



*The Nexus Between Human Trafficking
and Immigration*

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NAPAWF believes that true comprehensive immigration reform must be grounded in principles of human rights and include provisions that support all immigrants, their families, and communities. Moreover, just and humane immigration policies will help prevent the trafficking and exploitation of immigrants. In partnership with immigrant rights, women's rights, and reproductive justice organizations, NAPAWF advocates for federal immigration reform legislation that incorporates the following set of principles:

- Provides a path to permanent and citizenship status
- Reunite families and communities
- Support for all immigrant and refugee women
- Protect all workers
- Ensure access to health care and public benefits
- Provides survivors of violence, sexual assault, and human trafficking with access to social services

This spring, the 110th Congress introduced legislation that attempts to fix the country's broken immigration system. However, there are alarming flaws in both the House (H.R. 1645) and Senate (S. 1348/1639) bills that concern the well-being of those who are impacted by human trafficking. Although S. 1639—the amended and renumbered version of S. 1348—has temporarily stalled, the Senate is expected to resume its immigration debate in late June. It is unclear whether the House will take up its immigration bill before the August recess. However, in the event that there is renewed activity around immigration, API communities must be prepared to respond.

Border Security and Enforcement

Reported border-crossing related deaths have doubled since 1995.¹ Building longer fences and increasing law enforcement presence along the

U.S.-Mexican border will not eliminate the entry of undocumented immigrants because of the economic reasons driving immigration. Rather, increasing border security and enforcement will only drive trafficking further underground and turn our borders into unsafe militarized zones.

Stricter immigration regulations increase chances for individuals to succumb to unsafe migration, often facilitated through traffickers.

Immigration Raids

With anti-immigrant sentiments rising, U.S. Immigration and Customs Enforcement (ICE) has increased its immigration raids of immigrant communities, factories, meatpacking plants, and other sectors.² The Department of Homeland Security arrests and detains immigrants who cannot immediately prove their legal status.³ Therefore, it is imperative that law enforcement officials are adequately trained to properly identify trafficked persons, otherwise, survivors may be denied legal protections afforded by the Trafficking Victims Protection Act. This is of particular concern to anti-trafficking advocates, since ICE raids often result in potential due process violations.

Employment Authorization for Spouses and Dependents

The bills provide permanent and limited temporary visa categories that allow immigrants to work legally in the United States. Spouses and dependents of visa holders, particularly wives who accompany their husbands to work in the United States, should also receive employment authorization because it will provide women the opportunity for financial independence. This is critical in preventing power and control issues that arise in domestic violence situations. For example, in the event that a woman is caught in a domestic violence situation, having the opportunity to work and earn her own money may help her leave her abusive relationship. Another area of concern is the provision in S.

1639, which requires non-immigrant temporary workers (Y visa holders) to provide health insurance for family members they bring to the U.S.⁴ This requirement is not only cost prohibitive to workers, but it also compounds the level of women's dependence on their husbands, which may make it difficult for women to leave abusive situations.

Family-Based Immigration System

The Trafficking Victims Protection Act provides legal immigration status to survivors of trafficking if they meet certain criteria. In addition, survivors of trafficking may be eligible to bring their families to the United States.

However, if the family and employment-based categories are eliminated and replaced with a merit based "point-system," this will greatly impact a survivor's ability to be reunited with her family.

The elimination of a family-based immigration system would be particularly detrimental for survivors and their families who continue to face harm in their home country by traffickers.

"Touch Back" Requirement

The House and Senate bills require a form of re-entry into the United States as a criterion for a path to citizenship for undocumented immigrants. Survivors of violence should not be required to "touch back" to their countries of origin. Returning home is costly and creates vulnerability for survivors to be trafficked again. It can also re-traumatize survivors by putting them through hardship to gain lawful permanent residency, particularly when re-entry is not guaranteed.⁵

Temporary Worker Visas

Currently, temporary worker's visas are tied to a specific employer. Therefore, if an immigrant or migrant worker faced abuse or exploitation from an employer and left her job, she would also lose her legal status. Workers who are afraid to seek help are stuck in an abusive situation in order to

keep their jobs. For women who enter the country to work in unmonitored industries, such as domestic work, visa portability can prevent human trafficking.

Abusive and exploitative employers may threaten to deport or report workers to the police if they complain about or report inhumane working conditions.

S. 1639 provides visa portability for the new Y visa; the Y visa eliminates the temporary worker H-2A and H-2B visas.⁶ This bill permits Y visa holders to change employers, provided that the employer is certified by the U.S. Department of Labor.⁷

Implications of a Temporary Guest Worker Program

Although S. 1639 provides visa portability for workers, the bill also creates a class of workers who are not able to establish themselves and their families in the communities in which they work. For example, Y visa holders are only permitted to work in the U.S. for two years and then must return to their country of origin for a year. Temporary workers are permitted to work in the U.S. for two more two-year stints, separated by a one-year timeframe in their home country. Workers who bring their families during the first two-year stay are not allowed to bring their families with them again.⁸ In addition, the processing and adjudication fees placed on workers are cost prohibitive, which may encourage immigrant and migrant workers to seek cheaper, more dangerous ways to find employment in the U.S.⁹

Legalization

S. 1639 creates a new visa category, the Z visa, available to undocumented immigrants, which provide a pathway to citizenship. While it is unclear whether this could be an option for survivors of trafficking who were ineligible for a T visa, barriers still remain for accessing a Z visa. Unfortunately, there are cost prohibitive fees tied to this visa. Principal Z visa applicants must pay a \$1000 penalty fee on top of a \$500 State Impact Assistance Fee. In addition, undocumented immigrants with final orders of removal are not eligible for the Z visa, although

S. 1639 does have a provision for an extreme hardship waiver.¹⁰

A key eligibility requirement for the Z visa is providing evidence of continual presence and employment or education since January 1, 2007. This could be problematic for survivors of violence who do not have documentation to prove their employment or who escaped an exploitive situation and were not employed for a period of time.

¹⁰ American Immigration Lawyers Association, *Section-by-Section Summary of Bi-Partisan “Bargain” (Substitute Amendment for S. 1348)*, available at <http://www.aila.org/content/default.aspx?bc=1019|6712|8846|22389>, May 2007.

¹ U.S. Government Accountability Office, *Illegal Immigration: Border-Crossing Deaths Have Doubled Since 1995; Border Patrol’s Efforts to Prevent Deaths Have Not Been Fully Evaluated*, available at <http://www.gao.gov/new.items/d06770.pdf>, August 2006.

² American Friends Service Committee, *Religious, Labor, and Civil Rights Organizations Call for an Immediate End to Immigration Raids*, <http://www.afsc.org/immigrants-rights/news/groups-call-for-end-to-raids.htm> (January 2007).

³ San Francisco Bay Area Independent Media Center, *National Immigration Project Calls for Moratorium on Immigration Raids*, available at <http://www.indybay.org/newsitems/2007/03/27/18384156.php> (March 2007).

⁴ American Immigration Lawyers Association, *Section-by-Section Summary of Bi-Partisan “Bargain” (Substitute Amendment for S. 1348)*, available at <http://www.aila.org/content/default.aspx?bc=1019|6712|8846|22389>, May 2007.

⁵ Friends Committee on National Legislation, *Selected Summary of Senate Immigration “Compromise” Legislation (S. 1348)*, available at http://www.fcnl.org/pdfs/Senate_Compromise_Table.pdf, May 2007.

⁶ Id.

⁷ American Immigration Lawyers Association, *Section-by-Section Summary of Bi-Partisan “Bargain” (Substitute Amendment for S. 1348)*, available at <http://www.aila.org/content/default.aspx?bc=1019|6712|8846|22389>, May 2007.

⁸ Friends Committee on National Legislation, *Selected Summary of Senate Immigration “Compromise” Legislation (S. 1348)*, available at http://www.fcnl.org/pdfs/Senate_Compromise_Table.pdf, May 2007.

⁹ Id.