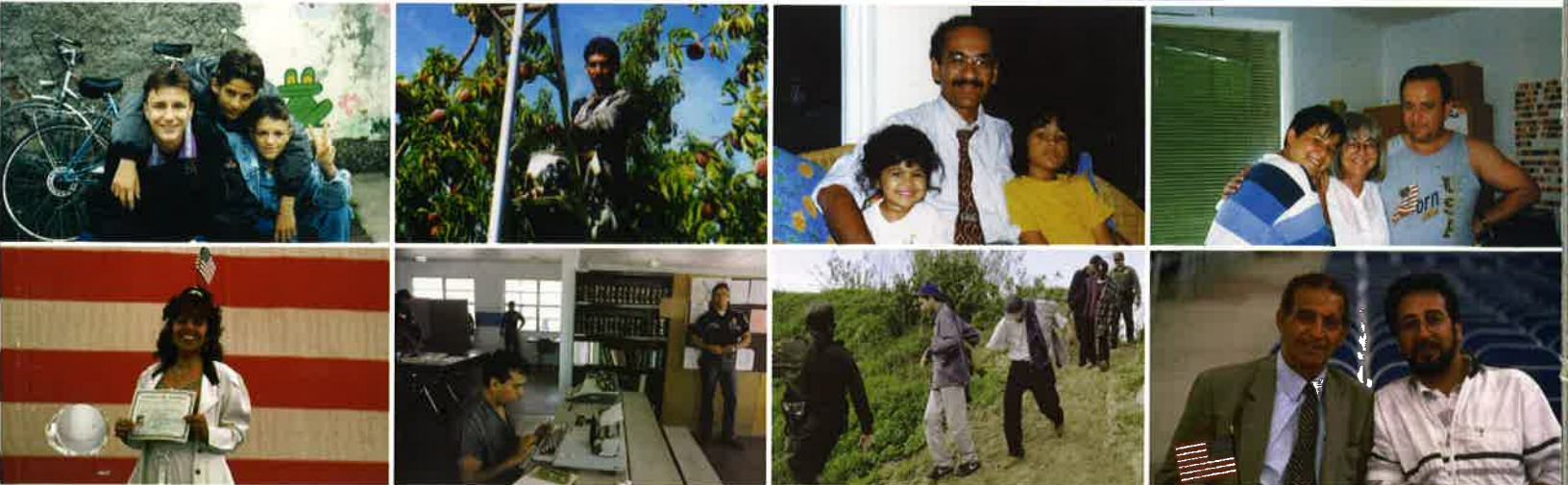


WORK WITHOUT JUSTICE:

LOW-WAGE IMMIGRANT LABORERS



Credits

This report is the third in a series of reports by the Catholic Legal Immigration Network, Inc. (CLINIC) on at-risk immigrants in the United States. The series attempts to put a human face on the difficulties experienced by discrete populations of immigrants as they attempt to make the United States their home. The series does not seek to advance specific policies or reforms. Instead, it hopes to describe the experiences of at-risk immigrants in the confidence that they will speak powerfully for themselves.

Since its inception in April 1999, this project has been a collaborative one. CLINIC paralegal Molly McKenna has masterfully staffed the project; she has collected many of the case studies and did much of the research for this report. CLINIC attorney Karen Herrling likewise developed many of the report's case studies and did significant research. Donald Kerwin, CLINIC's Chief Operating Officer, pulled the report's sections into a cohesive whole and contributed language to several sections. Juan Osuna, the editor for this series, edited and supplemented the report. Charles Wheeler, a CLINIC Senior Attorney, and Kevin Appleby, Director of Immigration Policy for Migration and Refugee Series of the US Catholic Conference, reviewed and provided comments on the report.



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Suggested citation:

Kerwin, Donald, Karen Herrling, and J. Kevin Appleby. 2000. *Work without Justice: Low-Wage Immigrant Laborers*. CLINIC "At-Risk Immigrants" Report Series. Washington, DC: CLINIC. <https://doi.org/10.14240/atriskreport3>.

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T A B L E O F C O N T E N T S

Acknowledgments.....	i
I. A Dangerous Frontier: The Journey North and the United States/Mexican Border	4
II. Low-Wage Newcomers: Exploited, Imperiled and Abused.....	9
II A. Day Laborers.....	9
II B. Service Sector Workers.....	11
II C. Keeping Workers Unorganized.....	14
II D. Farmworkers.....	16
II E. Meatpacking and Poultry Workers	22
III. Smuggling and Indentured Servitude.....	29

A C K N O W L E D G M E N T S

"Work Without Justice: Low-Wage Immigrant Laborers" is the third in a series of reports by the Catholic Legal Immigration Network, Inc. (CLINIC) on at-risk immigrants in the United States. The series attempts to put a human face on the difficulties experienced by discrete populations of immigrants as they attempt to make the United States their home. The series does not seek to advance specific policies or reforms. Instead, it hopes to describe the experiences of at-risk immigrants in the confidence that they will speak powerfully for themselves.

CLINIC, a subsidiary of the U.S. Catholic Conference, provides legal support services to a network of 131 local Catholic immigration programs. From its ten offices nationwide, CLINIC also directly represents and administers legal service projects for at-risk newcomers. The principal authors of this report were:

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Section I. A Dangerous Frontier: The Journey North and the United States/Mexico Border (Karen Herrling)

Section II (A). Day Laborers (Karen Herrling)

Section II (B). Service Sector Workers (Karen Herrling)

Section II (C). Keeping Workers Unorganized (Karen Herrling)

Section II (D). Farmworkers (Kevin Appleby)

Section II (E). Meatpacking and Poultry Workers (Donald Kerwin)

Section III. Smuggling and Indentured Servitude (Karen Herrling)

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reviewed and provided comments on the report.

The report relied heavily on contributions from CLINIC's partner agencies. Agencies and individuals who contributed significantly to the report include:

American Friends Service Committee, Denver, Colorado: Larry Leaman-Miller

Annunciation House, El Paso, Texas: Rene Kasischke

Archdiocese of Louisville, Kentucky, Migrant Ministries: Sr. Lupe Arciniega

Asociacion Tepeyac de Nueva York, New York, New York: Brother Joel Magallan Reyes, S.J. and Esperanza Morales

Casa Juan Diego, Houston, Texas: Mark Zwick and Brian Frazelle

Casa de Maryland, Inc., Silver Spring, Maryland: Steven Smitson

Catholic Immigration Law Project, St. Louis, Missouri: Angie O'Gorman

Coalition of Immokalee Workers, Immokalee, Florida

Diocese of Des Moines, Iowa, Hispanic Ministry: Fr. Kevin Cameron

Fairfax County Police Department, Fairfax, Virginia: Harry Edward Foxwell

Florida Rural Legal Services, Immokalee, Florida: Laura Germino

Hotel Employees and Restaurant Employees Union Local 100, New York, New York: Bill Granfield

Hotel Employees and Restaurant Employees Union Local 17, Minneapolis and St. Paul, Minnesota: Uriel Perez Espinoza

Legal Services of North Carolina Inc., Raleigh, North Carolina: Lori Elmer

Maryland Department of Human Resources, Salisbury, Maryland: Maria Alvarado

Migrant Farmworker Justice Project of Florida Legal Services, Belle Glade, Florida: Greg Schell and Rebecca Schleifer

New Bern Deanery Hispanic Ministry, New Bern, North Carolina: Fr. Paul Brant, S.J.

Our Lady of Guadalupe, Omaha, Nebraska: Fr. Damian Zuerlein

Public Justice Center, Baltimore, Maryland: Ricardo Flores

Saint Anthony of Padua Church, Camden, New Jersey: Deacon Tito Miranda

Transfiguration Parish, New York, New York: Reverend Michael Lynch, S.J.

Union of Needletrades, Industrial and Textile Employees International Organization, New York, New York: Julio Marroquin

Union of Needletrades, Industrial and Textile Employees Local 169, New York, New York: Jerry Dominguez

U.S. Catholic Conference, Washington, D.C.: Sr. Charlotte Hobelman and Rocio Salvador

This series would have been impossible without the financial support of the Ford Foundation and the Foundation for Child Development. This report was also made possible (in part) by a grant from Carnegie Corporation of New York. Finally, CLINIC could not have initiated this project without the support and collaboration of its sister agency, the Migration and Refugee Services division of the U.S. Catholic Conference. Of course, the statements made in the report and the views expressed are solely CLINIC's responsibility.

CLINIC greatly appreciates the many contributions it received in putting together this report. It hopes that the final product does justice to the newcomers whose stories it tells and contributes to the more just treatment of immigrant laborers in the United States.

WORK WITHOUT JUSTICE: LOW-WAGE IMMIGRANT LABORERS



Photo Courtesy: Sr. Charlotte Hobelman, USCC

"Well, I came to America because I heard the streets were paved with gold. When I got here, I found out three things; first, the streets weren't paved with gold; second, they weren't paved at all; and third, I was expected to pave them." Attributed to anonymous Italian immigrant, Ellis Island Immigration Museum, New York, New York.

"[W]here a State which suffers from poverty combined with great population cannot supply such use of goods to [allow for the fulfillment of] its inhabitants, or where the State places conditions which offend human dignity, people possess a right to emigrate, to select a new home in foreign lands, and

to seek conditions of life worthy of man." Sacred Congregation for Bishops, "Instruction on the Pastoral Care of People Who Migrate" (August 22, 1969).

Low-wage immigrant laborers play a foundational role in our nation's economy. Many industries, particularly in the retail, agricultural and service sectors, depend overwhelmingly on immigrant labor. The foreign-born now constitute ten percent of our nation's population.¹ They represent 34 percent of those working in "private households;" 21.4 percent of those providing other "personal services;" 18.5 percent of the workers in "eating and drinking places;" and 12.8 percent of construction industry

employees.² In 1997-1998, a full 81 percent of farmworkers were foreign-born.³ Immigrants also dominate garment industry,⁴ meatpacking and poultry processing jobs.⁵ Nineteen percent of foreign-born workers perform "service occupations," another 19 percent work as "operators, fabricators, and laborers," and 4.7 percent work in "farming, forestry, and fishing occupations."⁶

Immigrant laborers enrich our nation and improve our quality of life, but do not reap the just benefits of their work.⁷ Instead, they endure sub-minimum and non-payment of wages,⁸ or receive regular pay checks but still do not earn enough to escape poverty. The median wages, much less those at the lower end, in many immigrant-dense occupations barely exceed the federal minimum wage. Slaughterers and butchers make \$8.64 an hour; textile machine operators, \$9.04; sewing machine operators in the garment industry, \$7.22; meat, poultry and fish cutters and trimmers, \$7.77; farmworkers, \$6.00; and fast food cooks, \$6.11.⁹ Paltry wages like these explain the 21 percent poverty rate among the foreign-born, compared to 12.9 percent of the native-born population.¹⁰

Immigrants work disproportionately in jobs that do not provide health insurance or other benefits that most workers take for granted.¹¹ In 1999, only 32.5 percent of foreign-born Hispanic women and 36.5 percent of foreign-born Hispanic men held jobs in which the employer provided health insurance, compared to 59.2 percent for native-born persons.¹² Furthermore, the gap in health insurance between the foreign- and native-born has grown in recent years.¹³ In a 1999 study of day laborers in Southern California, not a single one of the 481 workers interviewed had health insurance.¹⁴

Beyond subsistence-level wages and poor benefits, many immigrant laborers suffer from occupational hazards, including pesticide poisoning,¹⁵ perilous construction sites,¹⁶ repetitive stress injuries,¹⁷ cuttings,¹⁸ and exposure to dangerous chemicals.¹⁹

While the exploitation of immigrant laborers is nothing new in our nation's history, the current situation has its roots in institutional factors of relatively recent vintage. First, low-wage immigrant laborers occupy the lowest rung in the restructured American economy. This economy has created great wealth, but witnessed a drop in the real wages of low-income workers. From 1968 to 1994, the incomes of the bottom fifth of wage earners in the United States increased only eight percent, a decrease in real dollars.²⁰ By contrast, the wages of the top fifth

increased by 44 percent.²¹ Alan Greenspan, the Chairman of the Federal Reserve, has urged the admission of more immigrant laborers precisely as a way to keep wages depressed, inflation at bay, and the economy robust.²² Mr. Greenspan's position represents a recognition of the crucial role immigrants play in our new economy.

Viewed from a different perspective, the low prices of consumer goods rest, in part, on low wages. The percentage of income that Americans spend on food and alcohol (8.4 percent) has decreased by 25 percent since 1970.²³ At the same time, as this report details, the wages of agricultural laborers have decreased in real dollars, and their working conditions remain disgraceful. Whatever its merits, the nation's unspoken "cheap food policy" partly depends on the impoverishment of those who put food on our tables.

Second, despite recent successes at organizing immigrant laborers, membership in labor unions has steadily declined over the past several decades, from 39 percent of the American workforce in 1954,²⁴ to 13.9 percent today,²⁵ with lower rates in service industries.²⁶ In the absence of unions, low-wage laborers depend heavily on wage and standard, workplace safety, and anti-discrimination laws. However, federal and state governments lack the resources to enforce these laws adequately. Nationally, the Department of Labor (DOL) employs only 942 "wage and hour" investigators,²⁷ who must cover more than seven million work "establishments,"²⁸ and roughly 100 million full- and part-time workers.²⁹ States employ an estimated 500 additional investigators.³⁰ Thus, for example, immigrants working in the construction and restaurant industries in North Carolina suffer endemic under- and non-payment of wages.³¹ Yet, the state employs only 13 "wage and hour" investigators, and of these, only one speaks Spanish.³² Furthermore, North Carolina enjoys more resources to enforce its labor laws than most states. A 1997 survey of 46 state labor departments revealed 26 states with 10 or fewer compliance officers.³³ In short, immigrant laborers too often work outside the ambit of organized labor and legal protections.

Third, in 1986, Congress passed the Immigration Reform and Control Act of 1986 (IRCA),³⁴ which allowed roughly 2.6 million persons to "legalize" their status, and prohibited employers from "knowingly" hiring the undocumented at the risk of "sanctions." The law's architects thought that IRCA would benefit all U.S. workers, by legalizing a particularly exploitable group of laborers and destroying through employer



sanctions the "magnet" of jobs that drew them here. Instead, employer sanctions have never been enforced to the point that they operate as a meaningful disincentive to hiring the undocumented, and IRCA has served as a tool for unscrupulous employers. After IRCA, employers assume a very minimal "risk" of sanctions when they hire undocumented workers. In return, they can extract concessions in the form of below-minimum wages and appalling working conditions. Abuses against the undocumented, in turn, depress wages and working conditions for all low-wage workers. IRCA has also impeded union organizing efforts. Unscrupulous employers, in fact, prefer laborers who do not think that they can demand fair or legal treatment; they use the threat of deportation to suppress union organizing efforts, and have even "called in" raids to break fledgling unions.³⁵

Fourth, poverty, natural disaster, civil war, and persecution will continue to drive migrants to the United States. While this report does not cover migration "push" factors (what drives people to migrate), it should be recognized that migration typically occurs in the absence of viable alternatives. A recent article on Juventino Rosas, a small town near Guanajuato, Mexico, is instructive. Sixty percent of the town's able-bodied workers migrate to the United States for at least part of each year.³⁶ The residents have little choice. Some can work on collective farms earning \$20 a month, but the town lacks the jobs to sustain its population. As its mayor, Ernesto Rodriguez Villafana,

explained: "The Border Patrol can't compete with desperation . . . [t]hey prefer to die trying to find work to feed their families than to stay here without work."³⁷

The strength of the forces that drive migration can also be illustrated by looking at the vital role "remittances" play in immigrant source countries. Immigrant laborers in the United States send home an estimated \$30 billion each year,³⁸ on average six to 16 percent of their household incomes.³⁹ Labor represents a primary export for many countries. In fact, remittances exceed the amount of foreign aid received by many countries from the United States.⁴⁰

Remittances largely support "basic subsistence needs."⁴¹ They have also been credited with helping to stabilize fledgling democracies, repair countries afflicted by natural disaster, and even stem illegal migration to the United States.⁴² For example, in response to a 1994 request by the government of El Salvador to extend temporary status ("deferred enforced departure") to Salvadoran nationals in the United States, the U.S. Embassy in San Salvador wrote that remittances provided 60 percent of the income for Salvadoran families that received them, with many of these families residing in "ex-conflictive zones, where the greatest civil war fighting took place."⁴³ The embassy concluded that not only would reduced remittances be "economically disastrous," they would also probably "lead to increased illegal immigration."⁴⁴

This report highlights the plight of low-income immigrant laborers in the United States. It follows immigrant laborers from their countries of origin on their often perilous journeys to the United States (Section I). It then documents the harsh reality they find once they arrive, highlighting the plight of day laborers (Section II A), service sector employees (Section II B), migrant farmworkers (Section II D), and immigrants in the meatpacking and poultry industries (Section II E). It concludes by describing the horrors faced by migrants smuggled into the United States by organized crime syndicates (Section III).

I. A DANGEROUS FRONTIER: THE JOURNEY NORTH AND THE UNITED STATES/MEXICO BORDER

A. The Journey North

For decades, a steady flow of migrants has crossed the U.S./Mexico border heading north. No one knows exactly how many people cross each year, but the numbers are substantial. In fiscal year (FY) 1999, for example, the Immigration and Naturalization Service (INS) apprehended 1.6 million people, the vast majority from Mexico.⁴⁵ These statistics do not reflect people apprehended more than once. Nor do they distinguish between those caught trying to cross the border for the first time and those caught in the interior of the United States. More importantly, they only include people apprehended, not those who manage to elude capture.

The U.S./Mexico border is a dangerous and often deadly area. Migrants endure harsh terrain, extreme weather in the mountains and desert, and human predation. Many die along the way. In FY 1998, the U.S. Border Patrol documented 261 border crossing deaths, and in FY 1999, 230 more.⁴⁶ However, these numbers reflect only bodies found in the United States. A more inclusive study by researchers at the University of Houston reported more than 1,600 possible border crossing deaths between 1993 and 1997.⁴⁷

"Mr. H-," a native of Belize, had to cross not one, but three borders on his way to the United States in July 1999. The first time he crossed into Guatemala, the local police apprehended him. They beat him, took his money, and forced him to return to Belize. The second time he tried, he hitchhiked to a small town in Guatemala where he met two Honduran men and two Salvadoran women. The group traveled on trains at night and found places to hide, sleep, and eat during the day.

After crossing into Mexico on their way north, Mexican police caught them and stole their clothes and money. They tied up the men and sexually assaulted the women. The officers then



Photo Courtesy: INS

drove them to a deserted area and left them. The group walked several hours to a train. While trying to jump onto a moving train, one of the women tripped and fell. She lost most of her arm, requiring her to remain behind in a hospital. Later, the second woman, who was seven months pregnant, fell off a moving train. Mr. H- thinks that "she just got sleepy and lost her balance." The group took her to a hospital in a nearby town, where she died.

One of the Honduran men also had a fatal accident. He decided to jump off a moving train to try to find food. Caught between the tracks, he was killed. Residents of a nearby town promised to bury the man, and his fellow countryman stayed behind.

Mr. H- ultimately arrived in the Mexican border town of Ciudad Juarez, where he stayed for a night before setting out to cross the border. He walked to the far end of the city and traveled through the mountains. It took him longer than expected -- two nights and a day. During this time, he did not have water. When he got to El Paso, Texas, he drank from an irrigation ditch. Then he walked toward the lights of the city.

Not only is the population of border crossers large, it is also surprisingly diverse. One might think of the typical migrant as an agricultural laborer from rural Mexico, but border crossers come from many backgrounds. The restructuring of the Mexican economy and five currency devaluations in the past 23 years have been unforgiving to many Mexicans, including small business owners.⁴⁸

"Mr. S-" owned two pharmacies in Mexico. Because of the failing economy and an increase in the prices of supplies, Mr. S- fell into debt. He was purchasing \$7,000 in Mexican pesos per week in medicine for his pharmacies, but his customers could not afford them. As a result, Mr. S- did not have enough money to pay his bills, and the pharmaceutical companies sued him. He and his wife came to the United States in search of work, so that they could pay off their debts.

In the past two years, many Central Americans have come to the United States because of natural disasters, particularly the devastation caused by Hurricane Mitch, which hit Honduras and Nicaragua on October 27, 1998.⁴⁹ Not surprisingly, INS apprehensions of nationals from Honduras more than doubled from 1997 to 1999.⁵⁰

"Mr. C-" came to the United States in February 1999 from Honduras. His family lost their home in Hurricane Mitch. During the hurricane, they took refuge in a school located at the top of a hill. In the hurricane's aftermath, Mr. C-'s eight-month-old niece died. The floods unearthed bodies from the cemeteries. Mr. C- was told that part of the reason why there was so much illness was "because of the contamination of the air and water that resulted from the decaying bodies that came out of their graves." Mr. C-, the oldest of eight children, realized that he had to leave Honduras to find work in order for his family to survive.

Making their journey even more difficult, many migrants report that government officials rob them and demand pay-offs in exchange for being allowed to continue their journeys. Others find themselves at the mercy of bandits. While not limited to Mexico, few would dispute that migrants pass through a gauntlet of extortion, thievery and predation in Mexico, much of it at the hands of Mexican officials.⁵¹ During the first six months of 1999, for example, the Office of Human Rights of Casa del Migrante in Tecun Uman, Guatemala recorded 1,926 cases of human rights violations against migrants in Mexico and

Guatemala.⁵² Eighty-five percent of the offenses in Mexico were committed by Mexican authorities, including the police, military and immigration officials.⁵³ Of course, documented cases like these significantly understate the problem.

Daniel Chacon, one of many victims on the trek north, described to a reporter a brutal assault that he and members of his family endured in the Mexican state of Chiapas.⁵⁴ As Mr. Chacon, his daughter, and son-in-law were walking through a dense patch of brush running parallel to the Pacific Coast, two men attacked them. The men robbed them and raped his daughter, while Mr. Chacon and his son-in-law were forced to watch in horror.

"Mr. P-," his mother, and his young sister took a plane from a state in the interior of Mexico to near the U.S. border. There they were stopped by the Mexican police and forced to hand over all of their Mexican pesos. At the border, gang members stopped them and demanded money. Mr. P- and his family also had to pay the requisite fee to the smuggler who brought them over the border.

The head of a migrant shelter on the border related the story of a 16-year-old Honduran girl, four months pregnant, who was raped by two men at the border.⁵⁵ The young woman had lost the ability to speak.

At the border, migrants often hire "coyotes," smuggler-guides who take them across for a fee of anywhere from a few hundred to several thousand dollars. Coyotes are profiteers who view migrants as human chattel. As a spokesman for the Border Patrol in Tucson, Arizona put it, the "smuggler is not concerned about life or death, but about how much money he can make."⁵⁶

In 1997, "Mr. N-" paid \$3,100 to coyotes to assist his family in crossing the border. The family, along with other families, walked for two days in the desert until they crossed the border. Those who could not swim were hauled across the river in inner tubes. A child from another family died of a snakebite during the passage. Once they had safely crossed, a second coyote took the mother and younger children to a safe house where they were told that they should wait for a van to transport them to another location.

The father and older children continued with the coyote for another two days before being

abandoned. Left without food, the father had no choice but to walk to a highway and flag down help. Ultimately, the Border Patrol took them to a detention center where they were given food and water and then deported to Mexico.

During this time, the coyotes held Mrs. N- and her young children in the safe house, forcing her to cook and clean. After about a week, Mrs. N- realized that something had gone wrong and demanded to be freed. The coyotes refused to release them in the United States, and instead took Mrs. N- and the children back to Mexico.

The coyote's involvement often does not end at the border. Some coyotes, like the one in Mrs. N-'s case, transport clients by foot or in cramped vans to safe houses or hotels. There, migrants wait for their parties to arrive or for relatives to wire payments. Mrs. N-'s experience of being held hostage is not uncommon. One migrant recounted to CLINIC how, in his journey, he witnessed several women acting as servants in a safe house in Arizona. He explained that coyotes often hold people hostage and make them work to pay off their smuggling debts. In one case, a woman living in the United States paid a smuggler \$13,000 to bring in her five children from Central America. The smuggler kept the youngest, a six-year-old with Down's Syndrome, so that he could extort more money from the woman.⁵⁷

A man in "Mr. F-"s group had recently undergone foot surgery. The coyotes told his wife to leave the man behind. They disparaged and denigrated her husband for slowing the group down. Mr. F- ended up carrying the man.

Coyotes often leave behind those who cannot keep pace. In May 1999, for example, Border Patrol agents found a 15-year-old Honduran boy, with an empty water jug, curled up and crying in the desert 15 miles southwest of Deming, New Mexico.⁵⁸

B. The Border Patrol

Once migrants cross the border, they must contend with the U.S. Border Patrol, the front-line in the U.S. government's efforts to combat illegal immigration. The Border Patrol has expanded substantially in recent years, from less than 4,000 agents in FY 1993, to more than 8,000 in FY 1999.⁵⁹ Most Border Patrol agents perform their jobs with professionalism and even compassion. In recent years, however, advocacy organizations have questioned whether the Border Patrol's rapid growth has allowed it to screen recruits

and train supervisors properly. Quality, experienced agents are the Border Patrol's best insurance against mistakes and abuses against migrants. Yet, currently about 40 percent of the force has fewer than two years of service.⁶⁰ In these circumstances, reports of abuses come as no surprise.



Photo Courtesy: INS

"Mr. L-" walked from Mexico City to Tijuana. He came to the United States to work so that he could help support his family living in Mexico. In Tijuana, he met a coyote and agreed to pay him \$1,700 to take him across the border. As he crossed, Border Patrol agents apprehended and detained him, deporting him to Mexico the following day.

Mr. L- returned to Tijuana and later that night attempted to cross the border again. He was apprehended by the same Border Patrol agent who had caught him previously. The agent began to strike him on the legs, saying that he would beat Mr. L- so that he could not walk again. Other agents arrived and tried to stop the

assault. Later on, the agents took Mr. L- to a Border Patrol office and then released him at the border. Mr. L- fell asleep next to the border fence. While Mr. L- did not report any lasting damage, he felt a tremendous amount of pain and could not walk because of the injuries to his legs.

* * * * *

"Mr. J-" is a 16-year-old from Guatemala. His parents told him that they could no longer support him and, as their oldest child, he would have to take responsibility for himself. Mr. J- left Guatemala and traveled through Mexico to the United States. In April 1999, after spending three days in the desert, the Border Patrol apprehended him.

Mr. J- was placed on a flatbed truck. He jumped off and attempted to flee. Several Border Patrol agents tackled him and severely beat him. One agent jumped on his leg and broke it. The agents told him to tell people that he fell down and broke his leg accidentally.

Mr. J- received treatment at a local hospital. According to medical reports, he sustained a fracture to his right leg, which required the insertion of screws. Mr. J- underwent two surgeries; it is still unclear whether he will suffer any permanent damage from his injuries.

In separate incidents in September 1998, Border Patrol agents shot and killed three persons who were allegedly throwing rocks at them.⁶¹ An investigation into the shootings by the Department of Justice (DOJ) cleared the officers of criminal wrongdoing.⁶²

C. Recruiters and Labor Contractors Along the Southern Border

As a result of the tight job market, recruiters and labor contractors have become a fixture on the U.S./Mexico border. Employers often pay to transport workers north, sometimes in company vehicles.⁶³ The numbers involved are high. A recruiter from El Paso, for example, regularly sends 25 to 50 people to Dallas-Fort Worth for jobs in construction and food processing.⁶⁴ During the summer of 1999, El Expreso, a bus company, took 15,000 workers from Laredo, Texas to the tobacco fields around Raleigh, North Carolina.⁶⁵

Many recruiters and labor contractors misrepresent wages, working conditions and housing costs. For example, a report on the poultry industry by the DOL and the Occupational Safety and Health Administration (OSHA) found that "many processors engage in remote recruitment of workers without providing the recruited workers with a written statement of the terms and conditions of employment."⁶⁶ Others steal the money that employers send for transportation, or neglect to inform the workers that they will be charged a "recruitment" fee.⁶⁷ Undocumented workers, as elsewhere, are particularly vulnerable to these abuses.



Photo Courtesy: INS

In some cases, recruiters work directly with coyotes and other smugglers. After the smuggler brings workers across the border, they are often driven by labor recruiters or contractors to large cities like Phoenix, San Diego and Albuquerque. Once everyone arrives, the contractors transport them to their jobs. In other cases, employers ask the undocumented workers themselves to find more employees.⁶⁸

In one particularly horrific case, labor contractors Miguel Flores and Sebastian Gomez transported Mexican and Guatemalan nationals from the Arizona border and forced them to work without pay, allegedly to pay off "transportation debts," in Florida and South Carolina.⁶⁹ They also lured persons to make the trip at their own expense, with promises of

good work and fair wages. CLINIC spoke with one such person, "Mr. G-," who had been held captive by Mr. Flores and Mr. Gomez in Manning, South Carolina.

In 1992, "Mr. G-" began work picking cucumbers in South Carolina. He awoke every day at 6 a.m. to the sound of gunshots, the standard wake-up call for the workers. He toiled in the fields all day, every day, earning \$20 a day. While picking, he and his fellow workers were guarded by armed men. At the end of the day, Mr. G- returned to a migrant labor compound where he shared a tiny room, without electricity or hot water, with three other people.

The compound was isolated, surrounded by water and woods, and under constant surveillance. Only one dirt road led into and out of the camp. Mr. G- and his fellow workers were not free to leave the compound. If the workers needed to go to the nearest town, two guards would take a group of six or seven, watching them at all times. They were warned that if they left the compound, they would be found and killed. Stories circulated of Mr. Flores' violence against workers who attempted to flee.

The workers had reason to fear Mr. Flores and Mr. Gomez. Mr. G- saw Mr. Flores strike a Cuban worker with the butt of a pistol. He regularly heard the sound of gunfire, and it was well-known that the two men sexually assaulted women.

One evening, three workers attempted to escape. When guards discovered them missing, they began to hunt for them. Shortly thereafter, Mr. G- heard gunshots coming from the other side of the lake. Later, one of the workers emerged from the woods with a towel on his stomach; he had been shot. On the same night, a woman from the camp managed to escape and summon the police. When the police arrived, Mr. G-, the woman, and one other man told the officers that they wanted to leave. The police took the three workers out of the camp and away from Mr. Flores and Mr. Gomez. Fearful that the contractors would hunt them down, their other co-workers remained.

Mr. G- took a bus to Immokalee, Florida where he lived in fear that Mr. Flores and Mr. Gomez would find him. Five years later, Mr. G- testified in federal court against the two men who had enslaved and terrorized him.

It took an unusual partnership between migrant workers, advocacy groups, and the federal government to convict and punish Mr. Gomez and Mr. Flores.⁷⁰ The partners in this effort included the Coalition of Immokalee Workers, Florida Rural Legal Services (FRLS), the Border Patrol, the DOJ, and the DOL. FRLS and the Coalition, a community organization comprised of low-wage immigrant workers, brought the case to the attention of the DOJ. These two agencies also played a vital role in investigating the case, developing leads, and interviewing witnesses.⁷¹ In October 1996, a grand jury issued a 25-count indictment against the two contractors and two of their associates.⁷² In May 1997, Mr. Gomez and Mr. Flores pled guilty to enslavement charges.⁷³ In November 1997, the men received 15-year prison sentences.⁷⁴

The Gomez/Flores slavery case and others like it prompted Attorney General Janet Reno to establish a Worker Exploitation task force in April 1998. The task force "seeks to prevent worker exploitation throughout the United States and to investigate and prosecute cases when such violations occur."⁷⁵ It has created an outreach program that educates workers about their rights, builds relationships with community organizations, and provides education and training assistance to law enforcement. It has also established a hotline to report suspected worker exploitation and abuse.⁷⁶

Building on the relationships forged in the Gomez/Flores case, the Task Force successfully prosecuted Abel Cuello, Jr. for harboring aliens, unsafe labor practices, and peonage.⁷⁷ The case came to the attention of the Task Force in April 1998, when Coalition members learned that Mr. Cuello physically confronted several men who had escaped from his operation in an attempt to force them to return.⁷⁸ In the ensuing investigation, federal investigators found 27 migrant workers living in squalor in cramped trailers, forced to pick tomatoes to pay off their alleged transportation debts.⁷⁹ Authorities arrested Mr. Cuello in April 1999. He entered a guilty plea in May 1999, and four months later a judge sentenced him to 33 months in prison and ordered him to pay restitution to his victims totalling \$29,445.

II. LOW-WAGE NEWCOMERS: EXPLOITED, IMPERILED AND ABUSED

The plight of low-wage workers is nothing new. For many years, migrants have come to this country to fill jobs U.S. citizens generally shun. However, low unemployment and a booming economy have dramatically increased the demand for immigrants to fill low-paying jobs. Jobs paying \$8.00 an hour or less comprise roughly 25 percent of all jobs in the United States.⁸⁰ Determined workers who make it across the U.S. border can find employers willing to hire them.

The treatment of these newcomers reveals a disconnect between our nation's immigration policies and its labor needs. While taxpayers spend billions of dollars to keep the undocumented out of the country, hundreds of thousands of otherwise law-abiding employers rely on them for work that most U.S. citizens will not do.⁸¹

When "Mr. Z-" first arrived in the United States, he found a job washing dishes, doing janitorial work, and preparing food at a restaurant. He worked from 7 a.m. to 7 p.m., seven days a week. His employer allowed him one ten-minute break a day, and timed his bathroom breaks. Mr. Z-'s weekly wages totaled \$200. Mr. Z- washed large, heavy pans caked with dried food. Compounding the physically exhausting work and sub-minimum pay, the restaurant owner verbally abused him. After a month, Mr. Z- found a second job, also in a restaurant, and quit the first one.

In his second job, Mr. Z-'s shift began at 11 a.m. and ended between midnight and 3 a.m. He worked six days a week, with no break during the day, earning \$280 a week. He was allowed to eat a small piece of bread and one egg per day, usually while he worked. He stayed at this job for five or six months before moving to another sub-minimum wage job, as a stock boy at a deli. Like countless other low-wage laborers, Mr. Z- has become a "serf of the service economy."⁸²



A. Day Laborers

Many undocumented persons rely on day labor to support themselves and their families. Throughout the nation, day laborers congregate on street corners and in hiring halls to negotiate with employers in need of temporary workers. Day laborers often perform hard manual labor, such as hauling debris, painting houses, digging ditches, and cleaning buildings. They negotiate their earnings by the day or job, with immigrants often underbidding each other. Payment largely depends on the honesty of the employer.

When "Mr. X-" first arrived in New York, he worked as a day laborer for four months. He stood on the street corner and agreed to work on an informal basis for anyone who needed manual labor. On one occasion, an employer hired him to perform dangerous demolition work. Mr. X- negotiated a payment of \$80 for the day. At the end of the day, however, the employer balked, paying him only \$50.

On another occasion, Mr. X- worked a full day. The employer asked if he could hire him to work the next day and then pay him for both. Mr. X- agreed. The following day, Mr. X- waited, but the man never came. Mr. X- traveled to the work site and reminded the employer of their arrangement, but the man said that he did not remember Mr. X- and refused to pay him for the work he had performed.

Mr. X's experience points to an endemic problem -- day laborers cheated by their employers. A recent study revealed that day laborers in Southern California "are routinely abused at the work place."⁸³ Nearly half of the 481 workers interviewed in the study reported not being paid wages at least once, and significant percentages reported receiving "less than the agreed amount, bad checks (NSF) in the form of payment, no breaks or water at the work site, robbery and threats."⁸⁴ The report concluded that employers "knowingly abuse day laborers" and "realize that many day laborers may be in a vulnerable position with regard to their legal status and the knowledge of workplace and immigrant rights."⁸⁵

Casa Juan Diego in Houston, Texas, which operates the St. Joseph's Center for Workers, reports similar problems. The Center runs a work cooperative and a hiring hall. Six days a week, 100 to 125 men seek employment through the hall.⁸⁶ According to Center staff, workers have been cheated in myriad ways, from employers falsely accusing them of stealing tools, to giving them bad checks, to offering to pay them in the future and then failing to do so.

Day laborers often perform dangerous work, yet none of the day laborers interviewed in the 1999 study had private health insurance.⁸⁷ Often employers refuse to pay the medical costs or file worker's compensation for those injured on the job.⁸⁸

"Mr. C-" took a day job installing roof insulation. His employer did not provide him with any kind of protective gear and did not explain the hazards of working with the various materials. Consequently, fiberglass from the insulation got into his eyes and face. His eyes watered, and his face became inflamed for days. Mr. C- worked for eleven and a half hours that day, but his employer only paid him \$52, promising the rest later. The employer never returned to the hiring hall.

"Mr. M-" was hired by a roofer he did not know. He agreed to work for \$70 a day. Each day, Mr.

M- worked on a different house, always without ropes or other safety equipment. During his third day on the job, he fell off a roof. He received medical assistance only because residents in the neighborhood called an ambulance. At the hospital, the doctors determined that he had suffered three broken ribs and severe pelvic and hip injuries.

Mr. M- never again saw the person who had employed him, and received no pay for the days he worked prior to the injury. Nor did he receive reimbursement for his medical bills. Upon his release from the hospital, Mr. M- found the house where he had been injured. No one there, however, could give him information about the roofing company that had hired him.



B. Service Sector Workers

One of the fastest-growing segments of the U.S. economy is the service sector.⁸⁹ Service sector occupations, as classified by the Bureau of Labor Statistics, fall into three categories -- private household, protective, and other service occupations.⁹⁰ Private household occupations include cooks, housekeepers, in-home child care workers, cleaners and servants.⁹¹ Protective service occupations include law enforcement and fire prevention.⁹² Other service occupations cover those who work in food preparation services (such as waitresses and cooks), health services (such as dental assistants and nursing aides), cleaning and building services (such as janitors), and personal services (such as hairdressers and early childhood teaching assistants).⁹³ Workers in many service occupations earn low wages. The median weekly salary for a private household cleaner is \$235; for a waiter or waitress \$300; for a cook \$289; for a dental assistant \$369; for a nursing aide \$311; for a maid \$277; for a janitor \$327; for a hairdresser \$313; and for an early childhood teaching assistant, \$265.⁹⁴

Worker protections for service sector employees exist in theory. Most workers, regardless of their status, are entitled to legal protections. The relevant federal laws include the Fair Labor Standards Act (FLSA),⁹⁵ the Occupational Safety and Health Act (OSH-Act),⁹⁶ the National Labor Relations Act (NLRA),⁹⁷ and several federal fair employment practices laws that protect

employees from discrimination. The FLSA establishes minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers.⁹⁸ Under the FLSA, workers are entitled to a minimum wage of not less than \$5.15 an hour, and overtime pay at a rate not less than one and one-half times their regular rate after 40 hours of a regular work week.⁹⁹ The OSH-Act requires employers to comply with standards regarding safe working conditions and to maintain safe and healthful workplaces.¹⁰⁰ The NLRA safeguards the right of employees to engage in protected group activity, such as union organizing. Title VII of the Civil Rights Act of 1964¹⁰¹ prohibits employers from discriminating against workers on the basis of race, sex, color or national origin.

Unfortunately, many employers flout minimum wage and overtime laws. CLINIC interviews with service sector laborers affirmed the exploitation suffered by workers in restaurants, fruit and vegetable markets, and other industries.

"Mr. D-" worked in a Greek restaurant for almost three years. He was paid \$150 a week for working ten hours a day, seven days a week (an hourly wage of \$2.14). His employer routinely yelled racial epithets at him and hit him. Mr. D- did not report or complain about this treatment for fear that he would be fired.

Once when Mr. D- was too ill to report to work, his employer told him that the next time he was too sick to work, he would be fired. During his third year of employment, Mr. D- again became sick and could not work. When he returned, his employer terminated him. Mr. D- told CLINIC: "If you are poor and a Mexican immigrant you cannot get sick. You can never take a day off."

After being fired, Mr. D- looked for another job. He found one a month later at an Italian restaurant. He was paid \$1.50 an hour and worked 10 hours a day, seven days a week. He stayed at this job for four years. In his second year, his employer increased his pay to \$2.00 an hour.

Mr. D- now works at a dry cleaning store. He views his current employer as more humane. He earns \$2.75 an hour and works nine hours a day, six days a week. Mr. D-'s employer told him that he could not pay more because Mr. D- does not have a social security card.

For more than nine years, Mr. D- has labored in "sweatshop" conditions,¹⁰² and his employers have

failed to comply with basic labor laws. Mr. D- has never been paid the federal minimum wage. Nor has he received overtime pay for the countless overtime hours he has worked. He could never take a sick day, vacation day or holiday. The benefits that most U.S. workers take for granted are unavailable to undocumented workers like Mr. D-.

"Mr. P-" has been working since 1996 at a gift store in the Times Square area of New York City. One day, he got into a fight with three people who were trying to steal items from the store. Mr. P- suffered a black eye and other injuries. He went to the hospital for treatment, but his employer refused to pay the medical bills.

Mr. P- reported that the lack of health insurance has harmed his family. His father, who has worked in this country for the past 12 years, has a tumor. Mr. P- said that his father will not visit a hospital because he insists that he must work all the time. He added that his mother has diabetes and high blood pressure. According to Mr. P-, neither of his parents can afford to attend to their health.

Many service sector laborers endure unsafe and unhealthy workplaces in violation of the OSH-Act. For example, a 51-plant survey of the poultry industry by the OSHA and the DOL found "a general deficiency in the treatment of health hazards."¹⁰³ A former migrant laborer and now labor organizer in New York recounted his days picking fruit and vegetables in South Carolina.¹⁰⁴ One of his duties had been to clean peaches. Unlike U.S. workers, Mexican and Haitian workers were not given masks and gloves for protection from the peach dust. As a result, the man suffered intense nose, mouth and hand irritation. "It was like having glass in your nose," he told CLINIC.

"Mr. D-," who works at a dry cleaner in New York, is exposed to harmful chemicals at work, including ammonia. Every day, his skin and lungs burn from the chemicals. While his boss and the U.S. citizen workers are given protective clothing and masks, he is not. Mr. D- believes that if he were to complain, he would be fired.

The plight of service sector workers can be highlighted by looking at two industries that are notorious for wage and working condition violations: "green grocers" and the garment industry. In New York City, there are about 2,000 fruit and vegetable markets, called green grocers, which employ roughly 10,000 Mexican nationals.¹⁰⁵ The workers unload heavy

boxes from trucks and stock the shelves and vegetable stands. They cut and prepare vegetables, guard the vegetable stands, and serve customers.

The wages and working conditions at green grocers are abysmal. "Mr. T-," a former green grocer worker who now helps to organize workers, explained that Mexican workers labor 12 hours a day, six or seven days a week, earning from \$200 to \$250 a week. Workers are constantly pressured to work harder and faster. Many are not given breaks, or if they are, the breaks are short and inadequate. Mr. T- said that if workers complain about their wages or working conditions, they are fired. In addition, they do not receive any benefits, such as sick days, vacations, or health insurance.

The garment industry, which employs nearly one million persons, has also served as fertile ground for sweatshop labor.¹⁰⁶ An estimated one-half to two-thirds of the nation's 22,000 contract cutting and sewing shops operate as sweatshops.¹⁰⁷ The industry employs mostly female and foreign-born laborers.¹⁰⁸



In Los Angeles, the largest apparel production center in the United States, with approximately 160,000 laborers,¹⁰⁹ garment workers are paid by the piece and employed on an as-needed basis.¹¹⁰ The average garment worker makes less than \$8,000 a year.¹¹¹ Virtually all garment workers are from Mexico, Central

America, or Asia, with as many as 60 percent of them undocumented.¹¹²

Testimony from state officials before the Los Angeles Jewish Commission on Sweatshops revealed that three out of five of the city's apparel factories violate wage and hour laws, and 96 percent violate health and safety laws.¹¹³ One half of the health and safety violations are so serious as to threaten life and limb.¹¹⁴ Moreover, in any given year, employers in the Los Angeles garment trade owe workers an estimated \$73 million in back wages.¹¹⁵

New York City, another apparel industry hub, also has an abysmal compliance record with wage and hour laws. In 1999, the DOL found that 65 percent of the garment shops it surveyed in the city violated wage and overtime laws.¹¹⁶

Basic labor laws protect all workers. Undocumented workers, like everyone else, enjoy the right to protect themselves against these abuses by organizing, filing complaints with the state or federal government offices, and pursuing discrimination complaints with the Equal Employment Opportunity Commission (EEOC). So why do workers tolerate these abuses?

First, many fear that if they attempt to organize or even complain about their pay and working conditions, they will be fired. In fact, this represents a very real possibility, particularly for the undocumented. One study found that roughly a third of employers discharged workers for union activity.¹¹⁷ Second, the undocumented fear reporting abuse, no matter how egregious. Many have experienced corrupt police or other officials in their home countries or during their journeys to the United States. Most do not understand their rights, much less know how to exercise them.¹¹⁸ They also fear that if they complain they will be deported. Third, the lack of penalties or

low penalties imposed on employers by state law fail to deter them from violating wage and hour laws. In North Carolina, for example, the wage and hour laws do not contain adequate provisions for fining employers who are cited for violations.¹¹⁹ In New York, before passage of the Unpaid Wages Prohibition Act, penalties for non- or under-payment of wages were so low and infrequently applied that they did not operate as a meaningful disincentive to misconduct by employers.¹²⁰ Fourth, as discussed, IRCA's employer sanctions provisions have placed the undocumented squarely under the control of unscrupulous employers. As a labor organizer told CLINIC: "In New York City, green grocers do not want to hire documented workers. In fact, if a worker has papers the owners will not hire him."¹²¹

"Mr. A-" is 17 years old. Upon arriving in the United States, he worked in a restaurant, earning \$3.00 an hour as a busboy. His employer told him that because he was "Mexican and couldn't speak English, that is what he deserved." Mr. A- worked 12- to 13-hour shifts, six days a week. His employer constantly yelled at him and other Mexican workers.

Mr. A- left this job after three months and worked as a short order cook for two other restaurants. At each, he worked long hours, sometimes 16 hours a day, but never received his full wages of \$5.00 an hour. When Mr. A- complained about the pay and working conditions, his employer told him that because he was Mexican, he had no rights.



Photo Courtesy: UFCW Local 27

C. Keeping Workers Unorganized

Most workers are permitted by law to join unions, engage in organizing activities and join protests against unjust employers. The NLRA, the main federal law governing labor-management relations, forbids employers from retaliating against workers for engaging in protected group activities. Nonetheless, unscrupulous employers make it difficult, if not impossible, for undocumented workers to exercise their rights. John Hiatt, General Counsel of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), has described the problem thus: "There is no disincentive for employers to hire undocumented workers, yet employers who want to get rid of people [for union activity] can say they're doing it out of fear of employer sanctions. It's the worst of both worlds."¹²²

Employers have regularly used immigration laws to punish workers who try to organize. In a well-known case, the Holiday Inn Express in St. Paul, Minnesota

opened for business in April 1998. The following year, an organizing drive took place at the hotel. The Hotel Employees and Restaurant Employees Union Local 17 helped organize the housekeeping staff.¹²³ On August 26, 1999, the employees voted in favor of the union, 11 to 7. Before the bargaining meeting, hotel management scheduled a housekeeping meeting. At that time, the general manager ushered the Latino housekeepers into a conference room, where they were greeted by an INS agent who asked them for their papers. When none of the workers produced papers, they were handcuffed and told that they would be deported to Mexico. According to press accounts, one of the housekeepers present said: "They made us feel like criminals...like bad people, that we did something wrong when all we were doing was working."¹²⁴

The workers were taken to an INS detention center. Most were then transferred to county jails to await removal hearings. The housekeeper's manager told two workers that management had "called the INS because they had voted 'yes' for the union."¹²⁵ The union filed an unfair labor practice charge against

Holiday Inn Express with the National Labor Relations Board (NLRB). The NLRB and the EEOC jointly investigated. The NLRB found the hotel in violation of the NLRA for retaliating against its employees for attempting to organize.¹²⁶ The EEOC found that the hotel violated the civil rights of the Latino workers.¹²⁷ The hotel settled the case on January 6, 2000.¹²⁸ Subsequently, the INS exercised its prosecutorial discretion in agreeing not to pursue the removal of seven of the eight workers for a two-year period.¹²⁹

In a similar case, the Union of Needletrades, Industrial and Textile Employees (UNITE) attempted to organize green grocer workers in New York in the summer of 1999.¹³⁰ In July and August 1999, workers at Adinah's Farms began to organize. They signed union cards and began a community boycott of the store. The store owner tried to threaten and bribe the workers so that they would not assert their right to union participation. She warned that if they organized, she would call the INS and have the workers deported. She also threatened to fire the Mexican workers at her other

stores. The owner tried to force the workers to sign a document swearing that they only worked eight hours a day, had all legal holidays off, and were being paid minimum wage. When eight workers refused to sign, they were fired.¹³¹ Daniel Lucas, one of the terminated workers, had worked at Adinah's Farms for five years. During that time, he worked 72 hours a week, earning \$250 weekly.¹³² For five years, he did not receive the minimum wage, overtime, vacation or sick pay.

UNITE Local 169 filed a complaint with the NLRB for unfair labor practices, and with the DOL for back overtime wages. At the end of November 1999, the NLRB determined that the workers were entitled to reinstatement and back pay. In addition, it found that the union represented the workers, and ordered the owner to begin bargaining with the union. In January 2000, the owner of Adinah's Farms agreed to allow the workers to join unions.¹³³



Photo Courtesy: Sr. Charlotte Hobelman, USCC

D. Farmworkers

Farmworkers represent perhaps the most vulnerable of low-wage immigrant laborers. The DOL estimates that there are about 2.5 million hired farmworkers in the United States, about 1.8 million of whom work on crops.¹³⁴ The percentage of foreign-born farmworkers has grown from roughly 60 percent in 1989 to 81 percent in 1998, with Mexican nationals comprising 77 percent of all farmworkers.¹³⁵ Over the same period, non-Hispanic native-born persons have dropped as a percentage of the farmworker population from 30 to 10 percent and Hispanic native-born workers have fallen from 12 to 8.5 percent.¹³⁶

The rising share of the foreign-born in the U.S. farm labor force has been the result of increased immigration from Mexico.¹³⁷ Despite the "legalization" of close to one million farmworkers under the 1986 amnesty law, the share of undocumented workers in the farm labor force has more than tripled over the past 10 years, rising from 17 percent in 1990 to 52 percent in 1998.¹³⁸ During the same period, U.S. citizen farmworkers fell from 43 percent of the worker population to about 22 percent.¹³⁹

Agricultural workers perform hard manual labor. As might be expected, the farmworker population is relatively young. Seventy-nine percent of all farmworkers are between the ages of 18 and 44.¹⁴⁰ Twenty percent are women.¹⁴¹

1. Wages and Benefits.

In 1997-1998, the average U.S. farmworker earned \$5.94 an hour.¹⁴² Farmworkers earned either slightly more or slightly less than the average depending upon the specific task that they performed. For instance, farmworkers who engaged in pre-harvest work such as hoeing, thinning, and transplanting earned an average of \$5.67 an hour; those who harvested crops earned \$6.15; and those engaged in post-harvest labor such as field packing, sorting, or grading earned \$5.91.¹⁴³

The hourly wage for farmworkers is exceedingly low, and has not kept pace with inflation. Data from the National Agricultural Workers Survey of 1997-1998 shows that the average hourly wage of farmworkers declined from \$6.89 per hour (in 1998 dollars) in 1989 to \$5.94 per hour in 1997-1998.¹⁴⁴ During this period, farmworkers lost 95 cents per hour in real wages.

The seasonal nature of this work means that migrant laborers earn agricultural income for only 24 weeks a year.¹⁴⁵ The combination of low wages and seasonal work means that most farmworkers and their families live in poverty. Since 1990, the median income of individual farmworkers has remained below \$7,500 per year, while that of farmworker families has remained below \$10,000.¹⁴⁶

These meager earnings have prompted occasional protests. In December 1997, for example, a coalition

of farmworkers who picked tomatoes in Immokalee, Florida conducted a month-long hunger strike. Only a plea from former President Jimmy Carter convinced the workers to halt the strike. The hunger strike won the workers a paltry 10 cents more per bucket of tomatoes picked, a rate that will still keep workers well below the poverty line. As one of the hunger strikers said: "We are already dying. We are paid nothing, can barely eat. This is just a faster death if anything."¹⁴⁷ Almost two years later, workers in Immokalee orchestrated a work stoppage to protest their low wages. They called for a raise in the picking piece rate, from 40-45 cents to 75 cents, an amount that would bring them closer to a livable wage.¹⁴⁸

Many factors have contributed to the decline in farmworkers' real wages over the past decade, including a marked increase in undocumented workers from Mexico. An attorney at the Migrant Farmworker Justice Project of Florida Legal Services, for example, estimated that 40,000 domestic farmworkers travelled from Florida to North Carolina as part of the migrant labor stream in 1990. By 1999, however, only about 3,000 made the trek.¹⁴⁹ The undocumented are particularly vulnerable to exploitation. Because of their status, they are afraid to complain about low wages and difficult working conditions.¹⁵⁰ As a result, employers pay them lower wages, depressing wage scales for all farmworkers across the country.

"Mr. L-" is a native of Mexico who came to the United States in July 1997. His wife and three children joined him in September 1999. Since his arrival, Mr. L-'s most stable employment has been on a tobacco farm. During the busy seasons (spring and fall), he works every day, at least eight hours per day, but usually more. His income totals \$230 per week during peak seasons.

During the tobacco seasons, Mr. L-'s employer furnishes him with crowded, unsanitary housing. Mr. L- and his family share a two-bedroom house with two other single farmworkers. He and his family share a small room with two twin beds. His employer does not supply him with meals, but has permitted them to live in the house off-season. Its furnishings consist of a rotting couch, a few chairs, and one large table in the kitchen. The hardwood floors are old and rotting. Although Mr. L- does not pay rent, he is unable to pay all of his bills, or afford groceries, clothing, or medicine for the children.

After arriving in the United States, Mr. L- developed appendicitis. Because of his undocumented status, he was unable to get medical

treatment. Only when his condition finally became an emergency did Mr. L- undergo surgery. He has not healed properly, but cannot afford further treatment.

Each year, after the tobacco harvest, Mr. L- searches for work in other industries. This year, he was able to find work at a window manufacturing company. Currently, he earns \$6.50 an hour as a machinist in the window factory, working 40 hours per week or more. Although the work is strenuous and the hours long, Mr. L- believes that he is fortunate because he receives overtime pay.



Photo Courtesy: Sr. Charlotte Hobelman, USCC

As wages have fallen, other benefits traditionally provided to farmworkers have eroded. The Commission on Agricultural Workers in 1992 concluded that "since the 1980s, the living and working conditions of hired farmworkers have changed, yet seldom improved."¹⁵¹ The final Commission report noted that farm employers are not required to provide housing, meals, or transportation, and that the availability of new workers has relieved employers of the need to offer such benefits to attract workers. Subsequent studies have reached the same conclusion.¹⁵²

Migrant farmworker housing often lacks heating and plumbing. In some cases, farmworkers forgo housing and live in their own temporary shelters. In

Washington State during the late 1990s, the lack of safe and affordable housing forced apple pickers to organize tent cities. Housing standards are rarely enforced in the case of farmworkers. Funding for migrant housing is modest, and demand far exceeds availability. Additionally, recent changes in the law have made migrant farmworkers and their families ineligible for publicly subsidized housing. To compound the current housing shortage, legislation introduced in Congress would eliminate the housing requirement for employers of temporary foreign agricultural workers, called "H-2A" workers.

Farmworkers have difficulty obtaining even minimal health care. Preventative health care, such as routine doctor visits and prenatal care for pregnant women, is often unavailable. While U.S. citizen farmworkers are eligible for Medicaid coverage, many legal immigrant and all undocumented workers, who together make up the large majority of farmworkers, are ineligible for the federal Medicaid program, except for emergency services. The Migrant Health Program, created to bring primary and preventative health care to rural worker communities, is severely underfunded, having received only \$72 million in 1997 and \$74 million in 1998.¹⁵³ As a result, the program served only about 17 percent of the entire farmworker population in 1998.¹⁵⁴ As in other industries, employers fire workers who have suffered work-related injuries.

"Mr. A-" is from Mexico, and has worked in the United States for 19 years. While working, Mr. A- hurt two of his fingers. He was fired because he could not continue to do the work required. His boss paid part of his doctor's bills, but not the entire amount. Mr. A- now works in the tobacco industry earning \$5 an hour, and worries about having enough money to pay the bills and rent.

Finally, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996¹⁵⁵ has excluded not only undocumented workers, but also legal immigrants from eligibility for many assistance programs.

2. Labor Protections and Working Conditions

Farm work is consistently rated one of the most dangerous jobs in the United States, with workers exposed to harsh working conditions, pesticides, long hours, and little protection from labor law violations.

In 1996, when he was 16 years old, "Mr. R-" travelled by foot to the United States from

Guatemala. He entered in California, but soon moved to Immokalee, Florida where he found work in the tomato fields. According to Mr. R-, "tomato picking is the work that is available for poor immigrants." Mr. R- has picked tomatoes and other crops for more than three years. After the tomato harvest, he travels north to pick other crops in Georgia and Virginia, or travels west to Missouri.

When Mr. R- picks tomatoes, he works from sun-up to sun-down, taking only a short lunch break. He works six days a week, and receives only 40 cents for every bucket of tomatoes he picks. A bucket holds 32 to 35 pounds of tomatoes. He earns roughly \$50 a day, picking 120-130 buckets. At the end of the workday, Mr. R- feels tired and his hands are stained green. Sometimes he feels faint from the pesticides. Neither the growers nor the crew bosses provide protection from pesticides, and he suffers from contact with them: "The liquid hurts my nose and mouth. Sometimes I feel nauseous and sometimes my skin peels." On one occasion, Mr. R- could not work for three days because of his exposure to pesticides. The crew boss did not pay him for the days he was too ill to work.

Mr. R- pays \$140 a month to live with 14 other workers in a trailer designed to hold four people. The trailer contains one big room and a bathroom. As Mr. R- puts it, he "lives crowded to pay the rent." Mr. R- cooks for himself. He walks everywhere, including to the grocery store, which is two miles away. He does not have health insurance. When he gets sick, he must either seek treatment at an emergency room or suffer through the illness.

Mr. R- participates in organizing activities as an active member of the Coalition of Immokalee Workers. He and others hold meetings in the labor camp, advise workers of their rights, and challenge mistreatment by crew bosses. In March 1996, four hundred people marched to a crew leader's home because of his mistreatment of a fellow worker. Coalition members also held work stoppages in 1997 and 1999 to protest their low wages.

Labor law protections for farmworkers remain inadequate. Indeed, federal protections do not uniformly apply to farmworkers. For instance, the FLSA exempts agricultural workers from its overtime pay requirements.¹⁵⁶ In addition, employers who use no more than 500 "man-days" of farm labor in any quarter of the preceding calendar year do not have to

pay minimum wage to their employees.¹⁵⁷ Nor do farmworkers who work for their immediate families, certain local hand harvest laborers, and laborers engaged in the range production of livestock benefit from the FLSA's minimum wage provision.¹⁵⁸

Moreover, the FLSA includes separate provisions for children employed in agricultural jobs.¹⁵⁹ In general, the FLSA permits children working on farms to work at younger ages and at more hazardous tasks than children working in nonagricultural jobs.¹⁶⁰ Children employed in the agricultural industry perform hard manual labor and often forgo educational opportunities to help their families in the fields. Stories of labor contractors and farmers who flout minimum age requirements are all too common. In 1998, DOL investigators found one four-year-old and 11 other children under the age of 12 working on Arizona farms picking onions. They discovered 36 children, four as young as six years old, harvesting onions for six growers in the Rio Grande Valley of Texas.¹⁶¹ Also in 1998, a labor contractor and packing shed operator near Las Cruces, New Mexico were cited by the DOL for illegally employing two ten-year-olds to harvest onions.¹⁶²

State laws likewise provide only minimal protections for child agricultural workers. Eighteen of the 46 states that responded to a 1997 survey on their child labor laws and practices had set no minimum age for work as a migrant or seasonal farmworker.¹⁶³ Sixteen states had minimum ages between nine and 12 years old.¹⁶⁴ Combined, the 46 states employed only eight and a half compliance officers exclusively assigned to investigate child labor violations.¹⁶⁵

Children suffer serious injuries in the agricultural industry due to dangerous and unhealthy working conditions, and exposure to pesticides and farm equipment. An estimated 400 to 600 children suffer injuries doing agricultural work each year.¹⁶⁶

Agricultural deaths accounted for 40 percent of all fatalities suffered by children working in all industries from 1992 to 1996.¹⁶⁷ In a tragic example in 1998, a farm truck ran over a nine-year-old boy picking blueberries.¹⁶⁸

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), enacted in 1982, provides basic protections to farmworkers, such as the right to be fully apprised of contract terms, to be paid wages when due, and to receive itemized, written statements of earnings for each pay period. Unfortunately, employers routinely violate this law. During 1998, the DOL Wage and Hour Division conducted 2,025 MSPA compliance actions across the country.¹⁶⁹ Investigators found violations in nearly half (889) of the (1,744)

actions covered by the law, and assessed more than \$970,000 in civil penalties in 402 of those cases.¹⁷⁰ Additionally, the DOL conducted a special study of grape pruning and tying in several western states. Investigators uncovered substantial noncompliance with both the MSPA and the FLSA.¹⁷¹ In California alone, 77 percent of the vineyards were not in compliance with the MSPA, and 21 percent of the growers and 52 percent of the farm labor contractors violated the FLSA's minimum wage provisions, usually when paying a piece rate.¹⁷² Not surprisingly, the GAO has reported that the DOL's enforcement activities in agriculture have declined over the past five years.¹⁷³



Photo Courtesy: Association of Farmworkers Opportunity Program (AFOP)

Workers who suffer abuses find it difficult to organize for better working conditions, wages, and benefits. Farmworker advocates point out that the MSPA fails to prohibit "blacklisting" workers who attempt to organize or who belong to unions. In addition, attempts to organize and bargain in North Carolina, Ohio, California, and other states have also been hampered by the employment of "H-2A" temporary workers and undocumented workers. Because of their poverty and a lack of federal funding for legal services, farmworkers usually do not seek relief in court. Furthermore, because of a lack of education and access to legal counsel, they are often unaware of their rights. In one case, a representative of the Farmworker Project of Benson, North Carolina attended a briefing of the North Carolina Growers

Association for newly arrived H-2A workers from Mexico. During the briefing, an official of the Association ordered the workers to throw away their copies of a "Know Your Rights" booklet produced by Legal Services before leaving the building.

Farmworkers are also exposed to health risks because of the use of dangerous pesticides on crops, despite certain protections under federal law. While information on the extent of pesticide-related illness is limited and inconclusive, one study estimates that agricultural workers suffer 10,000 to 20,000 cases of "physician-diagnosed" pesticide illness and injury per year, and recognizes that "diagnosed" incidents almost surely understate the problem.¹⁷⁴ A General Accounting Office report summarizes the problem from the perspective of children as follows: "[O]f the 1.2 billion pounds of pesticides used in the United States annually, 76 percent, or about 950 million pounds, is used in the agriculture industry. According to the Environmental Protection Agency (EPA), farmworkers are among the primary populations exposed to these pesticides. Children may be exposed to pesticides by doing farm work, by eating fruits and vegetables directly from the fields, by being caught in the drift from field applications of pesticides, or by direct contact with treated plants and soil. Children are more vulnerable than adults to the effects of pesticides."¹⁷⁵

A March 1998 report by the Florida Migrant Farmworker Justice Project found that dangerous pesticides had been used routinely in Florida, leading to health problems among farmworkers.¹⁷⁶ The report cited a 1980 study that found that more than 50 percent of Florida's farmworkers exhibited symptoms of pesticide poisoning in the previous year.¹⁷⁷ Statistics from other states indicate the prevalence of pesticide poisoning nationwide. California, for example, recorded 3,991 cases of pesticide-related illness from 1991 to 1996, an average of 665 cases per year.¹⁷⁸

Studies have also found that farmworkers routinely work beyond 40 hours a week without overtime pay and suffer from exposure to extreme weather conditions.¹⁷⁹ In 1999, for example, a farmworker in North Carolina died from overexposure to 98-degree heat. The previous year, a group of churches and nonprofit groups in North Carolina accused that state's Growers Association of leaving thousands of Mexican workers without protection from Hurricane Floyd.

3. The H-2A Agricultural Worker Program

The H-2A agricultural worker program allows employers, upon certification of a labor shortage, to import foreign workers into the United States

temporarily to help harvest crops. In 1998, the DOL certified the need for 34,898 temporary farmworkers to enter the country, slightly more than one percent of the agricultural labor force.¹⁸⁰ Although small, this program has been the subject of justifiable controversy.

Since the end of the "Bracero" program in 1964, which was notorious for its exploitation of temporary farmworkers, temporary agricultural worker programs have come under close scrutiny. Of particular concern have been abuses in wages and working conditions and the lack of labor protections for temporary workers. H-2A workers are not covered by the MSPA, which requires full disclosure of employment terms. Critics also argue that temporary worker programs undercut efforts to organize farmworkers, and therefore suppress wages for all workers. Supporters of the program, primarily agricultural employers, argue that the H-2A program is necessary because of domestic labor shortages that threaten the timely harvesting of crops.

Because of their temporary status, H-2A workers are dependent on employers to give them work, and thus cannot effectively protect their rights. A 1999 survey of H-2A workers conducted by the Carnegie Endowment for International Peace found that blacklisting of H-2A workers appears to be widespread; this occurs for such activities as not completing a contract, involvement in a dispute over wages and working conditions, and misbehavior.¹⁸¹ Other reports have found cases of employers failing to provide appropriate wages, travel costs, housing, or minimum work guarantees to H-2A workers, as required under federal law.

In October 1998, "Mr. JA-" was admitted to the United States as an H-2A worker to harvest strawberries and raspberries. Before his arrival, Mr. JA- was informed that he would work 36 hours per week from October 1998 to May 1999, he would be furnished with housing at no charge, and he would earn at least the equivalent of the adverse effect wage rate (AEWR); the minimum wage rates that the DOL has determined must be paid in order not to adversely affect U.S. workers. Upon Mr. JA-'s arrival in the United States, however, his employer withheld money for housing from his wages. He was not paid on an hourly basis, but rather on a piece rate basis that did not equal the AEWR. Furthermore, his employer did not make up the difference as required by law. Mr. JA- was not offered even three-quarters of the hours promised, and was not compensated for the lost



Photo Courtesy: Sr. Charlotte Hobelman, USCC

hours, as is also required by law. In addition, the grower failed to reimburse Mr. JA- for the expenses he incurred from recruitment and transportation. Mr. JA- is a member of a pending class action lawsuit filed against his employer for lost wages.

In October 1999, legislation was introduced in Congress that would alter the H-2A program and create a legalization program for undocumented farmworkers. The legislation would effectively lower current wages for H-2A workers, remove the housing requirement for employers, and eliminate the certifi-

cation process required before approving an H-2A worker request. While the proposed law would also "legalize" some agricultural workers, it would require five more years of agricultural work before a worker would qualify for legalization and would guarantee that only 20 percent of eligible workers could apply to be legalized each year. Opponents of the bill believe that the legislation would create a new underclass of farmworkers, subject to the near total control of their employers.

E. Meatpacking and Poultry Workers

In 1999, CLINIC conducted a series of interviews and meetings with meatpacking workers in Nebraska and Iowa, and poultry processing workers on the "Delmarva Peninsula," which includes Delaware and the Eastern Shore of Virginia and Maryland.¹⁸² The workers' stories confirmed the problems set forth in prior reports on these industries.¹⁸³

The poultry processing and meatpacking industries mirror each other in many ways, particularly in their treatment of immigrant laborers. In recent years, they have consolidated, restructured, and grown more dependent on an immigrant workforce.¹⁸⁴ These changes have led to dramatically increased profits, as well as an expansion of their respective workforces. From 1989 to 1998, the number of poultry processing workers grew from 188,600 to 246,300, and the number of meatpacking employees from 138,100 to 150,300.¹⁸⁵ Over the same decade, gross profits for industry leaders, Tyson Foods, Inc. (poultry), and IBP, Inc. (beef and pork), rose respectively from \$482 million to \$1.15 billion,¹⁸⁶ and \$179 million to \$662 million.¹⁸⁷ IBP, Inc. has reported record earnings in 1999.¹⁸⁸

1. Working Conditions

Industry growth can be traced, in large part, to increased worker productivity. Immigrant laborers report that "line" speeds have increased dramatically in recent years, and the data bears them out. Worker productivity, as measured by output per hour of work, nearly doubled in meatpacking and poultry processing plants from 1967 to 1995.¹⁸⁹

Greater productivity has not, however, translated into higher wages. In real dollars, average hourly earnings of workers in these industries have decreased.¹⁹⁰ In 1980, meatpacking workers earned an average of \$10.24 an hour (in real dollars), and poultry production workers \$5.46 an hour. By 1988, average hourly earnings had fallen in real dollars to \$7.25 and \$5.44 respectively, and by 1997 to \$6.36 and \$5.34. In 1998, the median wage for "meat, poultry and fish cutters and trimmers" was \$7.82 an hour, with 90 percent of workers in these industries earning less than \$9.98 an hour.¹⁹¹

The return received by workers for their labor can be suggested by "wages as a percentage of value added by manufacture." This statistic refers to the worth of products (at shipment), minus the materials, supplies,

and other non-personnel costs incurred by the manufacturer in producing them. In 1980, wages constituted 38 percent of "value added by manufacture" in the meatpacking plants, and 42 percent in poultry processing plants.¹⁹² These percentages dropped precipitously to 30 and 37 percent in 1988, and fell further to 30 and 28 percent by 1997. As these figures indicate, wages in these industries have not kept pace with productivity.

Beyond low wages, immigrant laborers in the poultry and meatpacking industries endure scandalous employment practices and working conditions. A 1997 survey by the OSHA and the DOL found that less than 40 percent of poultry processing plants complied with the FLSA, with most violations due to the failure to pay overtime or to keep accurate records of hours worked.¹⁹³ In many plants, management failed to pay for the time spent on work-related tasks, like cleaning and dressing in required clothing and equipment.¹⁹⁴ Some plants did not pay workers for the short breaks provided during the day, and required workers to pay for work-related clothing and equipment.¹⁹⁵ In its meetings with poultry workers, CLINIC learned that employers took significant deductions out of their workers' modest wages for company-provided housing, transportation, equipment and uniform cleaning costs. A report on the Delmarva poultry industry found that workers "work extra minutes on a regular basis and [are] not being paid for that time."¹⁹⁶

In one poultry plant, workers must be inside and ready for work early, but cannot punch in until the conveyor belt starts. An organizer of meatpacking workers described to CLINIC a similar practice in a Nebraska plant: the clock at the plant's entrance runs ahead of the clock inside the plant that marks the beginning of the pay day. In other meat processing facilities, 15-minute breaks (which occur at most twice a day) begin when the last piece of meat is placed at the beginning of the production line. Because it takes several minutes for the meat to reach the end of the line, workers toward the end lose their scarce break time. Other workers complain that they had not received pay for extra time they worked at the beginning or the end of the day, or that they worked long hours one day and short hours another, so that their work week did not exceed the 40 hours that would trigger overtime pay.

In both industries, workers must remove and put back on their uniforms within the 10- to 15-minute breaks allotted them. Stories abound of persons forced to urinate in their uniforms, including pregnant women,

because they could not use the crowded rest rooms within the short breaks allotted, or could not secure permission to leave the production line.¹⁹⁷



Photo Courtesy: UFCW News Service

Poultry processing and meatpacking workers receive scant employee benefits. Those interviewed by CLINIC did not become eligible to receive health coverage until they had worked for six months, notwithstanding the high rates of injury in their jobs. Yet, meatpacking and poultry processing plants often lure potential workers from the U.S./Mexico border (through recruiters and labor contractors) with promises of health insurance, housing, and a range of other benefits. Some meatpacking plant employees and their children obtain Medicaid before they become eligible for the health insurance offered by the meatpacking companies.¹⁹⁸ Hospital administrators in Midwest communities have reported increases in unpaid hospital bills, which they attribute to meatpacking workers who do not qualify for Medicaid or for health insurance from their companies.¹⁹⁹

The failure to provide basic benefits to immigrant laborers can strain local resources and lead to anti-immigrant sentiment in local communities. In effect, immigrants receive the blame for problems that are actually rooted in unjust employment practices.

Poultry processing and meatpacking represent

major industries in Missouri.²⁰⁰ As in other sections of the country, these industries overwhelmingly employ immigrant laborers.²⁰¹ As a result of the influx of these workers, native-born persons refer to certain areas in southern Missouri as "Mexico on the Mississippi." Newly arrived immigrants, particularly those who can no longer work because of work-related injuries or who otherwise do not have health insurance, can become a burden on the mostly rural communities in which they live.

In 1999, the Missouri Legislature formed a Joint Committee on Immigration in response to the perceived immigration problem. The House resolution, establishing the Committee, focused on the health, social service, educational, and law enforcement burdens created by immigrants.²⁰² In statewide hearings, advocates sought to reframe the issue as one of unfair labor practices.²⁰³ They described laborers who worked in grueling jobs eight and ten hours a day, but could not afford housing and health care; the annual turnover rate of 75 percent in certain poultry processing plants; and immigrants who suffered work-related injuries that made them physically unable to continue work prior to becoming eligible for employer health insurance.²⁰⁴

In December 1999, the Committee published its recommendations.²⁰⁵ The recommendations focused largely on the responsibility of corporations for their workers. The Committee noted that the state had "experienced an influx of...immigrants due largely to its burgeoning meat-processing industry."²⁰⁶ It encouraged Missouri corporations to offer English-as-a-Second-Language training for employees and their families, and stated that "before a business can qualify for state tax credits, grants, or other related benefits, it should assist its employees in finding adequate health care."²⁰⁷ The Committee also recommended the formation of a multi-cultural center and program to serve as an "all-encompassing resource for immigrants" in Missouri.²⁰⁸

The working conditions in meatpacking and poultry processing plants lead to startling rates of injury and illness. In meatpacking plants, "[t]he use of knives, hooks, and saws in hot and cold areas on wet floors presents the risk of cuts, lacerations, and slips; and the work presents the risk of repetitive stress."²⁰⁹ In a relatively modern meatpacking plant visited by CLINIC, a conveyor belt in a very loud and cold (38 degree) warehouse moved cuts of beef past tightly packed workers, who were each responsible for

making the same cut or series of cuts all day long. Work in the poultry industry is similarly demanding, repetitive, and often dangerous. As one report notes:

"Perhaps the most difficult and labor intensive job is held by live hangers, 'who shackle by the leg 25 birds/minute while the chickens scratch, peck and defecate all over them.' The workers on the assembly line must keep pace with fast-moving conveyor belts while they use knives, scissors and their bare hands to split chickens, scoop out their innards (called 'evisceration'), and remove the meat from the bone (called 'deboning')."

"Plant floors are made slippery with chemical cleaning agents, waste-ridden standing water and fat globules; the potentially toxic chemicals used in the plants create various health risks to workers; and the machinery used to process chickens in combination with the tremendous processing speed of the conveyor belts cause injuries ranging from cuts to dismemberment."²¹⁰



Photo Courtesy: UFCW News Service

In 1998, meatpacking and poultry processing work ranked first and third in incidence rates of repetitive trauma disorders, with 993.5 incidents per 10,000 employees in the meatpacking industry and 494.6 incidents per 10,000 employees in the poultry industry.²¹¹ For overall injuries and illnesses, meat-

packing and poultry processing work rated first and nineteenth, with an appalling 29.3 injuries per year for every 100 employees in the meatpacking industry, and 16.8 injuries per 100 employees in the poultry industry.²¹²

Repetitive stress or cumulative trauma injuries, such as carpal tunnel syndrome and tendonitis, occur because workers make the same "cuts" and repeat the same range of limited motions thousands of times a day. Management puts "tremendous pressure on workers to perform at break-neck speeds, with little to no time for breaks or job rotation."²¹³ It is not uncommon in either industry to find workers whose fingers lock, or who have lost the ability to grip properly or turn their wrists. Many poultry workers have "to undergo corrective surgery or live with daily pain and suffering, unable to perform simple tasks such as raising their hands over their heads or lifting their own children."²¹⁴ Beyond repetitive stress injuries, accidental "cuts" by co-workers on crowded production lines are common. Workers in both industries spoke of co-workers who had lost fingers, hands, and, in one case, a leg.

Injuries can also be traced to inadequate training. One plant manager conceded that he provided no training to new workers, claiming that he tried to hire only experienced workers. The lack of training leads to safety problems. Workers who do not know how to sharpen their knives, for example, face greater risk of repetitive stress injury because cutting with a dull knife puts more strain on their arms and hands, and also increases the likelihood of accidental cuts. The same is true for workers not trained in how to use their knives. Untrained workers also create additional work for experienced employees who must make up for their lack of productivity.

Absent severe injuries, workers cannot leave the production line. One meatpacking worker described how, when he attempted to cut a pig that should have already been dead, the pig kicked his knife into his stomach. The man continued to work while bleeding from the injury, and worked the next day as well, when his wound broke open.

Company doctors and nurses do not always honestly diagnose or appropriately treat work-related medical problems. To the contrary, many seem to minimize the severity of problems or attribute them to non-work-related causes.²¹⁵ Meatpacking workers consistently report that once workers become disabled or sick, their employers look for an excuse to fire them. Poultry workers likewise know that if they "become sick, disabled, or elderly," management will

"dispose" of them without reference to their legal rights.²¹⁶

Strong evidence also exists of discrimination against immigrants in meatpacking and poultry processing plants.²¹⁷ Although the victims vary from one plant to the next, many workers point to discrimination in pay, the types of jobs received, and promotions. In Delmarva poultry plants, "Latinos were the subjects of discrimination far more than any other immigrant or minority group. The discrimination reportedly took the form of verbal abuse and harassment, denial of scheduled bathroom breaks, being assigned the worst and dirtiest jobs, failing to receive promotions, and other forms of disparate treatment."²¹⁸ In Iowa pork packing plants, workers spoke of discrimination against Asian immigrants. Workers in both industries reported discrimination against women.

"Mr. M-" and "Ms. A-" bear no family relationship, but their stories parallel each other. Both fled countries ravaged by civil war, Mr. M- from Guatemala and Ms. A- from El Salvador. Mr. M-, a student activist in Guatemala, received asylum in the United States and, subsequently, became a lawful permanent resident. Ms. A- applied for asylum, but soon lost track of her case. Like thousands of other newcomers over the last decade, the two moved to Perry, Iowa, the rural town where IBP, Inc., the world's largest meat processing company, opened a pork packing plant in 1989.

Mr. M- is slight and frail; he sat in a child's rocking chair during a meeting between CLINIC and past and present IBP, Inc. workers. Despite his frailty, he was assigned to one of the plant's most physically "punishing" jobs, operating the O-shaped electrical knife called the "whizard," which is used to remove skin and fat. An anthropologist who worked in the Perry IBP, Inc. plant in 1992 reported that Latinos disproportionately received the worst jobs.²¹⁹ Whatever the reason for the assignment, Mr. M- worked for eight months, cutting literally thousands of pig carcasses each day. He generally worked from 6:50 a.m. to 4:20 p.m. The knife's vibrations caused him intense pain, particularly in his wrist, and his work came to haunt even his sleep.²²⁰ According to his sister, his head would swing back and forth in time with the knife's movements, as he slept. He would wake with locked fingers. The company reneged on its promises to provide medical treatment to Mr. M-.

Worse than the physical trauma was the abusive treatment of his supervisors. This culminated one

day when Mr. M-, in his supervisor's absence, went to the restroom without permission. On his return, the supervisor chastised him. Mr. M- argued that he could not possibly have asked for permission, and the supervisor gave him a formal warning. Mr. M- referred to the constant pressure and abuse by his supervisors as the "worst part of a bad experience" and said that the incident made him feel "like a slave." IBP, Inc. paid him \$9.90 an hour -- good money, as he saw it. He ultimately quit, however, to preserve his health and dignity; he "wanted to be treated like a human being." He also knew that once he was physically "ruined," the company would "kick" him out, and "take another person." More than a year later, Mr. M- still suffers pain in his arm from his work in the plant. He now works at a less stressful, but lower paying job.

Ms. A- worked long and stressful hours in the frigid temperatures of the production line, making a cut every three seconds. Her pay topped out at \$8.65 an hour, and she said that while she often worked overtime, she did not always receive overtime pay. Her workday typically ran from 6:30 a.m. to 3 p.m., with a 15-minute break in the morning and a 30 minute lunch break. Like Mr. M-, she had difficulty using the bathroom during these breaks, partly because she needed to remove and put back on her uniform in the short time allotted. After three and a half years, Ms. A- severely injured her back. This scared her because she knew that the company "threw out" people who could not work. A company doctor told her that she could continue to work. A company nurse, at one point, explained that the injury had resulted from her advanced age. She tried less stressful work within the plant, but the pain persisted. She ultimately visited an independent doctor, who confirmed the severity of her injury and advised her that she could no longer perform work like meat cutting, cooking in a restaurant, or even caring for children. In late 1997, IBP, Inc. gave her a 30-day ultimatum to find a new position in the plant, forcing Ms. A- to leave her job. From that point on, the company refused to pay her medical bills. Ultimately, Ms. A- won a modest legal judgment, but her pain persists. It hurts her to perform even basic household tasks.

Ms. A- and her three children now subsist on her husband's weekly paycheck of \$315 from the same plant. Already, Ms. A-'s husband has been forced to change jobs within the plant because of pain in his fingers. After CLINIC interviewed Ms.

A- on a frigid day in mid-December, she rushed off to meet the power company that had threatened to shut off her family's electricity for nonpayment.



Photo Courtesy: AFOP

2. Labor Protections

Immigrant laborers in the meatpacking and poultry processing industries consistently complained to CLINIC about labor unions. Workers in non-unionized plants typically argued that unionized plants did not pay better wages or provide greater benefits. Workers in unionized plants typically said that the unions "don't count," "do nothing," or "don't help." At the same time, workers recognize their individual powerlessness and, in particular, the vulnerability of the undocumented.²²¹ In fact, they uniformly asked that their names not be identified, and expressed fear of retaliation by their employers. This fear seems justified, given that many laborers live in "company" towns or at least rural communities in which their employers wield immense power. A Missouri program in which welfare recipients must work in poultry processing or meatpacking plants or lose their benefits represents a telling example of this power.²²²

Laborers and advocates point to instances of retaliation. In 1997, a Catholic priest in Omaha, Nebraska hosted a series of meetings with meatpacking workers from his parish to identify their work-related problems. This process culminated in a parish hall meeting between the workers and plant management. The workers presented a list of basic concerns, such as the failure of persons who worked at the end of the

production line to receive pay for the extra time they worked, the shortage of knife sharpening stones, and the lack of time to use the bathrooms. Management met their concerns with anger. The next day, a plant supervisor called a special meeting of all workers, challenging anyone with complaints to speak. None of the workers did. According to the priest, management fired some of the workers and harassed others into not attending further meetings in the parish.

"Mr. U-" combines a strong work ethic and commitment to family. He fled his native El Salvador in the early 1980s and, after a brief stay in Mexico, entered the United States. His permanent resident wife and two U.S. citizen children live in California, but he has moved to Perry, Iowa to work.

Until recently, he made \$9.70 an hour working on the production line in the IBP, Inc. plant in Perry. His modest salary allowed him to cover his rental and living expenses in Perry, to send \$500 to \$600 a month to his family in California, and to send another \$500 every third month to his father in El Salvador. Mr. U- recently lost his job, allegedly because he has not gotten his work permit renewed. He believes, however, that he was laid off due to his efforts to organize workers in Perry.

In his brief time at the IBP, Inc. plant, Mr. U- experienced high line speeds, inadequate bathroom breaks, abusive supervisors, colleagues with repetitive stress injuries, and long stressful shifts punctuated with only one 15-minute break and a 30-minute lunch break. He would like to return to work so that he can resume sending money to his family in California and El Salvador.

Most immigrant workers in the meatpacking and poultry industries are not aware of their legal rights, much less how to realize them. While government officials charged with consumer safety maintain a regular presence in these plants, those responsible for protecting workers do not. A labor organizer in Nebraska told CLINIC that only eight OSHA inspectors cover the state of Nebraska. State labor officials only occasionally visit meatpacking plants in Nebraska, and workers report production line slow-downs during these visits. Immigrant poultry workers on the Delmarva Peninsula learn of their legal rights and remedies --if at all-- through word of mouth, and often do not understand even the availability of workers' compensation for injuries suffered on the job.²²³

3. *Operation Vanguard's Unintended Consequences*

During the spring and summer of 1999, the INS instituted an enforcement program, known as "Operation Vanguard," targeting the meatpacking industry in Nebraska. By September, the INS had suspended the program, delaying its planned expansion to other states due to privacy concerns raised by its main federal partner in the effort, the Social Security Administration (SSA). Under the program, the INS collected the employment eligibility verification documents (Forms I-9) for every meatpacking employee in Nebraska. It then forwarded relevant employee information to its federal partner agencies, primarily the SSA, to run through their databases. Workers whose documents did not check out received "discrepancy" letters, and were summoned to meetings with INS officials at their plants. Of the more than 24,000 cases reviewed, the INS found potential "discrepancies" in 4,400 to 4,800 cases. Roughly 1,000 of these persons came to their INS interviews; the remainder simply left their jobs.²²⁴ Only 34 of the 1,000 persons interviewed by the INS were placed in proceedings to remove them from the United States. The rest satisfactorily explained the discrepancies and kept their jobs.

Community organizers, religious leaders, and civil libertarians formed an unlikely alliance with the meat processing industry to oppose the program. One plant manager referred to the program in hyperbolic terms as a form of "ethnic cleansing." Months later, he complained bitterly of how it had permanently depleted his workforce and brought job applications to a standstill. Workers and community organizers argue that the program failed to meet its primary objective -- to remove the undocumented from the workforce -- for two main reasons. First, Operation Vanguard generally did not catch workers who used work authorization documents that belonged to others. As a corollary, the undocumented workers it did catch could return to work with different documents. Second, the program had the unintended effect of causing documented workers, particularly those with undocumented family members, to leave their positions. These workers feared that the program would ultimately lead to the removal of family members from the United States.

"Mr. X-" came to the United States from Mexico in 1984 to work as a migrant laborer. He became a permanent resident through the Special Agricultural Worker "amnesty" program under

IRCA. Mr. X-'s wife, two children, and brother also reside in the United States. His wife and brother are undocumented. For eight years, Mr. X- has lived in Nebraska and worked in a meatpacking plant, earning \$10.50 an hour. In May 1999, Operation Vanguard targeted his plant. Although a lawful permanent resident, Mr. X- received a "discrepancy" letter from the INS. Fearful that a meeting with the INS would lead to immigration problems for his wife and brother, he resigned from his job. Mr. X- found employment at a concrete company, earning \$8.50 per hour; he worked as a concrete layer for two months, before returning to his old job at the meatpacking plant. When Mr. X- returned, the plant owner reduced his pay by \$2.00 per hour for the same work he did before his departure. To compensate for the family's loss in income, Mrs. X- has begun to work without authorization, increasing her risk of removal.

4. *The Undocumented*

Mr. X- was fortunate in that he was legally entitled to work. Undocumented workers face the same job hazards as others, but live in constant fear that their lack of legal status will be discovered, and that they will lose their jobs.

"Mr. and Mrs. S-," Mexican nationals, entered the United States in the mid-1980s. They have worked in the same pork packing plant for four years and, before that time, in another plant. Mrs. S- lost her previous job due to her undocumented status, but was nonetheless asked to stay on until she could train her successor. The couple has four children, ages 17, 14, 12, and 1 1/2. Their two youngest children are U.S. citizens by birth. The oldest, like their parents, are undocumented.

Both Mr. and Mrs. S- work on the production line, from 6:30 a.m. to 6 p.m. on busy days, and 6:30 a.m. to 5 p.m. on normal days. They occasionally work on Saturdays as well. They receive 15-minute breaks every two and a half hours, and 30 minutes for lunch. Over the last three years, Mr. and Mrs. S- have witnessed a dramatic increase in line speed and production. However, their pay has not kept pace with their increased productivity; the plant's maximum wage has increased only 75 cents an hour, from \$9.50 to \$10.25, over the same period. Mrs. S- insists that women in the plant receive less than men for the same work. In fact, Mr. S- makes \$10.25 an hour and Mrs. S- earns \$9.50 an hour. However, she said that women who challenge these disparities

are told to "go home." This leaves undocumented persons, like herself, with few options.

The company provides Mr. and Mrs. S- with health insurance, requiring a \$14 weekly contribution. It charges employees for the cost of cleaning their uniforms, and for plastic gloves. It does not provide a pension or sick pay. After three years of work, Mr. and Mrs. S- finally began to receive two weeks of vacation per year. Neither Mr. S- nor Mrs. S- work under a contract.

Mr. and Mrs. S- must ask permission to use the bathroom and often permission is delayed or denied. If granted, the pace of the production line does not slow, and their co-workers must pick up the slack.²²⁵ Supervisors yell at the workers, using abusive language. Workers accidentally cut each other often, due to their proximity. The lack of training in how to use and sharpen knives increases the risk of accidents. In most cases, supervisors require injured employees to keep working. Occasionally, workers will be taken to a hospital for stitches, then returned to work. More violent injuries occur as well. One employee, for example, recently lost his hand. After several years on the job, Mr. S- suffers from recurrent hand and back pain. Mrs. S- suffers

from "trigger" finger: her finger springs open, she cannot uncurl it gradually. Mr. and Mrs. S- do not see the advantage of unionizing, and fear that management will make good on its threat to close the plant rather than allow the workers to organize.

Like workers throughout the meatpacking and poultry industries, Mr. and Mrs. S- provided their employers with false documents. The company knows that they are false. Indeed, their current boss has said that the company cannot prevent immigration raids, but will do nothing to undocumented workers in the meantime. Mr. and Mrs. S- have made a life for themselves in the United States. They own their home. Their children have grown up here, and know no other country. Their lack of legal status puts them at risk of losing the lives they have built.

III. SMUGGLING AND INDENTURED SERVITUDE

Not every individual seeking to live and work in the United States enters via the U.S./Mexico border. Some brave shark-infested waters on rafts and unseaworthy vessels to land on Florida shores. Others hide in darkness for weeks in metal containers, crossing the Pacific Ocean from China to seaports like Seattle or Los Angeles. Some travel by airplane from China to South America, then to Miami, and ultimately to New York City.

Since 1997, the INS has apprehended significantly more undocumented persons from countries other than Mexico, such as Honduras, El Salvador, Cuba, and the People's Republic of China (PRC).²²⁶ Migrants from these countries rely more heavily on smugglers to enter the United States.²²⁷ Human trafficking is a global industry,²²⁸ with estimated revenues of \$6 billion a year.²²⁹ It "shows up in every major city (in the United States)."²³⁰ However, this section of the report will focus on the notorious Chinese smuggling networks run by organized crime syndicates. These smugglers, called "snakeheads," charge exorbitant rates and often keep people in bondage or involuntary servitude until they have "paid off" their debts. In 1999, an estimated 12,000 to 24,000 nationals from the PRC entered the United States illegally, most of them with the help of smugglers.²³¹

"Mrs. C-" came to the United States from China in 1989, leaving behind her husband and children. She was 44 years old at the time and suffered religious and political persecution in her homeland. The Communist authorities persecuted her because of her Catholicism and killed her father due to his affiliation with the Nationalist Party.

Mrs. C- paid snakeheads \$20,000 to smuggle her into the United States. She was given a Chinese passport and a visitor's visa to travel to Bolivia. When she arrived in Bolivia by airplane, the snakeheads gave her a Taiwanese passport and airline tickets to Miami. Once in Miami, they took her passport and gave her an airline ticket to New York City.

Upon arriving in the New York area, Mrs. C- learned that she had to pay off her debt immediately. A woman who had opened a number of restaurants in New Jersey agreed to pay Mrs. C-'s debt to the snakeheads. In exchange, Mrs. C-

agreed to work for two years in one of the woman's restaurants. Mrs. C- acknowledged that at the time she did not know what the working conditions would be like. At the restaurant, Mrs. C- cooked, cleaned, washed dishes, prepared the restaurant for business in the morning, and closed the restaurant at night. Mrs. C- worked for 12 hours on weekdays and longer on the weekends. She lived in the restaurant's basement.

Mrs. C- had nearly completed her second year at the restaurant when she fell ill, suffering from bleeding for several days. Both she and her fellow workers told the boss that she could no longer work. Mrs. C- still owed \$7,000. Her boss added \$2,000 to Mrs. C-'s debt because of interest she said that Mrs. C- owed. Moreover, because Mrs. C- sent \$100 to her family in China each month, she owed her boss an additional \$2,000. Hence, Mrs. C- left the restaurant still owing \$11,000.

Mrs. C- went to Chinatown in New York City and rented a very small room for \$100 a month. Most rooms cost three times that much, but Mrs. C-'s room did not have a radiator or light. She furnished the room with items that she found on the street. Fifty people lived in the building and shared a small kitchen and two bathrooms.

After moving to Chinatown, Mrs. C- spent the next several months taking care of her medical problems, which included surgery. She began working again six months later, finding a job in the garment industry. Factory work proved grueling. Typically, Mrs. C- arrived at her sewing machine at 8 a.m. and left at 9 p.m. Because she kept her head down while she worked, she never knew the workers in front or in back of her. Mrs. C-'s first assignment was to sew the linings of coats. She was paid by the piece, earning 60 or 70 cents for sewing the inside of a sleeve and 50 cents for sewing the back of a coat. Workers at the factory did not belong to a union. The employer offered neither benefits nor insurance. Mrs. C- worked for two years at the clothing factory to pay the \$11,000 debt that she owed to her previous boss.

Mrs. C- and others like her pay snakeheads up to \$50,000 to be transported to the United States, often in cargo ship containers.²³² Their passage to the United States is perilous and dehumanizing, and the costs are high. Some, like three PRC nationals who recently perished in filthy containers, do not make it.²³³ Those who do have to work for years in sweatshop-like conditions to pay off their debts.

A. Trafficking in Workers and the Chinese Smuggling Network

The Chinese organized crime network runs a sophisticated and profitable global business.²³⁴ It shepherds roughly 100,000 people per year to a range of destinations around the world,²³⁵ with annual profits reported to be in the range of \$3.1 billion.²³⁶

Mrs. C-'s case illustrates the network's sophistication. Her smuggling package included fraudulent documents, passage out of China, two transit locations (Bolivia and Miami), transportation to a final destination (New York City), and a safe place to stay for 10 days. In many situations, the families of Chinese migrants smuggled to the United States must scrape together a down payment, often \$1,000 to \$5,000.²³⁷ This is an enormous sum in a country with an average yearly income of \$400. The newcomer must then pay the remainder in installments or through loans. To pay their debt, many accept any job that comes their way and often take multiple jobs.²³⁸ Some, like Mrs. C-, indenture themselves. Unfortunately, many Chinese come to the United States with unrealistic financial expectations, never realizing they will end up working in a sweatshop.²³⁹

"Mrs. Lin" and her husband arrived from China five years ago. Their passage to New York included a 45-day trip across the Pacific in an unseaworthy fishing boat, which almost capsized before reaching the Mexican coast. Fortunately, both Mrs. Lin and her husband survived the ordeal. Once in New York, they began work without a day's rest. Mrs. Lin's husband, whom she now rarely sees, could only find a job in a Chinese restaurant in New Haven, where he works 12-hour shifts and sleeps on the kitchen floor at night. Mrs. Lin lives in a one-room apartment in Chinatown with her in-laws. She works 14 hours a day as a seamstress at home. She would work more if the in-laws didn't complain about the noise after midnight. After four years, the Lins have only paid off half of their debts.²⁴⁰

Trafficked workers find themselves enslaved or indentured for many reasons. As discussed, many must pay off immense transportation debts or risk violence to themselves or their families. Others are lured to America with the promise of a well-paying job, but instead find themselves forced to work in sweatshops as seamstresses or in brothels as prostitutes. Still others are exploited because they are

handicapped or because their families sold them into servitude. In many of these cases, the victims are women and children. In 1999, a State Department official estimated that "50,000 women and children are brought to the United States each year to be forced into prostitution, bonded sweatshop labor and domestic servitude."²⁴¹

This has led the federal government to focus on smuggling as an enforcement priority, with mixed results.²⁴² A few of its enforcement successes illustrate the severity of this problem. In February 2000, three members of one family received maximum sentences for recruiting and bringing women from China to Saipan, in the Northern Mariana Islands (a U.S. territory), to work at a karaoke club, where they were forced to have sex with customers.²⁴³ The women were not allowed to stop working until they had paid debts owed to the family for bringing them to Saipan.

In August 1999, 13 members of a smuggling ring, all foreign nationals from Taiwan, China, and Vietnam, were indicted for importation of people for prostitution.²⁴⁴ The ring had smuggled 500 to 1,000 women from China, Thailand, Korea, Malaysia, and Vietnam into the United States to work in brothels in Atlanta. The women agreed to "contracts" that obliged them to work off debts of \$30,000 to \$40,000. While some knew that they would work as prostitutes, others thought they would be working as seamstresses. Barbed-wire fences, dogs, and guards kept them imprisoned.

In August 1995, authorities freed 71 Thai workers from years of virtual slavery. Recruiters in Bangkok had lured the women to Los Angeles, with the promise of high wages and reasonable hours.²⁴⁵ When they arrived, the women were taken directly from the Los Angeles International Airport to an apartment complex in the San Gabriel Valley, encased by razor wire and spiked fences, where their passports and valuables were confiscated. They were paid \$1.60 an hour and forced to sew 16 or more hours a day. Full-time guards prevented them from leaving the compound. Seven Thai nationals ultimately pled guilty to violating federal criminal civil rights laws.²⁴⁶

In another case, five suspects were indicted in Illinois for luring Russian women into the United States by telling them that they would work in Broadway-style shows, and then forcing them to work in nude dance clubs and become prostitutes.²⁴⁷

In Florida, 16 people were indicted for luring Mexican women and girls as young as 14 to the United States and forcing them to work as prostitutes in Florida and

other states.²⁴⁸ Those who refused to work or attempted to leave were beaten. One woman who tried to escape was locked in a closet for two weeks. Those who became pregnant were forced to have abortions.

In a widely publicized case in 1997, authorities learned that nearly 100 Mexican nationals -- all hearing impaired -- were being forced by smugglers to sell pencils and trinkets in subways and on street corners for 12 hours a day in New York City, Los Angeles, Chicago, and Charlotte, North Carolina.²⁴⁹ When the victims did not bring in enough money, they were beaten and their families threatened. Eighteen defendants pled guilty in New York for offenses against 60 Mexican nationals.²⁵⁰

According to the Coalition to Abolish Slavery and Trafficking, a Los Angeles-based nonprofit organization, "[o]f the thousands of cases that might be out there, we only see a few....These people are really afraid. No matter how exploitative their situation is, they're still more afraid of the INS."²⁵¹



Photo Courtesy: Sr. Charlotte Hobelman, USCC

IV. CONCLUSION

The plight of low-income immigrant laborers in the United States should offend our sense of justice. In the world's richest country, immigrant laborers should not suffer from rock-bottom wages, dangerous working conditions, and abusive employers. As this report reveals, these problems cut across many industries and spring from an array of legal and insti-

tutional factors. These realities cry out for a national response.

In recent months, the United States Catholic Conference (USCC), the AFL-CIO, the U.S. Chamber of Commerce, and others have called for an amnesty program for undocumented workers and an end to employer sanctions.²⁵² An amnesty program would acknowledge the significant contributions made by low-wage immigrant laborers to our nation's prosperity and would ensure that the United States has continued access to this labor pool. It would also recognize the family and other equitable ties immigrant laborers have developed in the United States.

Beyond these specific measures, our nation needs to rethink its attitude toward low-income immigrant laborers. These workers and their families struggle every day to pay the rent, put food on the table, and provide other necessities of life for themselves and their children. Many cope by residing close to relatives who can help them with expenses and childcare, while some are forced to send their children back to their homelands to be raised by relatives.²⁵³ They work hard to support their families and to contribute to the economic well-being of this country.

Our approach needs to go beyond improving wages and working conditions, enforcing labor standards, and respecting the right to organize. As a nation, we need to recognize that immigrant laborers personify our nation's core values: patriotism, hard work, strong families, an effort to better one's condition, and a desire to contribute to the nation. By allowing current conditions to persist, we dishonor these values. In treating low-income immigrants with dignity and respect, we would build a better future for these laborers and for our nation.

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