

THE GENDERED IMPACT OF “GENDER-NEUTRAL” IMMIGRATION LAWS: FAMILY REUNIFICATION

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In 1965, Congress passed the Immigration and Nationality Act, establishing a preference for family reunification and reserving 75% of admissions for this purpose.¹ Despite policy changes over the years, family reunification has remained a fundamental principle of United States immigration law.² Under this tenet, certain relatives of US citizens or Lawful Permanent Residents (commonly referred to as “green card holders”) are preferred.³ At face value, such a family-based system appears gender-neutral. However, in practice, such immigration laws disproportionately impact women.

Approximately 70% of immigrant women attain legal status under the family-based immigration system.⁴ There are two types of family-based immigrant visas: immediate relative and family preference. Immediate relative visas are granted to close family members of U.S. citizens, such as spouses, children, and parents.⁵ Family preference visas are for those with more distant familial ties to U.S. citizens, and for close family members of green card holders.⁶ Regardless of the type of family visa applied for, a U.S. citizen or green card holder must petition for the immigrant family member. The effect of this petitioner requirement is complicated by stereotypical and prevailing gender constructs.

In many modern societies, including the United States, men are stereotypically presumed the “heads of the household” and the main financial providers.⁷ In contrast, women are socialized to attend to “domestic responsibilities,” even when they hold jobs outside the household and make significant financial contributions.⁸ Adhering to persistent gender roles, male family members tend to migrate first, while many women end up relying on their male relatives to submit family petitions on their behalf, unintentionally reinforcing the idea that women are “dependents.”⁹ Upon arrival, male immigrants are provided many educational, employment, and social opportunities to integrate

¹ See *Immigration and Nationality Act of 1965 (Hart-Celler Act)*, Immigration History, <https://immigrationhistory.org/item/hart-celler-act/> (last visited July 17, 2023).

² See *How the United States Immigration System Works*, American Immigration Council, <https://www.americanimmigrationcouncil.org/research/how-united-states-immigration-system-works> (last visited July 17, 2023).

³ See Muzaffar Chishti, Faye Hipsman, & Isabel Ball, *Fifty Years On, the 1965 Immigration and Nationality Act Continues to Reshape the United States*, Migration Policy Institute, <https://www.migrationpolicy.org/article/fifty-years-1965-immigration-and-nationality-act-continues-reshape-united-states> (last visited July 17, 2023).

⁴ *Immigration as a Feminist Issue*, National Organization for Women, <https://now.org/resource/immigration-as-a-feminist-issue/> (last visited July 17, 2023).

⁵ See *Family Immigration*, U.S. State Department, <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration.html> (last visited July 17, 2023).

⁶ See U.S. State Department, *supra* note 5.

⁷ See *Americans see men as the financial providers, even as women’s contributions grow*, <https://www.pewresearch.org/short-reads/2017/09/20/americans-see-men-as-the-financial-providers-even-as-womens-contributions-grow/> (last visited July 17, 2023).

⁸ See Cecilia Menjivar & Olivia Salcido, *Gendered Paths to Legal Status*, American Immigration Council, <https://www.americanimmigrationcouncil.org/sites/default/files/research/genderedpaths052813.pdf> (last visited July 17, 2023); Pew Research Center, *supra* note 7.

⁹ See American Immigration Council, *supra* note 8.

into U.S. society.¹⁰ However, immigrant women are more often tied up in tending to their partner and children.¹¹ As a result, these women are often left socially and economically isolated due to familial responsibilities, the cultural implications of their “dependent” role, and limited access to support systems.¹²

Lengthy processing backlogs and entrenched gender stereotypes also expose immigrant women to greater economic, emotional, physical, and social burdens. Under family-based petitions, women often wait years before they are reunited with their families due to processing backlogs. The current wait time for a U.S. citizen’s spouse living abroad to receive a green card is 12.5 to 26 months.¹³ For spouses of green card holders living aboard, the application processing time is 18 months, and it can take 23 to 32 months to receive a green card.¹⁴ Women who choose to wait out such long processing times in their home countries are often left as sole providers for their households.¹⁵ However, these women tend to lack access to the same “economic and employment opportunities as men,” and they often struggle to provide for their families and themselves.¹⁶

Further, immigration laws require employment authorization (a work permit) prior to working for pay.¹⁷ Once immigrant women arrive in the United States, their work permits often take a while to arrive, and they are often forced to depend on their spouse’s income.¹⁸ As such, immigrant women increasingly turn to unpaid, informal jobs that are deemed stereotypically fit for women.¹⁹ For instance, health care and social assistance (i.e. elderly and child care) is one of the top five industries for immigrant women.²⁰ Participation in such unregulated occupations increases the likelihood that immigrant women will be exploited and abused.

Some women may choose to immigrate illegally to avoid wait times. Undocumented women are particularly vulnerable to routine exploitation, unsafe working conditions, and sexual harassment both at home and in the informal job sector.²¹ At home, dependency on spouses and male relatives leaves immigrant women more vulnerable to instances of domestic violence and sexual assault within the family unit. About 48.9% of immigrant women experience Intimate Partner Violence

¹⁰ See Catherine Holtmann & Tracey Rickards, *Domestic/intimate partner violence in the lives of immigrant women: a New Brunswick response*, 109(3) Can. J. Pub. Health 295, 295-96 (2018).

¹¹ See *id.*

¹² See *id.*

¹³ Jonathan Petts, *How Long Does It Take to Get a Family-Based Green Card?*, ImmigrationHelp.org, <https://www.immigrationhelp.org/learning-center/green-card-processing-times> (last visited July 17, 2023).

¹⁴ ImmigrationHelp.org, *supra* note 13.

¹⁵ See American Immigration Council, *supra* note 7.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See Sofia Carratala, Nicole Prchal Svajlenka, & Sarah Jane Glynn, *A Profile of Immigrant Women in the Workforce*, Center for American Progress, <https://www.americanprogress.org/article/profile-immigrant-women-workforce/#:~:text=Top%20occupations%20and%20industries%20among%20working%20immigrant%20women&text=The%20top%20five%20industries%20for,%3B%20retail%20trade%3B%20and%20manufacturing> (last visited July 18, 2023).

²¹ See National Organization for Women, *supra* note 4; *Gender Bias and Immigration Policy*, Legal Momentum, <https://www.legalmomentum.org/gender-bias-and-immigration-policy> (last visited July 18, 2023).



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(“IPV”), which is almost three times higher than the national average.²² Abusers often weaponize a woman’s immigration status and threaten deportation if any violence is reported.²³ Common tactics include threatening to withdraw the abused partner’s immigration case or withholding financial resources unless the undocumented partner complies.²⁴ Due to limited access to legal resources, many immigrant women are unaware of protections prohibiting such outcomes and never report their abusers.

In the informal job sector, undocumented women frequently face exploitation and abuse from their often-male employers.²⁵ In the agriculture industry, there are approximately 283,000 undocumented immigrants employed as farmworkers, 37% of which are female.²⁶ Exploitation in this industry takes the form of unfair labor practices, work without fair pay, and sexual assault.²⁷ A 2010 study found that of 150 Mexican women working in agriculture in California, 80% had experienced some form of sexual harassment.²⁸ Such exploitation persists because many employers are well aware that their undocumented employees, fearful of deportation, will refrain from reporting any crimes against them.

Gender-neutral immigration laws, although originally written in good faith, tend to play out along gender-biased lines. While this discussion focuses solely on the impact of immigration laws on women, it is important to recognize that members of the LGBTQ+ community are also disadvantaged. For example, LGBTQ individuals are prohibited from sponsoring their partners or children for residency regardless of whether they co-parent children or co-own properties.²⁹ While a family-based immigration system intends to simply reunite families, its impact snowballs and disadvantages many minoritized individuals in the process. Key necessary reforms include eliminating family-based visa backlogs, respecting LGBTQ families, recognizing and protecting informal occupations that women predominate, and expanding the number of available U-visas for trafficking and domestic violence survivors.³⁰ Implementing these reforms is only an initial step to creating a more fair and inclusive immigration system. Nonetheless, it is a step in the right direction.

²² *Intimate Partner Violence Undocumented and Immigrant Women*, National Organization for Women, <https://now.org/wp-content/uploads/2017/06/Learn-More-IPV-and-Immigrant-Womenpdf.pdf> (last visited July 18, 2023).

²³ *See id.*

²⁴ *See id.*

²⁵ *See* Alina Husain & Leslye E. Orloff, *Immigrant Women, Work, and Violence Statistics*, National Immigrant Women’s Advocacy Project, https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/CULT-RCH-ImmigrantWomenWorkViolence_FactSheet.pdf (last visited July 18, 2023).

²⁶ Raquel Rosenbloom, *Undocumented Agricultural Workers in the United States*, Center for Migration Studies, [https://cmsny.org/agricultural-workers-rosenbloom-083022/#:~:text=Approximately%2063%20percent%20of%20undocumented,are%20female%20\(Figure%202\).&text=According%20to%20CMS%20estimates%2C%20approximately,for%20more%20than%2010%20years](https://cmsny.org/agricultural-workers-rosenbloom-083022/#:~:text=Approximately%2063%20percent%20of%20undocumented,are%20female%20(Figure%202).&text=According%20to%20CMS%20estimates%2C%20approximately,for%20more%20than%2010%20years) (last visited July 18, 2023).

²⁷ *See* Ariel Ramchandani, *There’s a Sexual Harassment Epidemic on America’s Farms*, *The Atlantic*, <https://www.theatlantic.com/business/archive/2018/01/agriculture-sexual-harassment/550109/> (last visited July 18, 2023).

²⁸ *See id.*

²⁹ *See* National Organization for Women, *supra* note 4.

³⁰ *See id.*