

DOMESTIC VIOLENCE IN IMMIGRANT AND REFUGEE COMMUNITIES: Asserting the Rights of Battered Women



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Chapter IV

THE EVOLUTION OF UNITED STATES IMMIGRATION POLICY

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A. Introduction

The United States of America is often referred to as a “melting pot”, the land of opportunity, the place for those yearning to breathe free. Historically, that image has reflected both fact and fiction. This country's wealth has been built, in part, by workers from other countries, by those who are the descendants of immigrants, and by workers in other countries who work for United States industries.

Recent events evince a growing intolerance for immigrants and increasing racism at a time when resources and opportunities are limited. Yet there is no question that immigrants have always contributed to and continue to affect the design of our economic, social, cultural, and political landscape. Those who seek to advance the civil rights of immigrants, as women, workers, residents, students or family members, must understand the development of immigration policy and the factors that shape it.

One intriguing aspect of immigration policy is its historical roots in the economic, labor, and foreign policies of the United States. Immigration policy can be simplified as follows: It is the domestic reflection of United States foreign policy and the expression of industry's needs for labor to produce and compete in domestic and international markets. Simultaneously, it captures the values, prejudices, and worldview of a nation. Consequently, the policy ignores, among other factors the realities of women's lives and social circumstances that have confined women to limited roles and subjugated them to their spouses.

B. In the Beginning: European Immigration and Slavery

In the 17th century, no formal immigration policy governed the flow of immigrants to this country. Essentially, those who were willing to brave the oceans from Europe were allowed to live and work in the “new world.” In the South, plantation owners relied on indentured servants from Europe and Africa for cheap labor. They soon found this system inadequate, however, since indentured servants could leave a plantation after they had worked and paid off their fares. Consequently, plantation owners looked to the African slave trade to meet their labor needs. Thus, the first major group of immigrants to the United States were African slaves: workers with no rights or protections, condemned to bondage for generation after generation. The import of over one million slaves during the course of two centuries provided plantations, and the United States economy as a whole, with a large disenfranchised labor pool insuring the production of tremendous profits.

After the end of the slave trade in the 1850s, immigration from Europe went unfettered until 1917. This “open door” policy for Europeans resulted in the migration of over 25 million immigrants between 1860 and 1920, providing industries, particularly in the Northeast, with a steady source of labor. Congress did pass laws, however, which excluded paupers and aliens who had entered the country illegally (1891), anarchists (1903), and persons suffering from mental or physical conditions that might affect their ability to earn a living (1907).

In the 1920's, the law was established giving male citizens and permanent residents control over the immigration status of their immigrant wives. They either had to file a petition for them or accompany them. Conversely, citizen and permanent resident women could not file petitions for their male immigrant spouses.¹ This discrepancy reflected the concept of “coverture” in the common law at that time: “the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband.”^{1a} As Congress acknowledged in 1951, these laws codified the “theory that the husband is the head of the household and the woman’s nationality and residence follow that of her husband.”²

While immigration law has since been changed and policy references are now gender neutral, it is the women who experience continued subjugation and vulnerability under their husbands.

“The law gives so much power to the citizen or resident spouse that the alien spouse is faced with a Hobson’s choice: either remain in an abusive relationship or

¹ As reported by J. Calvo in her article, “Spouse-Based Immigration Laws; the Legacies of Coverture” in *Immigration and Nationality Issue of San Diego Law Review*, Vol. 28, No. 3, (to be published in Spring 1992); (hereinafter cited as “Spouse-Based Immigration Laws”).

^{1a} W. Blackstone, *Commentaries on the Laws of England*, (1765), 430. Moreover, common law gave a husband the right of “chastisement” to restrain his wife from “misbehavior.” *Id.* at 432. This “right” created a societal environment in which spousal abuse was tolerated, if not encouraged.

² S. Rep. No. 1515, 81st Cong., 2d Sess. 414 (1951).

leave and become an undocumented alien and be deprived of home, livelihood and perhaps child custody.”³

C. Asian Immigration

Between 1840 and 1860, thousands of Chinese men were brought in to build the railroads and work in the mines in California. By the mid-1870s, during a severe depression on the West Coast, Chinese laborers constituted 50% of the labor force in California. Many white miners and workers, displaced by the eventual failure of industry, saw the Chinese as the cause of their plight and attacked them with racist violence. Nativist labor organizations, such as the Know-Nothing Party (originally founded on anti-Catholicism) and the White Workingman's Party, and white union leaders (including Samuel Gompers, the first president of the American Federation of Labor) blamed the Chinese for the 1870s depression, and successfully lobbied for the passage of the Chinese Exclusion Act of 1882.⁴ This law enshrined racism and national origin discrimination as the cornerstones of immigration policy.⁵

In the 1880s and 1890s, following the exclusion of Chinese immigrants, thousands of Japanese migrated to the United States to fill the agricultural labor shortages in California and Hawaii. They, too, faced anti-immigrant sentiments and an anti-labor backlash when they organized for labor rights. As a result, Congress passed the Gentlemen's Agreement of 1907, which essentially ended Japanese immigration. In the Immigration Act of 1917, Congress created the "Asiatic Barred Zone," effectively eliminating for decades immigration to the United States from Asia.

Faced with another labor shortage problem, growers in this country turned to workers in the Philippines, then a colony of the United States. Tens of thousands of Filipinos, who were then nationals of the United States, entered from 1910 to 1934 as farm laborers. Again, in response to anti-Filipino prejudices and activities of whites displaced by the Depression, Congress passed the Tydings-McDuffie Act of 1934 which transformed the Philippines from a colony into a "commonwealth" and its citizens into "aliens". That same act limited Filipino immigration to 50 per year, thereby effectively excluding them.

³ See Spouse-Based Immigrations Laws, *supra* note 1.

⁴ The Chinese Exclusion Act suspended the immigration of Chinese laborers for ten years, but allowed those in the United States as of November 17, 1880, to remain. All others were deported. The Act also barred Chinese immigrants from obtaining United States citizenship. Congress repeatedly extended the law, making it permanent in 1904, and did not repeal it until 1943. United States Commission on Civil Rights, "The Tarnished Golden Door: Civil Rights Issues" in *Immigration* 8 (1980) (hereinafter cited as "*The Tarnished Door*").

⁵ In response to the large migration of persons from the West Indies and other parts of the Caribbean to the United States, the Senate passed an amendment in 1915 to exclude "all members of the African or black race" from admission. Only an intense lobbying effort by the NAACP resulted in the defeat of the amendment in the House. *The Tarnished Door*, *supra* note 4, at 9.

Thus, by 1934 Congress had barred all Asian immigration. Filipinos, Chinese and Japanese who were in the United States legally could not become citizens or bring their immediate relatives to join them. Filipinos who served in the United States military during World War II eventually were allowed to gain citizenship in 1946. Chinese were allowed to naturalize in 1943, when Congress formally repealed the Chinese Exclusion Act, but Japanese could not naturalize until 1953.

In the meantime, Congress had passed the National Origins Quota Acts of 1921 and 1924 which based immigration admission rates per country on the 1910 and 1920 census. The purpose of the quota was to preserve the northern-and western-European character of the population in the United States. Primarily aimed at excluding non-English speaking Eastern Europeans, the law also served to eliminate immigration from all non-white countries. Thus, while Great Britain represented only 2% of the world's population in 1910, it garnered 43% of the United States' 150,000 annual quota of immigrants.

Facing another shortage of skilled workers, Congress passed major amendments to the Immigration and Nationality Act in 1965 which allowed skilled workers and new categories of relatives to enter: parents, brothers and sisters, and married children. Though intended by Attorney General Robert Kennedy to increase European immigration, the Asian community saw this as the first opportunity in decades to reunite with relatives.

Between 1966 and 1983, one and a half million people immigrated to the United States from China, Taiwan, Japan, Hong Kong, Korea and the Philippines.⁶ Most of the permanent immigration over the last five years has come from Mexico, the Philippines, Korea, China, India and Vietnam; 50,000 people per year have immigrated from the Philippines alone.⁷ As of January 1989, more than 2.3 million people had registered for immigrant visas at consulates abroad; 65% of these were from Asian countries, with the Philippines leading all countries. Still, decades of racist exclusion laws have had their effect: while persons of Asian ancestry make up 50% of the world's population, they constitute less than 3% of the population of the United States.

D. Mexican Immigration

The immigration of Mexicans into the United States is rooted in the expansion and annexation campaigns of the United States during the 1840s. The bloody and violent conquest of the Southwest against the will of the Mexican people and the Indians in those regions eventually resulted in the annexation of many parts of what had been northern Mexico. Starting in 1848, the United States expanded into the area

⁶ Not included in this count are the 800,000 refugees from Southeast Asia who have been entering the United States under refugee status since 1975.

⁷ This does not even begin to include the thousands of Filipinos who enter on non-immigrant, temporary visas, and overstay each year.

that is now the states of Texas, California, Colorado, New Mexico, and Arizona. This created a "border" which divided families and peoples sharing a common culture and established the basis for a constant flow of migrants from Mexico.

After the Mexican Revolution of 1910, thousands of Mexicans migrated to the United States. While initially welcomed as refugees from war, they also served as sources of cheap labor to fill the shortage created by World War I. The Depression and growing resentment against "foreigners" taking jobs resulted in the arrest of hundreds of thousands of Mexicans in raids throughout the Southwest. During this "repatriation" campaign, approximately 500,000 persons were deported to Mexico; more than half of those repatriated were citizens of the United States.

With the shortage of farm labor caused by World War II, Southwest growers once again looked to Mexico as the source of cheap labor and persuaded the government to enact the "bracero" program. Under this program, hundreds of thousands of Mexican farmworkers were imported with no labor law protections, no minimum wage, no housing, and no government benefits. Although scheduled to end with the culmination of the war, growers persuaded Congress to extend the program. It was not until after national protests that Congress ended the program in 1964, thereby allowing the United Farmworkers Union finally to obtain a foothold in farm labor organizing.

The recession of the early 1950s briefly interrupted the steady import of workers under the bracero program. As the hostility of native-born citizens to the large number of Mexicans in the Southwest increased, the Justice Department launched "Operation Wetback," a massive arrest and deportation campaign. More than one million Mexicans were deported in 1954, many without hearings. A large number of those arrested and deported were citizens of the United States. These deportations caused the separation of families for years and deprived many United States citizen children and spouses of their primary source of income.

Today, adverse economic conditions in Mexico drive thousands of Mexicans to the United States in search of work and a better life. At the same time, Mexican labor continues to serve as an integral component of the economy of the Southwest United States. The agricultural, garment, hotel and restaurant, and light manufacturing industries depend on Mexican immigrant labor and create a "magnet" for those south of the border.

E. Immigration Laws: Tools to Curb Labor Organizing and Political Activism

Although immigration laws often facilitated the import of workers, they also were used to deport those who asserted their labor and political rights.⁸ In response to the Bolshevik revolution in Russia in 1917 and the organizing of workers in this country by activists sympathetic to that revolution, Congress passed a law in 1918 to

⁸ In fact, the Department of Labor controlled immigration enforcement from 1906 to 1940, when the Department of Justice took over.

exclude and deport anarchists, which resulted in the deportation of 248 radicals, including Emma Goldman. During the "Palmer Raids" of 1919 and 1920 (launched by Attorney General Mitchell Palmer), over 10,000 activists were arrested for deportation because of their political activities.

Mexican farmworkers also faced resistance to their organizing efforts. During a strike in 1928, over 3,000 farmworkers were deported from California. In 1930, in California alone, over one million undocumented workers were deported. The 1940 Alien Registration Act allowed the exclusion of "subversives" and required the registration and fingerprinting of noncitizens.

Immigrants especially felt the onslaught on their political rights during the McCarthy period. For example, the Internal Security Act of 1950 authorized the deportation and exclusion of "politically dangerous" persons. The McCarthy period also spawned one of the most repressive pieces of legislation, the McCarran-Walter Act, a law passed over President Truman's veto. This act created 33 grounds of exclusion and numerous grounds for deportation aimed primarily at political activists. Since the labor movement's progressive wing already had been curbed by government practices and no groundswell of support for civil rights had yet emerged, the public was not sympathetic to protecting the political rights of non-citizens.

During this period, political considerations governed who would receive asylum in this country. While anti-Castro Cubans easily gained entry to the United States, politically active immigrants were deported to dictatorships in Iran, South Korea, and other countries where they faced persecution. This double standard in determining who would receive protection from persecution in their homelands clearly reflected foreign policy considerations, a hallmark of our immigration law which persists today.^{8a}

While the McCarran-Walter Act was intended principally to exclude and deport political activists, it also provided for the exclusion of gays and lesbians. Under a 1965 amendment to the Act, persons excludable included "aliens afflicted with psychopathic personality, or sexual deviation, or a mental defect."^{8b} In 1967, the Supreme Court ruled that the exclusion of a gay person as a "sexual deviate" was constitutional.⁹

^{8a} For further information on the history of immigration laws, see the National Lawyers Guild's *Immigration Law and Defense*. (To order: National Immigration Project of the NLG, 14 Beacon St., Suite 506, Boston, MA 02108, (617) 227-9727.)

^{8b} INA § 212(a)(4), 8 U.S.C. §1882(a)(4).

⁹ *Boutilier v. INS*, 387 U.S. 118 (1967). In recent years, immigrants attempting to gain permanent status in the United States and those visiting this country who test HIV seropositive or who have AIDS also have been excluded under this law. While the world public health community has repeatedly condemned this policy, the Reagan and Bush Administrations have resisted changing the law. The Immigration Act of 1990 placed the determination of what diseases should serve as grounds of exclusion in the hands of the Secretary of Health and Human Services; at this time of publication, Secretary Louis Sullivan has proposed removing HIV seropositivity from the list of diseases that justify exclusion.

F. Recent History: 1975 To 1990

After the Vietnam War, over 800,000 Southeast Asians from Vietnam, Laos, and Cambodia were admitted to the United States as "political" refugees. At the same time, however, hundreds of thousands of Central Americans fled their war-torn countries to the United States and were denied asylum. Those fleeing persecution in Haiti, particularly under the Duvalier regime, faced treacherous waters and hostile Coast Guard ships that sent them back. Haitians who made it into the United States were detained in federal prisons for lengthy periods of time.

The direct impact of foreign policy on immigration practice is no better illustrated than in the treatment of Central American refugees. The United States politically, economically, and militarily supported the governments of El Salvador and Guatemala, despite their well-documented records of human rights abuses. Under the guise of "silencing the communists", the militaries of those countries conduct campaigns to kill peasants, students, workers, and others sympathetic to the cause of social change. As a consequence of this United States-financed war, an estimated 750,000 Salvadorans have sought refuge in the United States since 1979. Despite their justified fears of returning to their homeland, less than 3% of the political asylum applications filed by Salvadorans have been granted by the INS, while more than 50% of asylum seekers from Eastern Europe and the Soviet Union during the same period were approved.¹⁰

In the 1970's and 1980's successive administrations raised the alarm that the growing number of "illegal aliens" in the United States threatened our economic, cultural, and political life. In particular, undocumented immigrants were accused of causing increased unemployment and crime. In 1986, Congress codified a number of measures that restricted immigration to this country.

The Immigration Reform and Control Act of 1986 (IRCA) provided for the legalization of over two million persons unlawfully in the United States since January 1, 1982 and others who met special requirements as agricultural workers. IRCA also barred the hiring of undocumented workers, turning employers into agents of the INS and increasing discrimination against Latinos and Asians.¹¹ Undocumented workers could not gain new lawful employment if they were terminated from their current jobs; they therefore found themselves more vulnerable to racial abuse, sexual harassment, lower pay and other exploitation in their workplaces.

¹⁰ In a recent victory, the government reached a settlement with Salvadoran and Guatemalan asylum seekers who, as a class, alleged that foreign policy dictated denial of their applications. As a result, all Salvadorans and Guatemalans in deportation proceedings may submit new asylum applications to specially trained INS officers who may not rely on foreign policy to guide their decisions. In addition, in 1990 Congress provided Temporary Protected Status to Salvadorans in the United States. For more information on these forms of relief for Central Americans, contact the National Immigration Project of the National Lawyers Guild at 14 Beacon St., Suite 506, Boston, MA 02108; (617) 227-9727.

¹¹ On March 29, 1990, the United State General Accounting Office (GAO) issued a report finding that employer sanctions had caused "widespread discrimination" against Latinos and Asians authorized to work. The GAO found that 19% of employers practice unlawful discrimination as a result of IRCA.

In response to INS reports that 30% of visa petitions filed on behalf of spouses were fraudulent and that "sham marriages" were entered into solely for obtaining immigration status, Congress passed the Immigration Marriage Fraud Act of 1986. Claiming to "curb fraud" in visa petitioning, this act placed battered women at the mercy of their husbands. The Anti-Drug Abuse Act of 1986 and its 1988 update broadened the grounds of deportability and excludability for those convicted of crimes and increased the penalty for illegal re-entry after deportation.

G. The Immigration Act of 1990

The Immigration Act of 1990, passed on November 29, 1990, represents an attempt by Congress to balance several (and somewhat competing) factors: increasing the number of skilled workers to address the failure of the U.S. educational system to produce adequate numbers of such workers for industries' needs; preserving family reunification as a component of U.S. immigration policy while keeping families separated for years; and curtailing the due process rights of respondents in deportation hearings in order to provide for their swift deportation. The roots of the Act of 1990 were Senator Simpson's (of the Simpson Mazzoli bill) attempts to curb legal immigration in the family reunification process, while increasing the pool of skilled labor from which to draw. His attempts to severely curtail Latin American and Asian family-based immigration were thwarted, however, the act laid the basis for increasing admissions based on one's skill level. Consequently, the number of employment based visas was increased from 54,000 to 140,000 visas per year.

In addition, the Act operated on the premise that Asians and Mexicans had "dominated the family preference system" to the exclusion of other countries, largely white European countries. Consequently, part of the bill encourages the increase of immigration of these "underrepresented" countries and specifically grants 40,000 visas a year for FY 1992-94 for countries "adversely affected" by the 1965 Act. Of these 40,000 visas, 16,000 visas per year are reserved for natives of Ireland. Beginning in 1995 55,000 annual visas will be available for individuals from "low admission countries" who have at least a high school education or its equivalent or two years of employment requiring two years of training or experience. Countries barred from "low admission" status include India, Korea, People's Republic of China, the Philippines, Taiwan, and Mexico. Asia, with nearly 50% of the world's population, would receive roughly 11% of the visas under this system.

The Act also provided the vehicle for important amendments to the Immigration Marriage Fraud Amendments including the "good faith" and "battered spouse/extreme cruelty" waivers.^{11a} On the other hand, the Act curtailed the due process rights of aliens including provisions for deportation of aliens in absentia and the elimination of judicial recommendations against deportation in criminal proceedings.

^{11a} See Chapter VII for further explanation of the Immigration Marriage Fraud Amendments and "good faith" and "battered spouse/extreme cruelty" waivers.

H. Increase in INS Enforcement

In the last 20 years, there has been a marked increase in INS enforcement activities at the border and in the interior. Well-documented border abuses have been the focus of Congressional hearings. Such abuses include the killing of men, women and children and the mass round-up and detention of Latinos in border cities. While escalating enforcement activities often are conducted under the guise of "securing our borders and protecting our jobs," the drug war recently has become a popular reason for increasing INS powers to arrest. INS, with the assistance of local law enforcement agencies, has stepped up its raids workplaces, neighborhoods, transportation stops, restaurants, and clubs.

The fight against drugs also serves as a rationale for reducing the constitutional and civil rights of those who come in contact with INS agents. INS detains both citizens and non-citizens, especially Latinos and Asians, for hours without particularized reasonable suspicion that they are unlawfully in this country. Unfortunately, abuses committed against non-white non-citizens in the course of "fighting the drug war" go largely unremedied.

I. The Immigration of Women¹²

Immigrant women come to the United States seeking a better quality of life for themselves and their families. Some flee from political repression, rape by military police, severe poverty, or high inflation and employment rates; others seek reunification with family members here in the United States. With the passage of increased penalties for employers of undocumented workers, many women find that they are better able than their male counterparts to find jobs within the "hidden" service economy in this country.

While undocumented women are a growing population, there is little information about them. In the last five years, the number of women and children crossing the border without documentation has multiplied significantly. Between 1984 and 1986 the number of women apprehended at the border increased by 40%. A 1987 Urban Institute Report estimated that in 1985 there were 28,200 Central American women and 53,359 Mexican women residing in the five San Francisco-Bay Area counties.¹³ These populations have risen steadily since 1980, and in all likelihood this trend will continue. Although little is known about the numbers of undocumented Asian women, the growing number of garment shops in urban areas such as San Francisco reflects the availability of Chinese immigrant women's labor. Immigrant women face intensified

¹² See Chapter V: Immigrant Women in United States History for further detail.

¹³ Urban Institute, *Profile of Central American and Mexican Immigrants, Populations in San Francisco Bay Area* (Project Report #3605), Tables 1 and 8 (1987).

physical, legal and economic threats by authorities both at the border and inside the United States, and are becoming increasingly impoverished and marginalized.

J. Conclusion

Throughout United States history immigrants have been welcome when they provided cheap labor for developing industry or when they were fleeing countries at odds with the United States. At the same time, many immigrants, especially non-whites, have been subjected to some of the worst violations of human, civil and labor rights. The political, economic and social framework for United States immigration policy is unlikely to alter substantially in the coming years, as policy makers grapple with the various forces that propel hundreds of thousands of immigrants to come to this country. For immigrant and refugee advocates, our task is to place this issue before the civil rights, labor and women's movements, and to set an agenda that broadens the struggle for equality, unfettered by the blinders of racism, sexism and national chauvinism.