employer as a way to supplement the low wage.<sup>256</sup> The low wage abuse by employers towards domestic workers fuels what is considered an "underground economy."<sup>257</sup> The "underground economy" stems from the fact that domestic work, often considered invisible in the workforce, including pay, is not regulated

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250. *See id.* at 242–44 (explaining why immigration status was more prejudicial than probative).

251. *See id.* at 241–42 (discussing how immigration status is not a material issue in a personal injury action for damages); *see also* *Grocers Supply, Inc. v. Cabello*, 390 S.W.3d 707, 718 (Tex. App.—Dallas 2012, no pet.) (proving that Texas can abide by immigration laws and allow for there to be a tort claim for lost wages).

252. *TXI Transp. Co.*, 306 S.W.3d at 241–42; *see Cabello*, 390 S.W.3d at 718 (stating how it is within the State's powers to provide lost wages to an undocumented individual); *see also* *Republic Waste Servs., Ltd. v. Martinez*, 335 S.W.3d 401, 408 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (showing how employees, regardless of immigration status, can obtain compensation).

253. *See, e.g.*, Schwartz, *supra* note 239 (discussing how domestic work includes hotel maids); *see also* Redmayne, *supra* note 89 (furthering the discussion on the categories of what domestic work entails); *see also* Chen, *supra* note 214, at 173 (describing who falls under the category of a domestic worker).

254. *See* Hsin & Ortega, *supra* note 178 (emphasizing how low wages are linked to the lack of a formal contract); *cf.* Schwartz, *supra* note 239 (depicting the reality that even with contracts some hotels do not abide by them).

255. *See* Byrd, *supra* note 200, at 254 (paying low wages and providing the domestic worker a room to stay in); *see also* Hsin & Ortega, *supra* note 178 (detailing how the endless cycle of low wages is attributed to the lack of a written agreement between the domestic worker and their client).

256. *See* Yeung, *supra* note 213 (stating that domestic workers are often blindsided with a free room in exchange for low pay).

257. *See generally* Byrd, *supra* note 200, at 266–67 (defining domestic work as an economic shadow in the workforce).

through any labor laws.<sup>258</sup> Contracts are hardly existent in domestic work, and employers find it easy to avoid fair terms or conditions within those contracts.<sup>259</sup>

The issue, however, begins with the idea that these women cannot bring a claim against their employer because of how neglected the field of domestic work is.<sup>260</sup> Again, “any person” should mean any hardworking human in the United States. What does not help with the issue over low wages is the misconception that domestic workers deserve what they get.<sup>261</sup> This is a prejudicial and misinformed way of thinking based solely on the type of work these women and men do.<sup>262</sup> Domestic workers are usually poor and often marginalized, so they fall into the industry as a means of survival.<sup>263</sup> By giving domestic workers a voice, it will set a foundation for justice and the right to assert a claim through employment and labor law avenues.<sup>264</sup> These workers are already in a disadvantaged position when attempting to voice their rights against retaliating employers.<sup>265</sup> It does not get any easier for them to exercise their rights when they are undocumented.<sup>266</sup> Unfortunately, immigration status is the baseline to the injuries, retaliation, and hostility that domestic workers are subjected to within the workplace.<sup>267</sup> At what point does enough become enough?

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258. *See id.* at 247 (furthering the discussion on domestic workers’ invisible position in the economic aspect of employment).

259. *See generally* Hsin & Ortega, *supra* note 178 (attributing low wages to the lack of a contract).

260. *See generally* Yeung, *supra* note 213 (explaining how domestic workers invisibility within the workforce subjects them to a lack of labor protections).

261. *See generally* Chen, *supra* note 214, at 179 (discussing the misconceptions on low wages).

262. *See id.* at 168 (discussing the type of work domestic workers complete).

263. Redmayne, *supra* note 89.

264. *See generally* Campbell, *supra* note 222 (advocating for the rights of domestic workers in the United States).

265. *See* Schwartz, *supra* note 239 (depicting the exploitation that hotel domestic workers face).

266. *See* Olivia Sanchez, *Endless Fear: Undocumented Immigrants Grapple with Anxiety, Depression Under Trump*, USA TODAY (Aug. 27, 2019), <https://www.usatoday.com/story/news/nation/2019/08/25/undocumented-immigrants-struggle-mental-health-surival-mode/1816672001/> [<https://perma.cc/M9UW-XB3R>] (shedding light on the fear undocumented workers face).

267. *See* Feliciano & Segal, *supra* note 233 (detailing the unfortunate reality that domestic workers face).

V. A PROPOSAL: SOLUTIONS, NONPROFITS,  
AND LEGAL ASSISTANCE FOR UNDOCUMENTED DOMESTIC WORKERS

Fortunately, the Equal Employment Opportunity Commission (EEOC) has vowed to protect undocumented workers from discrimination.<sup>268</sup> However, the protection is not necessarily whole and not every employment and labor law sets out a “promise” to extend protection to undocumented workers.<sup>269</sup> One thing is for sure: the EEOC lays out the notion that it is illegal to discriminate against any worker in the United States, regardless of their immigration status.<sup>270</sup> The EEOC has maintained a reach of protection for undocumented workers, which should be provided through any employment and labor law.<sup>271</sup> The EEOC has implemented a policy that all claims for relief are to be processed regardless of an individual’s immigration status.<sup>272</sup>

Even though the EEOC has extended to process claims of relief for undocumented employees, domestic workers are still in the shadows of federal labor laws.<sup>273</sup> Solutions to assist undocumented domestic workers are not unfeasible.<sup>274</sup> It is necessary to start with establishing a safe haven for undocumented domestic workers to go without fearing deportation.<sup>275</sup> The ideal option for undocumented domestic workers is being able to seek legal assistance when filing a claim for wages and/or

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268. See Press Release, U.S. Equal Emp’t Opportunity Comm’n, EEOC Reaffirms Commitment to Protecting Undocumented Workers from Discrimination (June 28, 2002) (on file with author) <https://www.eeoc.gov/eeoc/newsroom/release/6-28-02.cfm> [<https://perma.cc/6VR4-AGPW>] (“Protecting immigrant workers from illegal discrimination has been, and will continue to be, a priority for the EEOC.”).

269. See generally *id.* (affirming that the EEOC will extend protection, however it is still limited).

270. See *id.* (“This Agency will vigorously pursue claims of discrimination against all workers covered by our laws.”).

271. See generally *id.* (“[T]he Agency will continue to work proactively with community groups to prevent discrimination against immigrant workers.”).

272. See *id.* (“[I]mmigration status remains irrelevant to the EEOC when examining the underlying merits of the charge.”).

273. See generally Yeung, *supra* note 213 (casting light on the lack of federal labor protections).

274. *E.g.*, Campbell, *supra* note 222 (detailing a solution for the lack of labor protections within the domestic field).

275. See generally Sarah Holder, *The Price of Domestic Workers’ Invisible Labor in U.S. Border Towns*, CITY LAB (June 25, 2018), <https://www.citylab.com/equity/2018/06/the-price-of-domestic-workers-invisible-labor-in-us-border-towns/5630+87/> [<https://perma.cc/2YBH-VJ5M>] (showing that a safe place for vulnerable women is necessary and useful).

submitting a personal injury claim without jeopardizing their livelihood with deportation.<sup>276</sup> To initiate the movement on rights for undocumented domestic workers, a proposal to create a nonprofit organization, Justice For Undocumented Domestic Workers (J.F.U.D.W.), is the starting point. This proposed organization would help undocumented domestic workers who sustain injuries while working to have a voice and stand up against injustice.<sup>277</sup> This proposed organization would provide legal assistance along bordering cities, just like Texas Rio Grande Legal Aid (TRLA) and AYUDA do.<sup>278</sup> However, this organization's central focus would be to extend labor protections to undocumented domestic workers and push Congress to create an immigration status exception under *all* federal labor laws that are currently in place.<sup>279</sup> Though it may seem like a far stretch in providing justice for undocumented domestic workers, the organization's mission is to advocate to establish fairness and integrity for undocumented domestic workers in the United States.<sup>280</sup>

*A. A Mission to Implement Immigration Status with All Labor Laws*

Distinguishing J.F.U.D.W. from other nonprofit organizations, it would not only be a safe haven for undocumented individuals to depend on, but also a legal aid. This organization would be composed of practicing attorneys who are motivated in promoting employment justice for undocumented workers. The foundation of J.F.U.D.W. would center its values in promoting justice for undocumented employees who face

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276. See generally John Carlos Frey, *How 'Sanctuary Cities' are Helping Immigrants Outwit ICE*, THE MARSHALL PROJECT, <https://www.themarshallproject.org/2017/06/19/how-sanctuary-cities-are-helping-immigrants-outwit-ice> [<https://perma.cc/XN6E-M3S8>] (last updated June 20, 2017) (providing an example of why safe havens for the undocumented are important).

277. This is my proposition to create a nonprofit organization that assists domestic workers, including undocumented workers, who face retaliation, injury on the job, sexual harassment, and other on the job-related injuries.

278. See *Who Are We*, TEX. RIO GRANDE LEGAL AID, <https://www.trla.org/who-we-are> [<https://perma.cc/44NL-Q8WY>] (showing how TRLA helps many individuals across Texas with legal services).

279. See generally *Legal Support for Workplace Justice*, JUSTICE WORK, <https://jatwork.org/> [<https://perma.cc/W34Z-NPH7>] (providing an example of an organization that seeks to assist undocumented workers).

280. See generally Joan Monras et al., *Understanding the Effects of Legalizing Undocumented Immigrants*, IZA INST. OF LAB. ECON. (Apr. 2017), <http://ftp.iza.org/dp10687.pdf> [<https://perma.cc/2DFM-QCNE>] (providing insight on why it is important to provide justice for undocumented workers).

hardship in their workplaces.<sup>281</sup> J.F.U.D.W. would help domestic workers, who work under a private employer or individual, seek legal assistance while obtaining citizenship.<sup>282</sup> J.F.U.D.W. would also assist an individual in the process of deportation for using either a stolen Social Security number or a fake number to work.<sup>283</sup> Because of the likelihood that they would be deported automatically for using fake or stolen information, J.F.U.D.W. would help the individual transition into their country of origin.<sup>284</sup> While the ideal goal is to help the individual obtain citizenship, the harsh reality is when one uses stolen information, the government is not so lenient.<sup>285</sup>

Just like with any nonprofit organization, the issue begins with government funding.<sup>286</sup> Although it may be difficult to obtain funding because most of today's society disfavors the idea to support undocumented individuals for anything, there are government officials like Senator Kamala Harris who the organization could reach out to for support.<sup>287</sup> Additionally, another goal of the proposed J.F.U.D.W.

281. See, e.g., *The Need for Social Justice*, INT'L LABOUR ORG., <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for-social-justice/lang-en/index.htm> [<https://perma.cc/WE7C-EZLS>] (stating how providing an equal opportunity for everyone is necessary).

282. See generally Robert Lynch & Patrick Oakford, *The Economic Effects of Granting Legal Status and Citizenship to Undocumented Immigrants*, CTR. FOR AM. PROGRESS (Mar. 20, 2013, 8:44 AM), <https://www.americanprogress.org/issues/immigration/reports/2013/03/20/57351/the-economic-effects-of-granting-legal-status-and-citizenship-to-undocumented-immigrants/> [<https://perma.cc/KC5L-4HFT>] (describing the benefits of granting legal citizenship to undocumented individuals).

283. See generally Richard Wolf, *Supreme Court to Decide if States Can Prosecute Undocumented Immigrants for Identity Theft*, USA TODAY (Mar. 18, 2019, 1:03 PM), <https://www.usatoday.com/story/news/politics/2019/03/18/identify-theft-illegal-immigrants-get-supreme-courts-attention/3202429002/> [<https://perma.cc/XX63-U5VB>] (explaining the ability for states to prosecute undocumented individuals for identity theft).

284. This would be the worst case scenario for an undocumented individual who does get prosecuted and deported. See generally Deborah Dyson, *Legal Pitfalls of Hiring Undocumented Immigrants*, NOLO <https://www.nolo.com/legal-encyclopedia/hiring-foreign-workers-your-business-first-things-know.html> [<https://perma.cc/6EYV-XEC6>] (detailing the harsh reality with risks on both the employee and employer).

285. See generally Wolf, *supra* note 283 (explaining how states want to prosecute undocumented individuals).

286. See generally *Starting a Nonprofit Organization*, USA GOV, <https://www.usa.gov/start-nonprofit> (Last updated Apr. 9, 2019) [<https://perma.cc/SJ2W-FQWJ>] (describing how to start a nonprofit organization).

287. See generally Campbell, *supra* note 222 (explaining how Kamala Harris is fighting for domestic workers).

organization is to push Congress to implement an immigration status provision within Title VII and other federal labor laws, to ensure that undocumented domestic workers can initiate a claim and still be legally protected.<sup>288</sup> Many undocumented domestic workers contribute to the economy, pay taxes, and obey the law.<sup>289</sup> Why should their status affect their ability to obtain compensation for work injuries and owed wages?<sup>290</sup> For this reason, it is imperative that there is some form of immigration status exemption under Title VII or FLSA to extend protection for undocumented domestic workers.<sup>291</sup> Determining whether a worker is an employee or whether the worker is an independent contractor is another hurdle to overcome.<sup>292</sup> The reason why this becomes a hurdle is because, as mentioned earlier, domestic workers also face retaliation and may not be considered an “employee” as defined by the federal labor laws.<sup>293</sup> There is no definite definition of an independent contractor; however, the courts follow the “right-to-control” test to determine the relationship of the individual with the employer.<sup>294</sup> This test essentially determines how much control the employer extends over an employee; if the employee is more of an independent contractor, the employer is not subjected to labor law violations.<sup>295</sup> Evidently, the

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288. *Cf.* 42 U.S.C. § 2000e (2012) (illustrating how definitions and provisions within Title VII are limited to certain persons).

289. *See* Lynch & Oakford, *supra* note 282 (explaining the economic benefits undocumented workers have on the country).

290. *Cf.* Republic Waste Servs., Ltd. v. Martinez, 335 S.W.3d 401, 410–11 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (reiterating that an undocumented worker should not be precluded from recovering damages due to illegal immigration status).

291. *Cf.* 42 U.S.C. § 2000e (2012) (showing lackluster protections for undocumented domestic workers).

292. *See* Chen, *supra* note 214, at 172 (explaining the difference between an informal and formal employee); *see also* PAUL M. SECUNDA ET AL., *MASTERING EMP. DISCRIMINATION* 18 (Russell Weaver ed., Carolina Acad. Press 2d ed. 2018) (providing a description for the difference between the employee’s status).

293. *See, e.g.*, TEX. RIO GRANDE LEGAL AID, *LEGAL ISSUES AFFECTING DOMESTIC WORKERS* 72–79 (2013), [http://fuerzadelvalle.org/wp-content/uploads/2014/01/legal\\_issues\\_affecting\\_domestic\\_workers.pdf](http://fuerzadelvalle.org/wp-content/uploads/2014/01/legal_issues_affecting_domestic_workers.pdf) [<https://perma.cc/S69V-BDPX>] (explaining the stark realities of federal labor laws); *see also* Chen, *supra* note 216, at 172 (“Most domestic workers work for a known employer or set of employers: private clients or households.”).

294. SECUNDA ET AL., *supra* note 292, at 18.

295. *See generally* Chen, *supra* note 214, at 172–74 (identifying varying domestic employment arrangements that domestic workers may obtain).

less control the employer has, the more independent the employee is.<sup>296</sup>

### B. *Changes with Labor Laws*

One of the main objectives of J.F.U.D.W. is to push Congress to establish an immigration status exception, so that undocumented workers can comfortably seek a claim within Title VII.<sup>297</sup> Implementing an immigration status exception, which covers undocumented domestic workers, is one step towards providing justice for undocumented workers.<sup>298</sup> Though creating an exception may be strenuous, it is not impossible.<sup>299</sup> There is already a movement to establish labor protection for domestic workers.<sup>300</sup> Just like Vice President Kamala Harris's proposed Bill of Rights, this organization will advocate to provide a voice for the undocumented domestic workers who want to seek legal assistance and pursue personal injury claims against their employers.<sup>301</sup>

Title VII is a federal law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.<sup>302</sup> The main feature of Title VII is that it applies to employers with *fifteen* or more employees.<sup>303</sup> J.F.U.D.W. would work to implement, under national origin, a sub provision that protects undocumented workers. National origin refers to the country where an employee originated from.<sup>304</sup> However, the Supreme Court held that

296. See SECUNDA ET AL., *supra* note 292, at 18–20 (explaining that an employer's control over an individual determines whether labor laws apply).

297. See *generally* 42 U.S.C. § 2000e (2012) (describing Title VII unlawful employment provisions).

298. Grabell & Berkes, *supra* note 128 (illustrating how an employee's immigration status prevented him from receiving the benefit of laws meant to protect his rights).

299. Cf. INT'L LABOUR ORG., *supra* note 281 (detailing international initiatives aimed at bettering labor standards).

300. See NAT'L DOMESTIC WORKERS ALLIANCE, *supra* note 231 (noting the movement towards creating protections for domestic workers).

301. See Senator Kamala Harris (D-CA) and Congresswoman Pramila Jaypal (WA-07) *Introduce National Domestic Workers Bill of Rights*, NAT'L DOMESTIC WORKERS ALLIANCE (July 15, 2019), <https://www.domesticworkers.org/release/senator-kamala-harris-d-ca-and-congresswoman-pramila-jaypal-wa-07-introduce-national> [https://perma.cc/ZZ8C-XKLN] (recognizing the introduction of legislation meant to ensure domestic workers have a voice).

302. 42 U.S.C. § 2000e (2012).

303. 42 U.S.C. § 2000e-2 (2012).

304. SECUNDA ET AL., *supra* note 292, at 131.

national origin does not apply to an employee's citizenship status.<sup>305</sup> This is because the issue of discrimination based on citizenship status is covered by a different federal law, IRCA.<sup>306</sup>

Under Title VII, reduction in pay, work hours, and the deprivation of employment opportunities are a few examples of adverse employment actions.<sup>307</sup> Undocumented immigrants should have the same protection from workplace injuries that citizens have.<sup>308</sup> The division in coverage between discrimination and retaliation, based on citizenship status, is the precise reason why J.F.U.D.W. would be a benefit to society.<sup>309</sup> The organization could help fix the division and enforce the ability to assert a claim by creating an undocumented status sub provision offered under Title VII.

Additionally, the EEOC is another federal entity that J.F.U.D.W. would work with to implement an undocumented worker exception.<sup>310</sup> The EEOC is considered a gatekeeper for discrimination claims to avoid frivolous and lengthy lawsuits.<sup>311</sup> This being said, it is logical the entity that resolves employment discrimination matters should also resolve, handle, and allow undocumented workers to file a claim against their employer.<sup>312</sup> By filing a claim through the EEOC, it becomes more likely an issue that is settled out of court.<sup>313</sup> This would be a great benefit

305. *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 88–91 (1973) (declining to consider citizen status under the national origin provision of Title VII).

306. 8 U.S.C. § 1324b(a)(1) (2018) (prohibiting discrimination based on national origin or citizenship status).

307. SECUNDA ET AL., *supra* note 292, at 20–21 (detailing how discriminatory consequences of employment actions are the focus of a violation rather than the motivations behind those actions).

308. *Cf.* Tom Spiggle, *Why Workplace Abuse Plagues Undocumented Workers*, FORBES (Aug. 22, 2019, 10:19 PM), <https://www.forbes.com/sites/tomspiggle/2019/08/22/why-workplace-abuse-plagues-undocumented-workers/#7d873f6d49b2> [https://perma.cc/96Q8-MDCR] (explaining the inequities and abuse undocumented workers face without legal protection).

309. *See generally* 8 U.S.C. § 1324b(a)(1)–(5) (2018) (outlining prohibited acts, including discrimination and retaliation based on citizenship status).

310. *See generally* SECUNDA ET AL., *supra* note 292, at 23–26 (explaining the EEOC's role in employment discrimination claims).

311. *Id.*

312. *See generally About the EEOC*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, <https://www.eeoc.gov/youth/about-eeoc-2> [https://perma.cc/6W3V-P9H5] (discussing the general tasks the EEOC handles).

313. *See* SECUNDA ET AL., *supra* note 292, at 24–26 (explaining how the EEOC's claim is filed and resolved); *see also What You Can Expect After a Charge is Filed*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, <https://www.eeoc.gov/employers/what-you-can-expect-after-charge->



to the undocumented employee because with an immigration status exception, within the EEOC, the employee would be encouraged to file a claim.<sup>314</sup> The undocumented worker would neither fear deportation nor their status being brought up in court.<sup>315</sup> The ultimate purpose is to promote justice and allow an undocumented employee to receive compensation for being subjectively and physically injured.<sup>316</sup>

C. *“But Your Honor, They Are Illegal!”*

The remedies for violations in employment law deter wrongdoing on the part of the employer and promote fairness within the workplace.<sup>317</sup> Nonetheless, this Comment does not seek to encourage the unlawful use of a Social Security number; nor does it encourage the usage of fake numbers to work in the United States. However, this Comment seeks to promote humanity and justice for undocumented domestic workers who are injured, who suffer from sexual abuse from their employer, and who are retaliated against because of their immigration status.<sup>318</sup> These individuals are being forced to keep their mouths sewn shut when it comes to speaking up.<sup>319</sup> It is an unfair and inhumane method of punishing undocumented workers who spend most of their time working and contributing to the economy.<sup>320</sup> Think about how it would feel if you could not seek legal assistance nor assert a claim through one of the

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filed [<https://perma.cc/HNQ3-TV7M>] (“In many cases, the organization [charged by the EEOC] may choose to resolve the charge through mediation or settlement.”).

314. Cf. Grabell & Berkes, *supra* note 128 (finding that many undocumented immigrants avoid standing up for their rights because of the likelihood of being deported later).

315. Cf. Agosto et al., *supra* note 206, at 34–35 (exploring means of preventing the status of undocumented individuals from admittance in a court proceeding).

316. Cf. INT’L LABOUR ORG., *supra* note 281 (“[L]abof[r] standards will be a source of social cohesion and economic stability in an era of great changes affecting work.”).

317. See Peter Margulies, *Stranger and Afraid: Undocumented Workers and Federal Employment Law*, 38 DEPAUL L. REV. 553, 618 (1989) (noting equity can be achieved while simultaneously deterring employers from committing unlawful employment actions).

318. Cf. Spiggle, *supra* note 308 (summarizing how many federal and state laws that are supposed to protect undocumented immigrants and citizens are exploited by employers).

319. See Grabell & Berkes, *supra* note 128 (“Like many unauthorized workers, Castro feared he would be deported if he reported an injury. So when he sliced his pinkie on some copper sheeting and got nine stiches, he stayed quiet and kept working.”).

320. Contributing also means spending money because we all have to eat, have to pay for gas, buy groceries, pay rent, and pay light and water bills. See Monras et al., *supra* note 280, at 3 (indicating that refusing to grant work permits to immigrant workers leads to a loss of potential public revenue).

federal labor laws because you were seen as a threat and detriment to the country.<sup>321</sup> Labor laws are designed to promote and establish effective employee organization, compensation, and conditions of employment.<sup>322</sup> For this reason, the status of an individual who pursues a claim against their employer should not matter in the courtroom.<sup>323</sup>

Unfortunately, it is still common in today's society for individuals to be prejudiced against undocumented individuals seeking compensation for a personal injury claim.<sup>324</sup> This Comment is intended to address how an undocumented domestic worker's ability to seek compensation and legal protection is a humanitarian issue that is undermined and disregarded by many individuals.<sup>325</sup> People in our society easily rely on ill-informed political and legal bias to form opinions on whether undocumented individuals should be granted basic rights.<sup>326</sup> Comments like "well, nobody told them to cross the border and work here" and "that's what they get for working here illegally" dangerously fuel prejudices in the courtroom and illustrate why a push for justice is necessary for injured undocumented domestic workers.<sup>327</sup> The dangers of these prejudicial and unfair opinions on undocumented individuals is

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321. See generally Sanchez, *supra* note 266 (detailing the fear, anxiety, and mental health problems undocumented immigrants experience as a result of the political structure and threat of deportation).

322. See *The Importance of Employment Laws*, BROWN & FORTUNATO L. FIRM (Jan. 13, 2016), <https://www.bf-law.com/the-importance-of-employment-laws/> [<https://perma.cc/95H8-ES9D>] (illustrating the areas occupied by labor laws).

323. See, e.g., *TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 245 (Tex. 2010) (stating an opposing party's attempt to call attention to the other party's immigration status "cannot be tolerated because [it] undermine[s] the very basis of our judicial process."); see also *Republic Waste Servs., Ltd. v. Martinez*, 335 S.W.3d 401, 408–09, 411 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (holding a plaintiff's immigration status was irrelevant because its prejudicial effect was higher than its probative value); see also *Grocers Supply, Inc. v. Cabello*, 390 S.W.3d 707, 724 (Tex. App.—Dallas 2012, no pet.) (concluding the district court did not abuse its discretion by deeming a party's legal status irrelevant in a personal injury action).

324. See Agosto et al., *supra* note 206, at 29, 32, 41, 43–45 (discussing the battles undocumented immigrants have faced in civil cases involving bias).

325. See generally Byrd, *supra* note 201, at 246 (stressing how undocumented women are vulnerable and marginalized as domestic workers).

326. See *id.* at 247 (emphasizing the biases and attitudes people have formed over undocumented individuals).

327. See Agosto et al., *supra* note 206, at 30 (asserting that the dangers of unfair prejudice appear when a person associates an individual with unpopular groups or beliefs); see also Byrd, *supra* note 202, at 247, 251–52 (explaining how prejudiced attitudes towards undocumented workers were "rooted in the oppression of the African American race . . .").

what sets the foundation that explains why people do not want to give undocumented workers compensation for their injuries and wages.<sup>328</sup> However, many people fail to realize receiving labor protection is a right that both citizens and undocumented workers should be entitled to.<sup>329</sup>

Exclusionists, for example, are individuals who impose barriers and refuse to accept that undocumented workers have rights.<sup>330</sup> They are individuals who want to “preserve” jobs in America for U.S. citizens based on their belief that undocumented workers take jobs away from American citizens.<sup>331</sup> These sentiments make it that much harder for undocumented workers to seek legal assistance against their employer.<sup>332</sup> Fortunately, numerous Texas courts have held immigration status is irrelevant in an employee’s action against an employer.<sup>333</sup> In court, evidence of immigration status can be excluded when its probative value is substantially outweighed by the danger of unfair prejudice.<sup>334</sup> There is proof that even Texas Appellate Courts have condemned arguments that invoke prejudice based on race, ethnicity, religion, or national origin.<sup>335</sup>

#### *D. The Difference with J.F.U.D.W. and National Domestic Workers Alliance*

The purpose of J.F.U.D.W. is to promote integrity and justice for all undocumented workers. J.F.U.D.W. would follow what the National

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328. *See id.* at 43–50 (analyzing arguments rooted on attacking an individual’s immigration status in order to inflame a jury).

329. *Cf. Yeung, supra* note 213 (proving labor protection for undocumented workers is slowly being spotlighted in the workforce).

330. *See Margulies, supra* note 317, at 559 (describing exclusionists as those who distrust any increase in population from foreigners).

331. *Id.* at 560.

332. *See id.* (explaining how employer sanction provisions in the IRCA favor exclusionists).

333. *See TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 245 (Tex. 2010) (concluding the admission of a party’s immigration status is prejudicial and harmful); *see also Republic Waste Servs., Ltd. v. Martinez*, 335 S.W.3d 401, 411 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (concluding immigration status was irrelevant because “illegal workers are treated the same as legal workers for purposes of asserting a worker’s compensation claim in Texas.”); *see also Grocers Supply, Inc. v. Cabello*, 390 S.W.3d 707, 724 (Tex. App.—Dallas 2012, no pet.) (“Texas law does not require citizenship or the possession of immigration work authorization permits as a prerequisite to receiving tort damages.”).

334. Agosto, et al., *supra* note 206 (referring to Federal Rule of Evidence 403).

335. *Id.* at 43 (emphasizing language from *Moss v. Sanger*, 12 S.W. 619 (Tex. 1889)).

Domestic Workers Alliance seeks to establish.<sup>336</sup> However, the focus of this Comment is on helping *undocumented* domestic workers. The National Domestic Workers Bill of Rights, introduced by then Senator Kamala Harris and Representative Pramila Jayapal, aims to establish rights for many domestic workers nationwide.<sup>337</sup> Currently, the National Domestic Workers Bill of Rights is implemented and adopted by only nine states.<sup>338</sup> Unfortunately, Texas is not one of those states.<sup>339</sup> J.F.U.D.W. would fight to fill in the labor protection gap for all domestic employees.<sup>340</sup> The challenge would be to start by establishing a state labor law that extends protection for domestic workers, especially undocumented individuals.<sup>341</sup> Texas Workforce Commission extends protection for employees' basic employment rights.<sup>342</sup> Some of the Texas Workforce Commission's major functions include providing support services for childcare, reducing discrimination in employment, and providing unemployment benefits.<sup>343</sup> However, there is still an absence of labor protection for domestic workers, not just on a federal level but on a state level.<sup>344</sup> To ensure domestic workers are given protection through labor laws, it must start at the state level.<sup>345</sup> This notion is not impossible and is supported by the discussion in *Grocers v*,

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336. See NAT'L DOMESTIC WORKERS ALLIANCE, *supra* note 231 (explaining the National Domestic Workers Alliance's position on domestic workers' rights).

337. *Id.*

338. NAT'L DOMESTIC WORKERS ALLIANCE, *supra* note 301 (showing that the only states that implement the Bill of Rights are: Oregon, Illinois, New York, California, New Mexico, Nevada, Connecticut, Massachusetts, and Hawaii).

339. *Id.*

340. See NAT'L DOMESTIC WORKERS ALLIANCE, *supra* note 231 (highlighting the lack of labor protection for domestic employees).

341. Cf. *About Texas Workforce*, TEX. WORKFORCE COMMISSION, <https://twc.texas.gov/about-texas-workforce> (last updated Aug. 16, 2018) [<https://perma.cc/2BES-QSUG>] (identifying a Texas agency as an avenue of enforcing labor protection for domestic workers).

342. See *id.* (describing some of the labor protections offered by the Texas Workforce Commission).

343. *Id.*

344. See *A National Bill of Rights for Domestic Workers*, NAT'L DOMESTIC WORKERS ALLIANCE, <https://www.domesticworkers.org/national-bill-rights-domestic-workers> [<https://perma.cc/SBW2-AC5Z>] (exploring the need for a "National Bill of Rights" for domestic workers for domestic workers due to a lack of states strengthening their labor protections and the absence of federal labor protections).

345. Cf. *Grocers Supply, Inc. v. Cabello*, 390 S.W.3d 707, 717 (Tex. App.— Dallas 2012, no pet.) (emphasizing how labor laws are "traditionally left to the states to regulate.").

*Supply Inc. v Cabello*.<sup>346</sup> A suggestion would be to include a provision specifically for domestic workers, who work in the State of Texas, allowing them to bring a claim in court for injuries they were subjected to by their employer or client.<sup>347</sup> The main hurdle is proving to the Texas legislature why it is imperative for there to be domestic worker rights under the Texas Workforce Commission, more specifically to provide an opportunity for undocumented domestic workers as well.<sup>348</sup>

Domestic workers, both in private and public sectors, have the right to bring up a personal injury claim in court regardless of their immigration status.<sup>349</sup> Moreover, their status should not be a reason to stay quiet.<sup>350</sup> J.F.U.D.W. will ensure that both women and men, in the domestic field, are guided in the path of seeking justice. The reality is, a lot of undocumented workers have no other option but to work in fields such as domestic work.<sup>351</sup> Their employment should not undermine their ability to speak out and fight for what is right and just.<sup>352</sup> The community needs

346. *See id.* (inferring state law has the power to control and regulate labor laws).

347. *Cf. Non-Covered Employers: Information for Employers from the Division of Workers' Compensation*, TEX. DEP'T. INSURANCE, <https://www.tdi.texas.gov/pubs/factsheets/noncoveremp.pdf> [<https://perma.cc/JD5E-7LRM>] (recognizing domestic workers are exempt from worker's compensation).

348. *See* Acacia Coronado, 'We Don't Exist': Texas Domestic Workers Fight for Inclusion in Labor Laws, TEX. OBSERVER (May 27, 2020), <https://www.texasobserver.org/domestic-workers-texas-labor-rights/> [<https://perma.cc/DHL8-R96G>] (highlighting the exclusion of domestic workers from labor protections since the 1930s and the lack of interest from Texas Republican legislators); *cf. Vargas v. Kiewit La. Co.*, No. H-09-2521, 2012 WL 2952171, at \*3 (S.D. Tex. July 18, 2012) ("[A]lthough Congress's interest is pervasive and dominant in immigration, tort and labor are areas that traditionally have been left to the states to regulate.").

349. *See, e.g., TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 241 (Tex. 2010) (establishing immigration status as a collateral matter that was irrelevant to proving a material issue in this case); *see also Republic Waste Servs., Ltd. v. Martinez*, 335 S.W.3d 401, 411 (Tex. App.—Houston [1st Dist.] 2011, no pet.) ("[I]llegal workers are treated the same as legal workers for purposes of asserting a workers' compensation claim in Texas."); *see also Cabello*, 390 S.W.3d at 712, 723 (holding an undocumented worker was not prevented from obtaining lost wages by IRCA and IRCA did not preempt tort law).

350. *See, e.g.,* Fernanda Santos & Jennifer Medina, *Speak Up or Stay Hidden? Undocumented Migrants Cautious After Court Ruling*, N.Y. TIMES (June 26, 2016), <https://www.nytimes.com/2016/06/27/us/speak-up-or-stay-hidden-undocumented-immigrants-cautious-after-court-ruling.html> [<https://perma.cc/T97J-82VU>] (detailing the efforts of immigrants without legal status who refused to stay silent).

351. *See* Byrd, *supra* note 201, at 254 (shedding light on the reality that undocumented individuals feel like there are no alternatives available).

352. *See* Yeung, *supra* note 213 (demonstrating the commitment of a hundred domestic workers to advocate for domestic worker rights at the national level).

to work together to provide humanity-based assistance to undocumented workers who, just like a majority of us, work to provide for ourselves and family.<sup>353</sup> As the bible states: “[I]et each of you look not only to his own interests, but also to the interests of others.”<sup>354</sup> Undoubtedly, humans can be selfish, but communities can work together to seek and establish legal assistance for the less fortunate, like undocumented workers.<sup>355</sup> After all, it just takes one voice to speak out and lead the pack in fighting for justice.<sup>356</sup>

#### CONCLUSION

Providing undocumented workers a right to bring a claim in court without the mention of their immigration status is essential to an attorney’s purpose, delivering justice.<sup>357</sup> The issue with granting undocumented domestic workers some protection in addition to bringing a claim in court is neither a political nor legal issue; rather, it is a humanitarian issue.<sup>358</sup> As mentioned earlier, domestic workers would rather stay quiet when they are subjected to abuse, retaliation, low wages,

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353. Cf. Coronado, *supra* note 348 (documenting the difficult story of an undocumented domestic worker in the United States who splits her wages by sending part of her wages to family in her home country and who is left out of state and federal protections).

354. *Philippians* 2:4.

355. See Judy Perry Martinez, *How Lawyers and Judges can Help Rebuild Public Trust and Confidence in Our Justice System*, A.B.A. J. (Aug. 9, 2018, 6:00 AM), [http://www.abajournal.com/news/article/how\\_lawyers\\_and\\_judges\\_can\\_help\\_rebuild\\_public\\_trust\\_and\\_confidence](http://www.abajournal.com/news/article/how_lawyers_and_judges_can_help_rebuild_public_trust_and_confidence) [https://perma.cc/75SB-UM57] (underscoring the importance of revitalizing our communities, justice system, and ensuring legal professionals do not stand idle or turn a blind eye to current injustices).

356. Cf. *The History of Si Se Puede*, UNITED FARM WORKERS, <https://ufw.org/research/history/history-si-se-puede/> [https://perma.cc/8Z58-GFNF] (summarizing the story of César Chávez’s decision to speak out by fasting and ultimately mobilizing thousands of community leaders and activists to work together and force a recall election).

357. Cf. Martinez, *supra* note 355 (recognizing there must be collective efforts by attorneys to ensure there is justice for all).

358. See STEFANI BONATO ET AL., DOMESTIC WORKERS’ RIGHTS IN THE UNITED STATES: A REPORT PREPARED FOR THE U.N. HUMAN RIGHTS COMMITTEE IN RESPONSE TO THE SECOND AND THIRD PERIODIC REPORT OF THE UNITED STATES 12 (Univ. N.C. Sch. L. ed.), <https://law.unc.edu/wp-content/uploads/2019/10/domesticworkersreport.pdf> [https://perma.cc/ZF K7-CHZF] (“According to one report, many domestic workers cited ‘fear that employers would report them to USCIS and that they would subsequently be removed from the United States’ as a major reason for not reporting human rights violations. This fear is not groundless as U.S. laws fail to protect either documented or undocumented domestic workers.”).

or threat of deportation because their job is important for them to keep.<sup>359</sup> It is crucial to disclose that this Comment is not intended to support an employer to knowingly hire an undocumented worker nor to force them to stay quiet when they find out that their employee is an undocumented individual. This Comment asserts that once an employer or independent contractor hires an undocumented individual, that will not mean there are no repercussions for them when it comes to complying with federal and state labor laws.<sup>360</sup> Nor does it mean an employee must stay quiet.<sup>361</sup>

In addition, through the implementation of J.F.U.D.W., establishing basic labor protections for domestic workers should become feasible. We as a society should advocate for providing rights to undocumented individuals, not just domestic workers.<sup>362</sup> Understandably, it is difficult to distinguish what we morally should do and what we legally can do, but sometimes we must make the initial step in advocating for basic rights. In this case, we should advocate to establish labor protection regardless of immigration status for domestic workers.<sup>363</sup> It is unjustifiable that just because one's immigration status is discovered, they are subjected to hostile and unethical work conditions as well as paid a mediocre wage.<sup>364</sup> It is against the basic notions of humanity to allow for there to be such inhumane treatment towards working individuals, regardless of their immigration status.<sup>365</sup> If César Chávez was successfully able to

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359. See Spiggle, *supra* note 308 (evidencing undocumented immigrants' willingness to endure poor workplace conditions for fear of employer retaliation); see also Byrd, *supra* note 201, at 247 (“[T]he likelihood of a worker coming forward is small, due to lack of knowledge regarding their legal rights and an overpowering fear of deportation.”).

360. See, e.g., 42 U.S.C. § 2000e-2 (2012) (defining the legal procedures employers must comply with to prevent employment discrimination violations).

361. See, e.g., Coronado, *supra* note 348 (“We[, Domestic workers,] are not in the shadows anymore, we are [speaking out] more and more everyday . . . . We don't exist. But if we stop, so many other things stop with us.”).

362. See, e.g., *id.* (highlighting the inclusion of undocumented workers in the proposed bill's attempt to expand workplace protections).

363. See generally Yeung, *supra* note 213 (illustrating the courageous efforts of domestic workers who continue to advocate for the expansion of labor protections).

364. See Amy Hsin & Francese Ortega, *What Explains the Wages of Undocumented Workers?*, ECONOFACT (July 24, 2019), <https://econofact.org/what-explains-the-wages-of-undocumented-workers> [<https://perma.cc/MMB5-J7UA>] (explaining the “weak enforcement” and limitations undocumented workers face).

365. See, e.g., BONATO ET AL., *supra* note 358, at 10 (“Many domestic workers face cruel and inhumane treatment at the hands of their employers. Though private actors are the ones actively

fight for farm worker's rights, then, surely, the same can be done for domestic workers.<sup>366</sup>

After all, being subjected to retaliation, sexual harassment, and below minimum wage pay is not only degrading on a working individual but is also violative of both state and federal labor laws.<sup>367</sup> So why should one's immigration status block them from receiving justice through federal and state laws? For these reasons, it is imperative that we provide undocumented domestic workers protection in the labor force to establish dignity and justice for *all* domestic workers.

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committing abuses against domestic workers, the government response, or lack thereof, allows the abuses to perpetuate.”).

366. Cf. UNITED FARM WORKERS, *supra* note 356 (describing how César Chávez catalyzed human rights protections by refusing to stay silent).

367. See, e.g., BONATO ET AL., *supra* note 358, at 3 (identifying violations of state and federal minimum wage laws).