

Labor Day 2019

Employers increase their profits and put downward pressure on wages and labor standards by exploiting migrant workers

Report • By [Daniel Costa](#) • August 27, 2019

Summary: Our current immigration system isn't working for workers. Instead, it benefits low-road employers who exploit the immigration status of unauthorized immigrants and authorized guestworkers through a legal framework that puts downward pressure on wages and leaves migrant workers powerless to enforce their labor rights and hold employers accountable. This hurts both migrants and the U.S. workers—citizens and lawful permanent residents—who work alongside them. Congress needs to reform the U.S. immigration system by granting lawful permanent resident status to the current unauthorized immigrant population; revising temporary work visa program rules; enacting new protections from retaliation for migrant workers; appropriating more funding for labor standards enforcement; and permanently banning employers from hiring through temporary work visa programs if they have violated immigration or labor laws.

In recent decades, far too much of our immigration policy apparatus has ignored the interests of workers—immigrants and U.S.-born workers alike. This apparatus has instead been weaponized to suppress wages for employers' gain. Immigration is an area of policy where a few simple solutions could result in major improvements to labor standards for all workers—but these solutions are blocked by low-road employers who benefit from today's anti-worker system.

To be clear, the challenge posed to U.S. workers is not the simple presence of migrant workers in the labor

market; instead, it is the legal framework that makes these workers exploitable. A recent [comprehensive study](#) conducted by a number of prominent scholars for the National Academies of Sciences, Engineering, and Medicine found that levels of immigration have only very small impacts on wages and employment.¹ However, in certain local labor markets and industries where a significant share of workers are migrants who do not have access to worker protections and basic labor rights—either because they are unauthorized immigrant workers or because they are migrants employed through nonimmigrant, temporary work visa programs (i.e., “guestworkers”)—the migrant workers’ lack of rights makes it difficult for them to bargain effectively for decent wages, and their weak leverage spills over to undercut the leverage of U.S. workers—i.e., citizens and immigrants who are lawful permanent residents.

Some industries have sought out unauthorized immigrant workers because of this vulnerability created by their lack of an immigration status. Various [analyses](#) of the August 2019 worksite raids on [Mississippi poultry plants](#) by U.S. Immigration and Customs Enforcement (ICE) have served to remind us of that fact.² In the case of guestworkers, employers and industry groups [spend millions lobbying](#) to expand the number of exploitative visas that are available and to deregulate the rules governing those visas.³ In doing so, they are able to undercut the wage-boosting potential of a low unemployment rate and strong job growth.

How our immigration system can be exploited to suppress wages

Unauthorized immigrants are easily exploited by employers. Unauthorized immigrants, who make up [nearly 5%](#) of the U.S. labor force, contribute to the economy in vital industries and [pay billions in taxes](#) and contributions to the social safety net.⁴ But these eight million workers are not fully protected by U.S. labor laws because of their precarious immigration status: Unauthorized workers are often afraid to complain about unpaid wages and substandard working conditions because employers can retaliate against them by taking actions that can lead to their deportation. That also makes it difficult for unauthorized immigrants to join unions and help organize workers. This imbalanced relationship gives employers extraordinary power to exploit and underpay these workers, ultimately making it more difficult for similarly situated U.S. workers to improve their wages and working conditions.

The exploitation described here is not theoretical. A [landmark study and survey](#) of 4,300 workers in three major cities found that 37.1% of unauthorized immigrant workers were victims of minimum wage violations, as compared with 15.6% of U.S.-born citizens. Further, an astounding 84.9% of unauthorized immigrants were not paid the overtime wages they worked for and were legally entitled to.⁵

Migrant guestworkers are also vulnerable. One of the main authorized or “legal” pathways for migrants who want to work in the United States is via “nonimmigrant” visas that authorize temporary employment. The United States issues hundreds of thousands of

nonimmigrant visas to workers from abroad every year in an alphabet soup of temporary work visa programs.⁶ Approximately **1.4 million guestworkers were employed** in the United States in 2013 through work visa programs, accounting for roughly 1% of the labor force at the time.⁷ Although they are legally authorized to work, guestworkers are among the most exploited laborers in the U.S. workforce because the employment relationship created by the visa programs leaves workers powerless to defend and uphold their rights.

The abuses often start before guestworkers even arrive in the United States—many are required to pay **exorbitant fees** to labor recruiters to secure U.S. employment opportunities, even though such fees are usually illegal.⁸ Those fees leave them indebted to recruiters or third-party lenders, which can result in a form of **debt bondage**.⁹ After arriving in the United States, guestworkers may find out the job they were promised **doesn't exist**.¹⁰ And in a number of cases, guestworkers have become victims of **human trafficking**—with some being **forced to work in the sex industry**.¹¹

It's not just farmworkers and other lesser-skilled guestworkers suffering from the epidemic of fees, shady recruiters, and trafficking in temporary work visa programs: **College-educated workers in computer occupations**, as well as **teachers** and **nurses**, have been victimized and put in “financial bondage” by recruiters and staffing firms that steal wages and file lawsuits against workers if they try to quit.¹²

Guestworkers who are in debt are anxious to earn enough to pay back what they owe and hopefully make a profit, and are thus unlikely to rock the boat at work when things go wrong on the job. But even guestworkers who aren't caught in the debt trap are still subject to exploitation once they are working in the United States. Like unauthorized immigrants, guestworkers have good reason to fear retaliation and deportation if they speak up about wage theft, workplace abuses, or other working conditions like substandard health and safety procedures on the job—not because they don't have a valid immigration status, but because their visas are almost always tied to one employer who owns and controls their visa status. That visa status is what determines the worker's right to remain in the country; if they lose their job, they lose their visa and become deportable. This arrangement results in a form of **indentured servitude**.¹³ Further, employers can **punish guestworkers for speaking out** by not rehiring them the following year or by telling recruiters in countries of origin that they shouldn't be hired for other job opportunities in the United States (effectively blacklisting them).¹⁴

The spectre of retaliation makes it understandably difficult for guestworkers to complain to their employers and to government agencies about unpaid wages and substandard working conditions. Private lawsuits against employers who break the law are also an unrealistic avenue for enforcing guestworker rights, for two reasons: First, most guestworkers are not eligible for federally funded legal services under U.S. law, and second, guestworkers who have been fired are unlikely to have a valid immigration status permitting them to stay in the United States for long enough to pursue their claims in court.

Because of these conditions, temporary work visa programs have been dubbed “**close to slavery**,” and government auditors have noted that **increased protections** are needed for migrant guestworkers.¹⁵

Migrant guestworkers can be legally underpaid. To add insult to injury, there is **abundant evidence** that the laws and regulations governing major temporary work visa programs—such as H-2B and H-1B—permit employers to pay their guestworkers **much less than the local average wage** for the jobs they fill.¹⁶ And most work visa programs have no minimum or prevailing wage rules at all—maybe that’s why some employers think they can get away with vastly underpaying their guestworkers, as one Silicon Valley technology company in Fremont, California, did by paying **less than \$2 an hour** to skilled migrant workers from India on L-1 visas who were working **up to 122 hours per week** installing computers.¹⁷

While employers are still required by law to pay guestworkers at least the state or federal minimum wage, that’s often far less than the true market rate, or the local average wage, for the occupation they’re employed in. The company employing the L-1 guestworkers in Fremont who were paid less than \$2 an hour got in trouble because California law required that they be paid no less than \$8 an hour (the state minimum wage at the time) plus time-and-a-half for overtime. But the average wage in Fremont for the job they were employed in—installing computers—was \$20 per hour at the time according to U.S. Department of Labor data, and if they were also configuring the computers for the company’s network, they deserved to be paid \$44 per hour.¹⁸ In the end, the company was required to pay back wages of \$40,000 plus a fine of \$3,500 “**because of the willful nature of the violations**”—a slap on the wrist considering the egregiousness of the wage theft and hardly a disincentive against future violations.¹⁹

In essence, these visa programs are intentionally designed to create a **labor market monopsony** for employers—awarding employers greater leverage over their workers²⁰—and **growing research** has shown that even modest amounts of employer monopsony power are utterly corrosive to workers’ ability to bargain for better wages.²¹

Visa program rules make it easy for employers to avoid hiring U.S. workers in favor of exploitable and underpaid guestworkers. While two of the major U.S. work visa programs require that employers first recruit U.S. workers and offer them jobs before hiring guestworkers, the vast majority of the programs have no such requirement. That means that employers hiring through large work visa programs like the **J-1**, **L-1**, and **H-1B** can bypass the local workforce altogether when hiring migrant workers, regardless of whether the local area is experiencing high unemployment.²²

Even when employers are required to recruit locally, many **go to great lengths** to avoid employing U.S. workers—preferring to hire guestworkers because they can be more easily exploited.²³ As the *New York Times*, *Washington Post*, and *Vox* have reported, some of President Trump’s companies have taken measures to avoid hiring local U.S. workers so they can hire guestworkers.²⁴

When rules requiring recruitment of U.S. workers aren’t in place, sometimes the abuses are even more egregious. There are many documented cases in which hundreds of U.S. technology workers **were replaced** with **workers on H-1B visas** earning **tens of thousands of dollars less per year**—and the U.S. workers **were required to train** their H-1B replacements to do their old jobs as a condition of receiving severance pay.²⁵

Oversight is lacking. There is also very little oversight of temporary work visa programs. Most of the programs have no rules in place at all to protect guestworkers after they arrive in the United States. Where such rules *are* in place, **enforcement is woefully inadequate**—and companies that are frequent and extreme violators of these rules are often allowed to continue hiring through visa programs with impunity.²⁶

Considering how these programs operate and the situation they leave guestworkers in, perhaps it is no surprise that less-skilled **legal guestworkers earn approximately the same low wages on average that unauthorized immigrant workers do** for similar jobs, despite the fact that unauthorized workers have virtually no rights in practice.²⁷ In other words, these guestworkers don't have any financial incentive to work legally through visa programs since there is no wage premium for it—and, in fact, authorized guestworkers can end up worse off economically than unauthorized workers because of the debts they incur through fees paid to recruiters.

Summary and solutions

In sum, the bargaining power of U.S. workers is undercut when millions of unauthorized workers and guestworkers—6% of the U.S. labor force—are underpaid by employers and cannot safely complain to the Department of Labor or sue employers that exploit them.

The Trump administration has pushed a bigoted and xenophobic narrative that pits immigrants against native-born workers under the false premise that the economy is a zero-sum game with a fixed number of jobs. This leads to predictably foolish and cruel policies—such as more and bigger worksite raids by ICE—that don't improve conditions for workers but **only serve to increase the power employers have over workers**.²⁸ A better and more humane response starts from realizing how much of today's immigration policy is driven by low-road employers who aim to benefit at the expense of both migrants and U.S. workers. From this perspective, one can see that improving labor standards for unauthorized immigrants and guestworkers will lift the floor for all workers, which will increase bargaining power and raise wages.

The most transformative solutions require congressional action. Congress should pass legislation granting lawful permanent resident (LPR) status to the current unauthorized immigrant population; this would include recipients of Deferred Action for Childhood Arrivals and those who currently have temporary protected status. Granting LPR status to workers without status would **raise their wages** and improve labor standards for all similarly situated workers.²⁹ Even if unauthorized immigrants were not granted LPR status through legislation but were at least provided with federal employment authorization documents by the Department of Homeland Security, **their wages would rise significantly** and economic outcomes would improve overall.³⁰

Congress could also reform temporary work visa programs by updating, simplifying, and standardizing the rules for all of them: first, by requiring employers to recruit and offer jobs to qualified U.S. workers, and second, in cases where employers can't find U.S. workers, ensuring that all guestworkers are paid no less than the local average wage for the job

and are not tied to one employer. Congress should also limit the time that guestworkers are in a temporary status by **allowing them to self-petition for permanent residence** after a short provisional period.³¹ And Congress should **appropriate more funding** to the Department of Labor to enforce this new system and audit employers,³² and pass laws permanently banning any employer from hiring through temporary work visa programs if that employer has violated immigration or labor laws.

Finally, Congress should prioritize reintroduction and passage of the **Protect Our Workers from Exploitation and Retaliation (POWER) Act**, perhaps the single most important piece of legislation aimed at protecting workers of all immigration statuses from the threat of employer retaliation and deportation. The POWER Act—last introduced in 2018 by Rep. Judy Chu (D-Calif.) and Sen. Robert Menendez (D-N.J.) and supported by various unions and **migrant worker advocacy organizations**—would expand access to humanitarian “U” visas for migrant workers who report workplace violations. (U visas are currently available to victims of certain qualifying crimes who are cooperating in a related investigation or prosecution;³³ the POWER Act would increase the number of U visas available and extend eligibility to labor-related crimes.) The POWER Act would also strengthen the investigative powers of labor standards enforcement agencies. Finally, it would permit postponing the deportation of migrant workers who file a bona fide workplace claim or are a material witness to one, so they can remain in the country to pursue it; they would also be eligible for employment authorization so they can work during that time.³⁴

Endnotes

1. National Academies of Sciences, Engineering, and Medicine, *The Economic and Fiscal Consequences of Immigration* (Washington, D.C.: National Academies Press, 2017).
2. See, for example, Eric Schlosser, “**Why It’s Immigrants Who Pack Your Meat**,” *The Atlantic*, August 16, 2019; Robin Young, “**A History of Hispanic Immigrants in Mississippi’s Poultry Industry**,” *Here and Now*, WBUR, August 12, 2019.
3. See, for example, Tony Romm, “**Apple, Amazon, Facebook and Google Spent Nearly \$50 Million—a Record—to Influence the U.S. Government in 2017**,” *Vox*, January 23, 2018; Devjyot Ghoshal, “**2017 India’s IT Trade Body Spent a Record Sum Lobbying the US Congress Before the H-1B Crackdown**,” *Quartz India*, April 7, 2017.
4. Jens Manuel Krogstad, Jeffrey S. Passel, and D’Vera Cohn, “**5 Facts About Illegal Immigration in the U.S.**,” *FactTank* (Pew Research Center), June 12, 2019; Alexia Fernández Campbell, “**Trump Says Undocumented Immigrants Are an Economic Burden. They Pay Billions in Taxes**,” *Vox*, October 25, 2018.
5. Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities*, Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment, 2009.
6. Jill H. Wilson, *Nonimmigrant (Temporary) Admissions to the United States: Policy and Trends*, Congressional Research Service, December 2017.
7. Daniel Costa and Jennifer Rosenbaum, *Temporary Foreign Workers by the Numbers: New*

Estimates by Visa Classification, Economic Policy Institute, March 2017.

8. Centro de los Derechos del Migrante, *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change*, n.d.
9. United Nations Office of the High Commissioner for Human Rights, “End of Visit Statement, United States of America (6–16 December 2016) by Maria Grazia Giammarinaro, UN Special Rapporteur on Trafficking in Persons, especially Women and Children,” Washington, D.C., December 19, 2016. See also United Nations Office of the High Commissioner for Human Rights, “Debt Bondage Remains the Most Prevalent Form of Forced Labour Worldwide—New UN Report” (press release), September 15, 2016; United Nations Human Rights Council, *Report of the Special Rapporteur on Contemporary Forms of Slavery, Including Its Causes and Consequences*, Thirty-third session, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, July 4, 2016; United Nations Office on Drugs and Crime, *The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons*, 2015.
10. Steven Greenhouse, “Low Pay and Broken Promises Greet Guest Workers,” *New York Times*, February 28, 2007.
11. Liam Stack, “Indian Guest Workers Awarded \$14 Million,” *New York Times*, February 18, 2015; Jessica Garrison, Ken Bensinger, and Jeremy Singer-Vine, “The New American Slavery,” *BuzzFeed News*, July 24, 2015; U.S. Department of Justice, “Miami Beach Sex Trafficker Sentenced to 30 Years in Prison for International Trafficking Scheme Targeting Foreign University Students” (press release), U.S. Attorney’s Office, Southern District of Florida, March 24, 2017; Holbrook Mohr, Mitch Weiss, and Mike Baker, “U.S. Impact: U.S. Fails to Tackle Student Abuses,” Associated Press, December 6, 2010.
12. Matt Smith, Jennifer Gollan, and Adithya Sambamurthy, “Job Brokers Steal Wages, Entrap Indian Tech Workers in US,” *Reveal News*, October 27, 2014; Farah Stockman, “Teacher Trafficking: The Strange Saga of Filipino Workers, American Schools, and H-1B Visas,” *Boston Globe*, June 12, 2013; Tom McGhee, “Kizzy Kalu Lured Nurses to U.S. with Promises of High Pay, Prosecutors Say,” *Denver Post*, June 14, 2013.
13. Christopher Lapinig, “How U.S. Immigration Law Enables Modern Slavery,” *The Atlantic*, June 7, 2017.
14. Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States*, February 2013.
15. Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States*, February 2013; U.S. Government Accountability Office, *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers*, GAO-15-154, reissued May 2017.
16. Daniel Costa, *The H-2B Temporary Foreign Worker Program: For Labor Shortages or Cheap, Temporary Labor?* Economic Policy Institute, January 2016; Ron Hira, “New Data Show How Firms Like Infosys and Tata Abuse the H-1B Program,” *Working Economics Blog* (Economic Policy Institute), February 19, 2015; Daniel Costa, “H-2B Crabpickers Are So Important to the Maryland Seafood Industry That They Get Paid \$3 Less per Hour Than the State or Local Average Wage,” *Working Economics Blog* (Economic Policy Institute), May 26, 2017.
17. Monte Francis, “Fremont Tech Company Paid Workers \$1.21 an Hour: U.S. Dept. of Labor,” NBC Bay Area, October 22, 2014. See also George Avalos, “Workers Paid \$1.21 an Hour to Install Fremont Tech Company’s Computers,” *Mercury News*, October 22, 2014. L-1 visa status confirmed

in an email from George Avalos of the *Mercury News*, October 23, 2014.

18. Author's analysis of historical data from Foreign Labor Certification Data Center, Online Wage Library, "7/2013 – 6/2014 FLC Wage Data," <https://flcdatcenter.com/Download.aspx>, for Standard Occupational Classification codes 15-1142 and 49-2011, for region 36084, Oakland-Fremont-Hayward, CA Metropolitan Division (2013–2014).
19. U.S. Department of Labor, Wage and Hour Division, "US Department of Labor Investigation Finds Silicon Valley Technology Employer Owed More Than \$40,000 to Foreign Workers" (press release no. 14-1717-SAN [SF-71]), October 22, 2014.
20. Bivens and Shierholz broadly define "monopsony power" as "the leverage enjoyed by employers to set their workers' pay." See Josh Bivens and Heidi Shierholz, *What Labor Market Changes Have Generated Inequality and Wage Suppression?: Employer Power Is Significant but Largely Constant, Whereas Workers' Power Has Been Eroded by Policy Actions*, Economic Policy Institute, December 2018.
21. IZA – Institute of Labor Economics, "Monopsony Power and Guest Worker Programs," IZA Discussion Paper no. 12096, January 2019.
22. International Labor Recruitment Working Group, *Shining a Light on Summer Work: A First Look at the Employers Using the J-1 Summer Work Travel Visa*, July 2019; Daniel Costa, *H-1B Visa Needs Reform to Make It Fairer to Migrant and American Workers* (fact sheet), Economic Policy Institute, April 2017.
23. Jessica Garrison, Ken Bensinger, and Jeremy Singer-Vine, "All You Americans Are Fired," *BuzzFeed News*, December 1, 2015.
24. Charles V. Bagli and Megan Twohey, "Donald Trump to Foreign Workers for Florida Club: You're Hired," *New York Times*, February 25, 2016; David A. Fahrenthold and Lori Rozsa, "Apply by Fax: Before It Can Hire Foreign Workers, Trump's Mar-a-Lago Club Advertises at Home—Briefly," *Washington Post*, August 7, 2017; Alexia Fernández Campbell, "3 Trump Properties Posted 144 Openings for Seasonal Jobs. Only One Went to a US Worker," *Vox*, February 13, 2018.
25. Julia Preston, "Pink Slips at Disney. But First, Training Foreign Replacements," *New York Times*, June 3, 2015; Michael Hiltzik, "A Loophole in Immigration Law Is Costing Thousands of American Jobs," *Los Angeles Times*, February 20, 2015; Ron Hira, "New Data Show How Firms Like Infosys and Tata Abuse the H-1B Program," *Working Economics Blog* (Economic Policy Institute), February 19, 2015; Bill Whitaker, "Are U.S. Jobs Vulnerable to Workers with H-1B Visas?" *60 Minutes*, August 13, 2017.
26. Ken Bensinger, Jessica Garrison, and Jeremy Singer-Vine, "Employers Abuse Foreign Workers. U.S. Says, by All Means, Hire More," *BuzzFeed News*, May 12, 2016.
27. Lauren A. Apgar, *Authorized Status, Limited Returns: The Labor Market Outcomes of Temporary Mexican Workers*, Economic Policy Institute, May 2015.
28. Rebecca Smith, Ana Avendaño, and Julie Martínez Ortega, *Iced Out: How Immigration Enforcement Has Interfered with Workers' Rights*, AFL-CIO, American Rights at Work Education Fund, and National Employment Law Project, October 2009.
29. Shirley J. Smith, Audrey Singer, and Roger G. Kramer, *Characteristics and Labor Market Behavior of the Legalized Population Five Years Following Legalization* (Washington, D.C.: U.S. Dept. of Labor, Bureau of International Labor Affairs, 1996).

30. Tom K. Wong et al., *Amid Legal and Political Uncertainty, DACA Remains More Important Than Ever*, Center for American Progress, August 2018.
31. See, for example, Demetrios G. Papademetriou, Doris Meissner, Marc R. Rosenblum, and Madeleine Sumption, *Aligning Temporary Immigration Visas with U.S. Labor Market Needs: The Case for a New System of Provisional Visas*, Migration Policy Institute, July 2009.
32. Daniel Costa, “Immigration Enforcement Is Funded at a Much Higher Rate Than Labor Standards Enforcement—and the Gap Is Widening,” *Working Economics Blog* (Economic Policy Institute), June 20, 2019.
33. United States Citizenship and Immigration Services, “Victims of Criminal Activity: U Nonimmigrant Status” (web page), last updated June 12, 2018.
34. Rep. Judy Chu, “Rep. Chu and Sen. Menendez Introduce Bicameral POWER Act to Protect Immigrant Workers” (press release), May 22, 2018; National Immigration Law Center, “POWER Act Would Empower U.S. Workers at a Critical Time” (press release), May 22, 2018.