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# The Unspoken Voices of Indigenous Women in Immigration Raids

*Karla Mari McKanders\**

*Like the canary's distress, which alerted miners to poison in the air, issues of race point to conditions in American society that endanger us all.*

—LANI GUINIER, *THE MINER'S CANARY*<sup>1</sup>

## I. INTRODUCTION

Like the canary in the mine, the voices of indigenous Guatemalan women detained in immigration raids signal conditions within the immigration system in need of change. This Article examines the conditions in which indigenous Guatemalan women migrate to the United States and the conditions under which they operate and work once here. In examining how the law and social constructs interact to influence their experience, this Article critiques how lawmakers can use the silenced voices of indigenous Guatemalan women to reform the U.S. immigration system. This Article also examines how different systems interact to subordinate these women. Specifically, indigenous Guatemalan immigrant women are “othered” within the immigration system. Their “other” status makes them more vulnerable to exploitation.

The symposium addressed how race, gender, and class intersect in employment, economics, and the law. This topic comes at a time when there is outcry regarding immigration reform in our country. Further, our country is experiencing an economic downturn where migrant workers are decried to be a drain on fiscal resources. This Article explores how race, class, ethnicity, education level, gender, and immigration status intersect to create the conditions under which women of color, specifically indigenous women from Guatemala, migrate to the United States.

Currently, there is an increasing number of women from Mexico and

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1. *About THE MINER'S CANARY*, MINERSCANARY.ORG, <http://www.minerscanary.org/about.shtml> (last visited Nov. 1, 2010) (reviewing LANI GUINIER & GERALD TORRES, *THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* (2002)).

Central America migrating to the United States.<sup>2</sup> Further, Guatemalans were the largest population of immigrants arrested in the country's largest immigration raids in Postville, Iowa; New Bedford, Massachusetts; and Chattanooga, Tennessee.<sup>3</sup> This Article uses these statistics to analyze how the treatment of indigenous women from Guatemala working as unskilled laborers evinces the conditions within the immigration system that need to be changed.

During the last few years, Immigration and Customs Enforcement (ICE), a division of the Department of Homeland Security (DHS), executed several workplace raids to deport undocumented immigrants who were unauthorized to work in this country. In May 2008, in Postville, Iowa, ICE arrested 389 immigrants in the largest raid in this country's history.<sup>4</sup>

2. *Increasing Number of Rural Women Migrating to the United States*, SOURCEMEX ECON. NEWS & ANALYSIS ON MEX. (Mar. 3, 2004), <http://www.allbusiness.com/north-america/mexico/756999-1.html> [hereinafter SOURCEMEX] ("Confederacion Nacional Campesina (CNC) said women now comprise 20 of every 100 undocumented Mexicans crossing the border into the US, compared with a ratio of five to 100 during the 1980s. The CNC says that about 200,000 rural women have emigrated to the US since the early 1990s."); *Migration from Guatemala to the US*, U.N. INT'L RES. & TRAINING INST. FOR ADVANCEMENT OF WOMEN, <http://www.un-instraw.org/migration/migration-map/migration-from-guatemala-to-usa.html> (last visited Sept. 22, 2010) [hereinafter *Migration from Guatemala*] ("Given the difficulties involved in traveling by land from Guatemala to the United States via unauthorized routes, the majority of those who migrate in this manner are men. It is estimated that 72% of the resident population living abroad are men and 28% are women.").

3. *Community Torn Apart by S.C. Immigration Raid: Federal Officials Arrest 330 Workers at Greenville Chicken Plant*, MSNBC.COM (Oct. 9, 2008), <http://www.msnbc.msn.com/id/27091738/> (explaining that most of people detained were of indigenous Guatemalan descent); Becky Evans, *The New Immigrants: Wages Earned in Whaling City Transform Guatemalan Village*, SOUTHCOASTTODAY.COM, June 29, 2008, <http://www.southcoasttoday.com/apps/pbcs.dll/article?AID=/20080629/SPECIAL/80627006/-1/SPECIAL62> (explaining that most of New Bedford's Guatemalans are from two rural villages "located in the northwest highlands of Quiche, one of Guatemala's poorest provinces and the region") ("To escape Guatemala's crushing poverty, high unemployment and violent crime, many Quiche residents are migrating to New Bedford, Providence and other U.S. cities with growing Central American populations. An estimated 1.4 million Guatemalans (11 percent of the population) live in the United States, as many as 60 percent illegally. Immigration advocates estimate that there are 3,000 to 5,000 Guatemalans, mostly Mayan immigrants, living in New Bedford."); Erik Camayd-Freixas, *Interpreting After the Largest ICE Raid in U.S. History: A Personal Account* (June 13, 2008) (unpublished essay) (on file with the New York Times), available at <http://graphics8.nytimes.com/images/2008/07/14/opinion/14ed-camayd.pdf> (explaining that the immigrants arrested "appeared to be uniformly no more than 5 ft. tall, mostly illiterate Guatemalan peasants with Mayan last names, some being relatives . . . , some in tears; others with faces of worry, fear, and embarrassment. They all spoke Spanish, a few rather laboriously." (presumably they were native speakers of indigenous languages); Reid Maki, *Immigration Raid Reveals Dirty Secret in Meat Processing Plants*, NAT'L CONSUMERS LEAGUE'S SAVVY CONSUMER BLOG (Oct. 23, 2008), <http://savvyconsumer.wordpress.com/2008/10/23/immigration-raid-reveals-dirty-secret-in-meat-processing-plants/> (stating that many workers in the raids were indigenous Guatemalans); *New Bedford "I Couldn't Understand Why Immigration Would Use These Tactics"*, NAT'L IMMIGRANT BOND FUND DIGNITY & DUE PROCESS BLOG (Nov. 21, 2009), <http://immigrantbondfund.wordpress.com/2009/11/21/new-bedford-i-couldn-t-understand-why-immigration-would-use-these-tactics/> [hereinafter NAT'L IMMIGRANT BOND FUND] ("Most of the people caught up in the raid at New Bedford were indigenous people from Guatemala. We are 99% orphans—our parents were killed in the early 1980's, when the Guatemalan government targeted indigenous people. We came here because we heard about 'human rights' in the United States.").

4. Kim Bobo, *Dispatches from the Workplace: Postville: Ground Zero for the Intersection of*

Approximately seventy-six of the immigrants detained in the raid were women.<sup>5</sup> Similarly, in April 2008, ICE arrested approximately 300 immigrants nationwide in the Pilgrim's Pride raid.<sup>6</sup> Through a coalition of advocates in Chattanooga, statistical information revealed that approximately sixteen of the detainees released in Chattanooga were women, many of whom were indigenous Guatemalans.<sup>7</sup> In both Chattanooga and Postville, ICE released the women, pending their deportation proceedings, on humanitarian grounds to care for children or because they were pregnant. When discussing workplace raids, most news articles focus on the mass deportation of men. This paper will take a different perspective, examining indigenous immigrant women's stories in migrating to the United States and seeking employment with large factories and their interactions with the immigration system.

This Article uses intersectionality theory to critically analyze ways in which the immigration system works to perpetuate the subordination of indigenous Guatemalan undocumented women workers. This theory highlights the need to account for multiple grounds of identity when considering how legal systems facilitate the subordination of marginalized groups. The goal is to use intersectionality theory to critique the treatment of the outsider in order to formulate ways to reform the immigration system for all groups.<sup>8</sup> This analysis reveals that the immigration system marginalizes

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*Immigrant and Workers' Rights*, RELIGION DISPATCHES (Aug. 6, 2008), <http://www.religiondispatches.org/archive/politics/493/>.

5. *Id.*

6. Dianne Solís & Alejandro Martínez, *Immigration Agents Arrest Nearly 300 at Pilgrim's Pride Plants*, DALLAS MORNING NEWS, Apr. 16, 2008, <http://www.dallasnews.com/sharedcontent/dws/dn/latestnews/stories/041708.dnmetice.6c9184cf.html>.

7. Information was compiled by a coalition of attorneys across the state of Tennessee who represented immigrants released on humanitarian grounds pending their immigration proceedings.

8. There are many articles that analyze and apply Kimberlé Crenshaw's intersectionality theory. The literature is vast. This Article simply acknowledges the varied texts that extrapolate on Crenshaw's intersectionality theory. See Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) (discussing how women of color are marginalized in racism and feminist discourse). See also Irene Browne & Joya Misra, *The Intersection of Gender and Race in the Labor Market*, 29 ANN. REV. SOC. 487, 487-88 (2003) ("Intersectional approaches maintain that gender and race are not independent analytic categories that can simply be added together. Instead, feminist sociologists call for an alternative theorizing that captures the combination of gender and race. Race is 'gendered' and gender is 'racialized,' so that race and gender fuse to create unique experiences and opportunities for all groups—not just women of color") (citation omitted); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Kevin Johnson, *The Intersection of Race and Class in U.S. Immigration Law and Enforcement*, 72 L. & CONTEMP. PROBS. 1 (2009) [hereinafter Johnson, *Race and Class*]; Kevin Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class*, 42 UCLA L. REV. 1509 (1995) [hereinafter Johnson, *Public Benefits*]. For legal scholarship on the undocumented see generally Linda S. Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law*, 1988 WIS. L. REV. 955, 986 (1988); Kevin Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law Enforcement*, 1993 BYU L. REV. 1139 (1993) [hereinafter Johnson, *Los Olvidados*]; Gerald P.

uneducated, undocumented, unskilled laborers, indigenous women in particular.

The Article will proceed in four parts. The first Section details how migratory laborers are forced to work in an underground system that fails to recognize their humanity and their work. The Section will detail how immigration raids affect undocumented immigrant employees and the towns in which they work. The second Section tells the story of Marina,<sup>9</sup> a Mam Mayan indigenous woman from Guatemala who was detained in the Pilgrim's Pride immigration raid. Her story illustrates firsthand how intersectionality theory can serve as a lens to examine how different legal and social constructs contribute to women's subordination. The third Section examines intersectionality theory's applicability to immigration law. This Section presents a detailed analysis of how ethnicity, immigration status, gender, and class intersect to subordinate indigenous Guatemalan women. The last Section addresses how intersectionality theory can be used to dissolve the multiple layers of subordination within the immigration system.

## II. THE INVISIBLE STATUS OF THE UNAUTHORIZED INDIGENOUS UNSKILLED IMMIGRANT WORKERS

Traditionally, work is conceptualized from a male dominated perspective wherein women and persons of color have been subordinated. In the context of immigration raids, there is a complex interplay between the supervisors within the plant, the hierarchy with the line workers, the larger company, and ICE. All of these relationships coalesce and perpetuate indigenous Guatemalan women's subordination in the workplace.

### *A. Underground Employment System*

The work environment in meat processing plants illustrates deeply

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López, *Undocumented Mexican Migration*, 28 UCLA L. REV. 615 (1981); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); Maria L. Ontiveros, *To Help Those Most in Need: Undocumented Workers' Rights and Remedies Under Title VII*, 20 N.Y.U. REV. L. & SOC. CHANGE 607 (1994). See generally Special Rapporteur on the Commission on Human Rights, *Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference*, pp. 9–10, Preparatory Comm., U.N. Doc. A/CONF.189/PC.3/5 (July 21, 2001), available at [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/644460b7ef7d41c9c1256aa9003453c5/\\$FILE/G0114744.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/644460b7ef7d41c9c1256aa9003453c5/$FILE/G0114744.pdf) [hereinafter *Preparatory Committee*] (acknowledging three different types of intersectional subordination: (1) targeted discrimination which “sometimes results from abuses that are specifically targeted at racialized women;” (2) compound discrimination which occurs when women are “subject to discrimination because of their gender roles and because they are members of racial or ethnic groups;” and (3) structural discrimination, which occurs when “policies intersect with underlying structures of inequality to create a compounded burden for particularly vulnerable women”).

9. “Marina” is the pseudonym of an actual client of the University of Tennessee Legal Clinic who was detained in the Chattanooga Pilgrim's Pride raid. The name of the client is kept anonymous and some of the facts modified due to the highly personal nature of asylum claims and immigration cases. Documentation is on file with the author.

embedded hierarchies of class, gender, race, ethnicity, and nationality.<sup>10</sup> Specifically, conditions at the meat processing plants highlight differential privileges and disadvantages. Most of the immigrants arrested in the Postville, Chattanooga, and New Bedford immigration raids were poor, indigenous Guatemalans.<sup>11</sup> Hiring undocumented workers permits U.S. employers to maintain work conditions that are unsatisfactory to U.S. citizens, and prevents employers from having to bear the costs of working with unions, complying with health and safety codes, and complying with wage and hour laws.<sup>12</sup> When the immigrant workers threaten to organize, the employers fire them or contact ICE.<sup>13</sup>

U.S. laws provide lower protections to undocumented workers. For example, in *Hoffman Plastic Compounds v. NLRB*, the U.S. Supreme Court held that U.S. immigration policy prohibited the National Labor Relations Board (NLRB) from awarding back pay to an “undocumented alien who had never been legally authorized to work in the United States.”<sup>14</sup> In that case, Hoffman Plastics hired Jose Castro, an undocumented immigrant.<sup>15</sup> Hoffman allegedly verified Castro’s ability to work in the United States.<sup>16</sup>

Castro and other workers were laid off when Hoffman found out that they supported a union-organizing campaign.<sup>17</sup> Castro readily admitted that he was not authorized to work in the United States.<sup>18</sup> He indicated that he

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10. Browne & Misra, *supra* note 8, at 502 (stating similarly that “[d]omestic work is deeply imbedded in hierarchies of class, gender, race, ethnicity, and nationality”).

11. See GABRIEL THOMPSON, *WORKING IN THE SHADOWS: A YEAR OF DOING THE JOBS (MOST) AMERICANS WON’T DO* 148 (2010) (“The immigrant workforce is not overwhelmingly Mexican but rather Guatemalan. Most Mexicans, it seems, have graduated to better jobs: Many are employed at various mobile home factories, while others, like Sabrina, have opened small businesses. Today, the vast majority of the immigrant workers at Pilgrim’s Pride are from Guatemala. Like Jesús [worker in the plant], they are indigenous and generally from one of two northern provinces: Huehuetenango and Quiché . . . . He was fifteen years old in 1985 when he fled the country’s civil war, but he doesn’t go into detail except to say ‘We suffered a little, I suppose.’ (Like many of the older immigrants, Jesús eventually gained political asylum; the recent arrivals are more likely to be undocumented.)”); sources cited *supra* note 3.

12. *Id.* at 117, 183–86 (Thompson repeatedly discusses how the Human Resources Department during orientation showed them an anti-union videotape and also discussed with his co-workers how management worked to lobby against the union organizing at the Pilgrims Pride poultry plant).

13. Bosniak, *supra* note 8, at 986 (“[E]ven where formal rights exist, the ability of the undocumented to exercise these rights in practice is limited. Undocumented aliens often fear exposing themselves to the exclusionary powers of the state and will often forego the exercise of membership rights in order to avoid such an eventuality. Undocumented immigrants commonly decline to report private or official abuse and are frequently unwilling to pursue civil claims in court or to step forward to receive benefits to which they are entitled.”).

14. *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137, 140 (2002).

15. *Id.* at 140–41.

16. *Id.* at 140.

17. *Id.*

18. *Id.* at 141.

used a birth certificate that belonged to a friend to obtain employment with Hoffman.<sup>19</sup> In litigating Hoffman's decision to lay off Castro, the NLRB found that the layoffs violated the National Labor Relations Act (NLRA) and ordered Hoffman to pay back pay.<sup>20</sup> The Supreme Court, however, found that Castro could not be awarded back pay<sup>21</sup> under the Immigration Reform and Control Act (IRCA), a federal immigration policy that governs the employment of immigrants.<sup>22</sup> The Court reasoned that an undocumented immigrant who has never been authorized to work in the United States is not entitled to relief under U.S. laws.<sup>23</sup>

Some employers are attempting to push a reading of *Hoffman Plastics* to bar employers from defining undocumented immigrants as employees under the law by virtue of their undocumented status.<sup>24</sup> The argument is that federal immigration policy bars hiring undocumented immigrants, thus, undocumented immigrants are not entitled to legal protections. Most federal circuit courts have held against employers, finding undocumented immigrants to be employees.<sup>25</sup>

For example in *Agri-Processors v. NLRB*, the employer argued that undocumented workers were not employees under the NLRA and, accordingly, were not entitled to damages under a collective bargaining agreement.<sup>26</sup> The Ninth Circuit distinguished this case from *Hoffman*, holding that the collective bargaining agreement was a binding document between two parties that differed from an employer's legal obligation to pay an undocumented immigrant back pay. The court held that an undocumented immigrant is an employee entitled to recover under the collective bargaining agreement.<sup>27</sup> The court declined to apply the *Hoffman* rationale in analyzing the history of the Act, finding that Congress did not intend to end job protections for undocumented workers.<sup>28</sup> Specifically, the court found that

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19. *Id.*

20. *Hoffman*, 535 U.S. at 140–41.

21. *Id.* at 151.

22. *Id.* at 147.

23. *Id.* at 150–51.

24. *Agri Processor Co. v. NLRB*, 514 F.3d 1, 5–6 (D.C. Cir. 2008).

25. *Id.* (citing *NLRB v. Concrete Form Walls, Inc.*, 225 Fed.Appx. 837 (11th Cir. 2007) (upholding the NLRB's conclusion in *Concrete Form Walls*, 346 N.L.R.B. No. 80, that undocumented workers remain statutory employees under the NLRA after IRCA); *NLRB v. Kolkka*, 170 F.3d 937, 941 (9th Cir. 1999) (holding that the NLRA continues to define undocumented aliens as employees after IRCA); *Del Rey Tortilleria, Inc. v. NLRB*, 976 F.2d 1115, 1121 (7th Cir. 1992) (same); and *Patel v. Quality Inn S.*, 846 F.2d 700, 704–05 (11th Cir.1988) (rejecting the claim that IRCA implicitly amended the Fair Labor Standards Act's definition of "employee").

26. *Agri Processor*, 514 F.3d at 5–6.

27. *Id.*

28. *Id.*



the employer “failed to show that the interests of undocumented workers as employees differ in any way from those of legal workers.”<sup>29</sup>

The ways in which courts interpret *Hoffman Plastics* is important because some argue that courts should interpret the case to deny undocumented immigrants any protections under the law.<sup>30</sup> This interpretation can perpetuate a dual system of rights—one system for citizens and those authorized to work in the United States, and another system for undocumented immigrants. The result is a U.S. labor system where undocumented immigrants participate in one market without legal protections, while U.S. citizens and documented immigrants enjoy protections of law in a separate labor market. This creates a system in which immigrants are afraid to report workplace violations, receive very low wages, and are subjected to sexual harassment, interracial discrimination, and sexual violence. Further, even though some states entitle undocumented immigrants to workers compensation, fear of retaliation and deportation prevents immigrants from seeking this remedy from their employers.

In the Postville, Iowa and Chattanooga, Tennessee immigrant raids the workplace violations included: child labor law violations, wage and hour violations, sexual harassment of women working in the plant, harassment of women in the plant, unsafe working conditions, racial discrimination, harassment, and no health care coverage.<sup>31</sup> The Postville raid revealed unsafe working conditions.<sup>32</sup> The workplace violations included physical beatings, as well as denial of overtime.<sup>33</sup> Further in journalist Gabriel Thompson’s book he cites a

Duke University study, published in 2007, [that] interviewed 300 female workers at two poultry plants in North Carolina. They found that 43 percent reported symptoms of MSDs. [a musculoskeletal disorder like carpal tunnel or tendonitis]. The study blamed the high rate of MSDs in part on the lack of

29. *Id.* at 9 (emphasis in original).

30. *Id.* at 10, 13, 15 (Kavanaugh, C.J., dissenting).

31. Theresa Lawson, *Sending Countries and the Rights of Women Migrant Workers: The Case of Guatemala*, 18 HARV. HUM. RTS. J. 225, 239 (2005) (discussing why Guatemalan women choose to migrate to the United States) (“The IACHR Special Rapporteur has reported that ‘most notorious abuses . . . include exhausting working days, payment below the legally established minimum wage, mass sackings, the refusal of employers to pay wages or to provide the workers with minimal infrastructure . . . and, in general, a lack of protection in the workplace.’”); Bobo, *supra* note 4; Dave Flessner, *Workers Suing Pilgrim’s Pride Claim Arrests Strengthen Case*, CHATTANOOGA TIMES FREE PRESS, Apr. 17, 2008, <http://www.timesfreepress.com/news/2008/apr/17/workers-suing-pilgrims-pride-claim-arrests-strengt/>.

32. Stephen Lee, *Private Immigration Screening in the Workplace*, 61 STAN. L. REV. 1103, 1121–22; see also THOMPSON, *supra* note 11, at 190–91.

33. Lee, *supra* note 32, at 1122.

workplace safety regulation.<sup>34</sup>

“One unauthorized worker caught up in the raids explained that he often worked seventeen-hour-days without breaks, noting that ‘the employers told us they were going to call immigration if we complained.’”<sup>35</sup> When a worker threatens to report the employer for violations of the law, the employer threatens to call immigration to have the undocumented worker deported. This permits employers to maintain employment of undocumented workers at lower wages and in abusive working conditions. The treatment of indigenous women working in the meat processing plants indicates that women’s work may also be subjected to double discrimination as a result of their dual status as women and migrants. The women’s invisible status within the workforce also compounds women’s fears of seeking protection against employers and other unlawful activity.<sup>36</sup>

### *B. The Raids*

ICE, with the help of state and local authorities and employers, has executed the largest immigration raids in our country’s history. These raids entailed going to workplaces and detaining persons without the proper identification that would allow them to work or live in the United States. With the help of ICE, upon making a finding that an immigrant is unlawfully within the country, the immigrant is charged criminally and placed in deportation proceedings.

ICE strategically plans the immigration raids. ICE first goes through months of investigation prior to the raid, collecting information from various sources regarding the undocumented employees at a worksite.<sup>37</sup> The process for the workplace immigration raids typically proceeds as follows: ICE contacts local law enforcement in the town and gives them warning.<sup>38</sup> However, in some instances ICE opts not to give persons within the community advance warning.<sup>39</sup> Next, “ICE agents arrive[] at the plants early in the morning with a large number of vehicles—including several buses—

34. THOMPSON, *supra* note 11, at 191.

35. Lee, *supra* note 32, at 1122.

36. Margot Mendelson, *The Legal Production of Identities: A Narrative Analysis of Conversations with Battered Undocumented Women*, 19 BERKELEY WOMEN’S L.J. 138, 182–87 (2004).

37. Lee, *supra* note 32, at 1138–39 (“Indeed, the DHS, as a matter of enforcement policy, appears to conduct no random worksite raids. Rather, it relies on frontline persons and entities to screen out potentially removable immigrants so that all investigations and enforcement efforts flow from ‘specific intelligence obtained from a variety of sources.’”).

38. RANDY CAPPS ET AL., URBAN INST. FOR THE NAT’L COUNCIL OF LA RAZA, PAYING THE PRICE: THE IMPACT OF IMMIGRATION RAIDS ON AMERICA’S CHILDREN 22 (2007).

39. *Id.*

to move arrested immigrants from the plants to processing facilities.”<sup>40</sup> ICE uses search warrants to enter the plants and apprehend immigrants it suspects of identity theft.<sup>41</sup> In most instances, the employer will “shut down the assembly lines and instruct[] workers to assemble in central locations, where ICE agents separate[] them into groups by citizenship and legal status and request[] to see their documentation.”<sup>42</sup>

The initial processing stage involves routine collection of information.<sup>43</sup> ICE obtains the detainees’ names and nationality, takes their fingerprints, and runs background, criminal, and immigration checks.<sup>44</sup> Additionally, an initial assessment is made as to whether an immigrant should be released, detained, or allowed to take voluntarily departure.<sup>45</sup> Some detainees complained that at several locations they did not have the proper documentation with them to prove their immigration status.<sup>46</sup> It has been noted that ICE typically releases “some arrestees within a day or two after the raids, based on their roles as primary or sole caregivers for children, or because of family health issues.”<sup>47</sup>

In May 2008, the meatpacking plant, Agriprocessors, Incorporated in Postville, Iowa, was raided.<sup>48</sup> This was one of the largest immigration raids in American history.<sup>49</sup> At the time, Agriprocessors had 968 employees, and seventy-five percent were undocumented immigrants.<sup>50</sup> Specifically, “[t]here were 697 arrest warrants, but late-shift workers had not arrived, so ‘only’ 390 were arrested: 314 men and 76 women; 290 Guatemalans, 93 Mexicans, four Ukrainians, and three Israelis who were not seen in court.”<sup>51</sup> In the Postville raid, the Government pursued deportation of undocumented immigrants, as well as criminal charges for identity theft.

The immigration raid in Chattanooga at Pilgrim’s Pride, a chicken-processing plant occurred one month prior to the Postville raid.<sup>52</sup> The plant

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40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 23.

44. CAPPS ET AL., *supra* note 38, at 23.

45. *Id.*

46. *Id.* at 22.

47. *Id.* at 28.

48. Camayd-Freixas, *supra* note 3, at 2.

49. *Id.*

50. *Id.*

51. *Id.*

52. Perla Trevizo, *Roundup at Pilgrim’s Pride*, CHATTANOOGA TIMES FREE PRESS, Apr. 17, 2008, <http://www.timesfreepress.com/news/2008/apr/17/roundup-pilgrims-pride/>.

employed 1,800 persons; over 100 employees were arrested.<sup>53</sup> Of the approximately 300 arrested in Pilgrim's Pride Plants nationwide, there were 130 Mexicans, 112 Guatemalans, 59 Hondurans, 4 El Salvadorians, one Columbian, and 5 of ancestry unknown.<sup>54</sup> Some of the women affected by the Chattanooga Pilgrim's Pride raid were able to garner pro bono legal support and assert viable defenses to deportation.<sup>55</sup> In surveying the population of immigrants detained during the raid in Chattanooga, a significant number of the women were from Central America, specifically Guatemala.<sup>56</sup> A number of the women were pregnant.<sup>57</sup> The women were primarily released on humanitarian grounds to provide care for their children.<sup>58</sup>

The women with defensive asylum claims fled domestic violence within their countries, coming to the United States for a better life. However, many fled only to face more violence in transit to the United States and, once they arrived, an oppressive labor market and society that systematically failed to recognize the intersecting social constructs that impact indigenous immigrant women's lives.<sup>59</sup> In particular, "[r]eleased mothers wore ankle GPS monitors, but had no income to provide for their children. Many children were citizens, but their parents were not, meaning the families would be torn asunder."<sup>60</sup>

In the Postville, Chattanooga, and New Bedford raids, indigenous Guatemalans were the largest population of immigrants detained.<sup>61</sup> Many indigenous Guatemalans do not speak Spanish.<sup>62</sup> During the Postville raid there were:

[C]onflicting reports about the number of agents who spoke

53. *Id.*

54. U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, FACT SHEETS: ICE ENFORCEMENT AT FIVE PILGRIM'S PRIDE PLANT LOCATIONS (2008) [hereinafter ICE FACT SHEET], available at <http://www.aila.org/content/default.aspx?bc=1016%7C6715%7C12053%7C26286%7C27850%7C25220>.

55. *Supra* note 9. This information comes from the Author's representation of women detained in the Chattanooga raids.

56. ICE FACT SHEET, *supra* note 54.

57. *Supra* note 9.

58. See Perla Trevizo, *Chattanooga: Organizations Plan How to Help Those Affected by Pilgrim's Arrests*, CHATTANOOGA TIMES FREE PRESS, Apr. 22, 2008, <http://www.timesfreepress.com/news/2008/apr/22/chattanooga-organizations-plan-how-help-those-affe/>; ICE FACT SHEET, *supra* note 54.

59. *Supra* note 9.

60. Bobo, *supra* note 4.

61. See sources cited *supra* note 3.

62. JORGE RAMOS, *THE OTHER FACE OF AMERICA* 118 (2002) (explaining that "[m]ore than twenty languages other than Spanish are spoken in Guatemala . . . [often] indigenous Guatemalans . . . don't even speak Spanish").

Spanish and were able to communicate effectively with the arrested workers. Less controversial was the fact that many Guatemalans in all three locations spoke a Mayan dialect, not Spanish, as their first language; ICE certainly had difficulty communicating with this group.<sup>63</sup>

An interpreter for the Postville, Iowa immigration raid noted that most of the detained immigrants were indigenous Guatemalans. He noted that:

Driven single-file [sic] in groups of 10, shackled at the wrists, waist and ankles, chains dragging as they shuffled through, the slaughterhouse workers were brought in for arraignment, sat and listened through headsets to the interpreted initial appearance, before marching out again to be bused to different county jails, only to make room for the next row of 10. They appeared to be uniformly no more than 5 ft. tall, mostly illiterate Guatemalan peasants with Mayan last names, some being relatives (various Tajtaj, Xicay, Sajché, Sologüí. . .), some in tears; others with faces of worry, fear, and embarrassment. They all spoke Spanish, a few rather laboriously. It dawned on me that, aside from their Guatemalan or Mexican nationality, which was imposed on their people after Independence, they too were Native Americans, in shackles. They stood out in stark racial contrast with the rest of us as they started their slow penguin march across the makeshift court. ‘Sad spectacle’ I heard a colleague say, reading my mind. They had all waived their right to be indicted by a grand jury and accepted instead an *information* or simple charging document by the U.S. Attorney, hoping to be quickly deported since they had families to support back home. But it was not to be. They were criminally charged with ‘aggravated identity theft’ and ‘Social Security fraud’—charges they did not understand. . . and, frankly, neither could I. Everyone wondered how it would all play out.<sup>64</sup>

The language barriers during the raid certainly impacted the detainees’ ability to plead to criminal charges. The immigrant workers charges included identity fraud and others that made them automatically deportable.

At the immigration court stage, in light of the confusion and fear, most workers choose to voluntarily depart.<sup>65</sup> Further, language barriers inhibited

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63. CAPPS ET AL., *supra* note 38, at 22.

64. Camayd-Freixas, *supra* note 3, at 2.

65. CAPPS ET AL., *supra* note 38, at 2, 24. See generally Kara L. Wild, Comment, *The New Sanctuary Movement: When Moral Mission Means Breaking the Law, and the Consequences for Churches and Illegal Immigrants*, 50 SANTA CLARA L. REV. 981, 986 (2010) (citing Michele Altemus, *The Sanctuary Movement*, 9 WHITTIER L. REV. 683, 699–700 (1988) (explaining the Sanctuary Movement during the 1980s when “violent wars raged in El Salvador and Guatemala: El Salvador had been engulfed by civil war since 1979, while in Guatemala, 11,000 people were killed in 1983 alone. Thousands of refugees fled these countries in pursuit of asylum in the United States,

many immigrants from seeking forms of immigration relief for which they might have been eligible.<sup>66</sup> Statistically speaking, Guatemalans are more likely to have defenses to removal or have other options to challenge removal to their country. As explained below,<sup>67</sup> many indigenous Guatemalans fled their countries in the 1980s in the middle of the 1960 to 1996 Civil War between the government and leftist guerilla groups.<sup>68</sup> In addition, many women have fled Guatemala seeking protection from domestic abuse.<sup>69</sup> In addition to language barriers, fear prevented immigrants from requesting forms of immigration relief.

In the raids, the most affected populations were the women and the children.<sup>70</sup> Most children are a part of a mixed-status family.<sup>71</sup> Mixed-status families are those where the parents are undocumented and the children, born in the United States, are citizens.<sup>72</sup> Many of the children were traumatized by not having parents return home, or by having so many of their classmates missing from school.<sup>73</sup> Further, the mothers and pregnant women were released on humanitarian grounds with ankle monitors during their deportation hearings.<sup>74</sup> While released, many mothers did not have income to feed their children.

### *C. Employers and Towns After the Raids*

Beyond the immigrants arrested in the raids, the towns are also

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but were routinely rejected and deported)). From 1960 to 1980, there was a civil war in Guatemala between the government and guerilla organizations. David Akerson & Natalie Knowlton, *President Obama and the International Criminal Law of Successor Liability*, 37 DENV. J. INT'L L. & POL'Y 615, 644 (2009) ("The longest civil war in the region's history began in 1960 in Guatemala after a military revolt that led to a long-standing conflict between the government and the Guatemalan National Revolutionary Unity; an organization composed of a number of leftist guerrilla groups. It is estimated that approximately 200,000 people were killed or disappeared between 1960 and the conflict's end in 1996") (citations omitted). In the 1980s, Guatemala was in the middle of the civil war. *Id.* During this time, many Guatemalans fled to the United States. The war adversely impacted the Indigenous populations in Guatemala as many indigenous villages were destroyed. Naomi Roht-Arriaza, *Making the State Do Justice: Transnational Prosecutions and the International Support for Criminal Investigations in Post-Armed Conflict Guatemala*, 9 CHI. J. INT'L L. 79, 83–84 (2008)(describing the targeting of indigenous Mayans as genocide).

66. *See id.* at 22.

67. *Infra* Section III.B.

68. NAT'L IMMIGRANT BOND FUND, *supra* note 3.

69. Lawson, *supra* note 31, at 233.

70. *See* CAPPS ET AL., *supra* note 38, at 42–43 (explaining that children and women were affected; and the women, even if not arrested, were affected by the arrest of their husband).

71. *Id.* at 17.

72. *See id.*

73. Camayd-Freixas, *supra* note 3, at 3.

74. *Id.*

adversely affected. After the raids, businesses typically shut down. “[I]n northeastern Iowa, the town teeters toward collapse as the plant sputters in bankruptcy; its managers face prison time and the town fights to stay solvent.”<sup>75</sup> “Postville’s population has shrunk by nearly half, to about 1,800 residents, and townsfolk say the resulting anxiety—felt from the deli to the schoolyard—has been relentless.”<sup>76</sup> “This was the immediate collateral damage. Postville, Iowa (pop. 2,273), where nearly half the people worked at Agriprocessors, had lost 1/3 of its population by Tuesday morning [after the raid].”<sup>77</sup>

Agriprocessors went into Chapter 11 bankruptcy and is up for sale with no apparent buyer. After the arrests, the plant recruited Somali refugees from Minneapolis, unemployed laborers from Detroit, and then migrants from Palau, whose natives are allowed to work in the United States under a 1993 compact. Many of the latter stayed only briefly before leaving, unhappy with their jobs.<sup>78</sup>

In the Pilgrims Pride East Texas raid (connected with Chattanooga raid), twenty-five people, including human resource employees, were arrested in a scheme to secure jobs for undocumented immigrants.<sup>79</sup> In exchange for dropping charges, Pilgrim’s Pride agreed to pay \$4.5 million.<sup>80</sup> The company also agreed to improve how it screens prospective employees to make sure they are authorized to work in the United States.<sup>81</sup>

#### *D. Marginalization and Immigration Raids*

The immigration raids appear to be neutrally targeting “illegal” immigrants. All of the evidence, however, reveals that these raids have a disparate impact on poor, undocumented, female, indigenous Guatemalans who, in most instances, have fled violence in their home country. The fact that another layer of criminality is added to their status when prosecutors press charges against the detained workers for identity fraud complicates their marginalization. The question remains whether the immigration raids reveal a deeper hostility towards poor immigrants of color—specifically, indigenous Guatemalans. The rest of this Article will examine how the intersectionality theory enhances our understanding of how indigenous

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75. Antonio Olivo, *Immigration Raid Leaves Damaging Mark on Postville, Iowa*, L.A. TIMES, May 12, 2009, <http://articles.latimes.com/2009/may/12/nation/na-postville-iowa12>.

76. *Id.*

77. Camayd-Freixas, *supra* note 3, at 3.

78. Anabelle Garay, *Pilgrim's Pride Pays \$4.5M to End Immigrant Probe*, ABC NEWS, Dec. 30, 2009, <http://abcnews.go.com/Business/wireStory?id=9451661>.

79. *Id.*

80. *Id.*

81. *Id.*

Guatemalan women are treated in the context of immigration raids.

### III. WOMEN WORKING IN MEAT PROCESSING PLANTS: MARINA'S STORY

The story of Marina, a Guatemalan worker at the Pilgrim's Pride poultry plant, illustrates how race, education level, gender, and class intersect to directly impact social constructs of a woman of color's experiences, both in Guatemala and after immigrating to the United States.<sup>82</sup> Marina is a Mam Mayan woman from Guatemala. She speaks very little Spanish and Mam, a Mayan dialect. At seven years old, she was removed from school to work on a farm to help provide for her family. As a teenager, she was forced to marry her neighbor's son.<sup>83</sup> While living with their family, her neighbors repeatedly beat, mistreated, and withheld food from her, and forced her to work in their household. In addition, she was repeatedly raped.

Marina fled to the United States after receiving numerous threats from the family. Her father came up with the money to have a coyote transport her to the United States. While traveling to the United States, several men repeatedly raped her. When she first entered the country, she worked on tomato farms in Florida for a few years to pay off debts to people who helped her get to the United States. She eventually began working at Pilgrim's Pride in Chattanooga, Tennessee. Pilgrim's Pride, a chicken processing plant, employs approximately 55,000 employees nationwide, mainly in the South and in Mexico.<sup>84</sup> There are approximately 1,800 employees at its two Chattanooga poultry processing plants where Marina worked.<sup>85</sup> Pilgrim's Pride is the fourth largest manufacturing employer in Chattanooga.<sup>86</sup> Journalist Gabriel Thompson, who went undercover to work in the Pilgrim's Pride poultry plant in Russellville, Alabama for two months, observed that most of the immigrant workers were indigenous Guatemalans.<sup>87</sup>

Marina worked in the plant processing distribution line. Many of

82. Harris, *supra* note 8 at 590 (suggesting that "moving beyond essentialism and towards a jurisprudence of multiple consciousness . . . story telling is the right way to begin the process").

83. U.S. DEP'T OF STATE, 2009 HUMAN RIGHTS REPORTS: GUATEMALA (2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136114.htm> [hereinafter STATE DEP'T REPORT] (stating that "there were credible reports of forced early marriages in some rural indigenous communities").

84. Flessner, *supra* note 31 (stating that the company has "more than 54,000 employees at 37 plants"). Pilgrim's Pride operates dozens of facilities across the South and in Mexico and Puerto Rico. Trevizo, *supra* note 52.

85. Flessner, *supra* note 31.

86. *Chattanooga Business Portal*, CITY OF CHATTANOOGA, [http://www.chattanooga.gov/138\\_147.htm](http://www.chattanooga.gov/138_147.htm) (last visited Sept. 20, 2010).

87. THOMPSON, *supra* note 11, at 148; see also Camayd-Freixas, *supra* note 3, at 2 (noting that most of the immigrants detained in the Postville raid were indigenous Guatemalans).



Marina's stories from working in the plant are similar to those of Gabriel Thompson.<sup>88</sup> Marina worked toward the beginning of the line, cutting the frozen chicken breast by placing it in a cutting machine, or at the end of the line, inspecting the breast after it was cut. She processed approximately thirty-five chicken breasts per minute.<sup>89</sup> Many times throughout the day, she had to look into a bright light without protective glasses to fix the breast-cutting machine, as it frequently broke down.<sup>90</sup>

Sometimes she worked overtime, but was only paid for eight hours a day. She was not given any medical insurance, nor was she eligible for medical insurance as an undocumented immigrant. The conditions at work involved limited bathroom breaks, even for women who, like Marina, were pregnant. The frozen chicken made her hands feel really heavy.<sup>91</sup> Her gloves would often get holes in them; however, her employers rarely replaced the gloves.<sup>92</sup>

The majority of her co-workers were indigenous Guatemalans who spoke very little or no Spanish.<sup>93</sup> Within the plant, there was a worker hierarchy based on the worker's nationality. Mexicans were often in supervisory positions, whereas indigenous Guatemalans often held the lower-level line-worker positions.<sup>94</sup> Specifically, Thompson noted that:

The immigrant workforce is not overwhelmingly Mexican but rather Guatemalan. Most Mexicans, it seems, have graduated to better jobs: Many are employed at various mobile home factories, while others . . . have opened small businesses. Today, the vast majority of the immigrant workers at Pilgrim's Pride are from Guatemala. . . . [T]hey are indigenous and generally from one of two northern provinces: Huehuetenango and Quiché.<sup>95</sup>

He also indicated that "[a]lthough the plant workforce [at the Russellville, Alabama Pilgrim's Pride poultry plant] is diverse, with roughly

88. Journalist Gabriel Thompson documents his working in the Pilgrim's Pride poultry plant in Russellville, Alabama for approximately two months until his cover is blown when he attempts to gain access to one of the chicken farms. THOMPSON, *supra* note 11, at 97–215.

89. *Cf. id.* at 145 (Thompson indicated that he processed approximately 7,200 chicken breasts per shift).

90. *Cf. id.* at 202–205 (confirming the frequent breaking down machines through Thompson's account of working in Pilgrim's Pride poultry plant in Alabama).

91. *Cf. id.* at 145 (Thompson corroborates this fact throughout this book in stating that "I arrive home each morning with throbbing hands." He also details the resulting injuries that poultry processing plant workers sustain as a result of their work in the plants over a long period of time).

92. *Cf. id.* at 149–50 (recounting the author's experience dipping his hands into frigid bloody water wearing plastic gloves with no insulation; when he asked for another pair of gloves his supervisor denied his request confirming that gloves were rarely replaced).

93. Camayd-Freixas, *supra* note 3, at 2.

94. THOMPSON, *supra* note 11, at 148.

95. *Id.*

an equal number of whites, blacks, and Latinos, it's becoming clear that immigrants dominate the most arduous jobs."<sup>96</sup>

In April 2008, ICE officials at Pilgrim's Pride detained Marina and many of her coworkers. On the day of the raid, around 8:15 A.M., Marina was called to what she believed was a safety equipment update meeting. She was given two pieces of paper, one in Spanish and the other in English. She was unable to read either paper, because she did not read Spanish or English, as Mam is her primary language. After everyone got into the room, they were told not to move as the immigration authorities entered. ICE officers transported Marina to a large empty office building and held her there from about 11:00 AM until 6:15 PM that day. Officers released Marina with an ankle monitor, because she was pregnant and had four children at home.

Marina worked at Pilgrim's Pride for about eight to twelve months before the raid. After the raid, many former employees of Pilgrim's Pride factory took voluntary departure<sup>97</sup> and returned to Guatemala. Many of the workers were charged with identity theft based on the false identification they used, or the employers supplied, to gain employment with Pilgrim's Pride.<sup>98</sup>

Marina was placed into deportation proceedings almost *seven* years after fleeing from Guatemala. In examining the social context of Marina's story, a focus on the intersections of race, class, ethnicity, education level, gender, and immigration status, highlights the need to account for multiple grounds of identity when considering her migration to the United States, her living conditions, work conditions, and her subsequent deportation.<sup>99</sup> The subsequent sections will situate Marina's story within this context.

#### IV. INTERSECTIONALITY THEORY: RACE, EDUCATION, CLASS, GENDER, ETHNICITY, AND IMMIGRATION STATUS

This Section examines the applicability of intersectionality theory to immigration law and shows the importance of applying this theory to immigration law. It also presents a detailed analysis of how ethnicity, immigration status, and gender intersect to subordinate indigenous Guatemalan women. As this Section will demonstrate, ethnicity (indigenous populations), poverty (outside and within the United States), education (low-level), gender (female) and immigration status act as a pipeline to

96. *Id.* at 138.

97. See Immigration and Nationality Act of 1952 § 240B, 8 U.S.C. § 1229c (2006) ("The Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense under this subsection, in lieu of being subject to proceedings under section 240 or prior to the completion of such proceedings, if the alien is not deportable under section 237(a)(2)(A)(iii) or section 237(a)(4)(B) . . .").

98. Flessner, *supra* note 31; see also THOMPSON, *supra* note 11, at 210 (discussing immigration raids).

99. *Cf.* Crenshaw, *supra* note 8 at, 1245.

subordination in the employment context when indigenous Guatemalan women migrate to the United States. Indigenous Guatemalans are the largest population detained in the immigration raids.<sup>100</sup> Even before entering this country, they are unduly burdened through their ethnicity, race, and poverty, which leads to their inequitable exploitation in meat processing plants and other similar employment contexts. In this Section, I attempt to deconstruct Marina's story and the complex interplay between systems of subordination and immigration policy.

### A. Intersectionality Theory and Immigration Law

Intersectionality theories assume that dominant groups control productive resources and major social institutions. Dominant groups use these institutions to promulgate legitimized ideologies that make social inequities appear natural.<sup>101</sup>

Since Kimberlé Crenshaw introduced intersectionality theory to legal scholarship, many legal and interdisciplinary scholars have used her theory to critique legal institutions that facilitate the marginalization of certain groups.<sup>102</sup> In the area of immigration law, legal scholars like Kevin Johnson and Linda Bosniak have critiqued how the immigration system has continually perpetuated the subordination of marginalized groups.<sup>103</sup> For example, immigration scholar Linda Bosniak has critiqued progressive scholarship, including intersectionality theory, for omitting non-citizens and undocumented immigrants from the groups at the margins, which further subordinates them.<sup>104</sup> She specifically critiques "progressive" scholarship in

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100. See sources cited *supra* note 3.

101. Browne & Misra, *supra* note 8, at 491 (reviewing JIM SIDANIUS & FELICIA PRATTO, *SOCIAL DOMINANCE: AN INTERGROUP THEORY OF SOCIAL HIERARCHY AND OPPRESSION* (2001)).

102. See *supra* text accompanying note 8.

103. Bosniak, *supra* note 8; Johnson, *Los Olvidados*, *supra* note 8; Johnson, *Public Benefits*, *supra* note 8, at 1509; Johnson, *Race and Class*, *supra* note 8; Kevin Johnson, *Race, the Immigration Laws, and Domestic Relations: A "Magic Mirror" into the Heart of Darkness*, 73 *IND. L. J.* 1111 (1998); Mary Romero, *Nanny Diaries and Other Stories: Imagining Immigrant Women's Labor in the Social Reproduction of American Families*, 52 *DEPAUL L. REV.* 809, 812 (2003) (arguing that the existing social economic and legal conditions in the United States "shape the constraints and opportunities for immigrant household workers and nannies (and their families). Consequently, these conditions (1) reproduce gender, race, ethnic and class privileges; (2) blur the ideological contradictions of equality and justice embedded in the 'American Dream,' and (3) reinforce the existing social stratification"); *Id.* at 837 ("Paid reproductive labor in the United States is structured along local, national and international inequalities, positioning third-world immigrant women as the most vulnerable workers.").

104. Linda S. Bosniak, *Opposing Prop. 187: Undocumented Immigrants and the National Imagination*, 8 *CONN. L. REV.* 555, 578 (1996) ("[S]ubsuming alienage-based exclusion into analyses of racial and cultural marginalization is problematic, not merely because not all undocumented immigrants belong to ethnic and racial minority groups, but also because it fails to capture what is specific about the exclusion experienced by undocumented immigrants, which is constituted in substantial part, by their irregular status under the country's immigration laws.").

that it “tends to normatively embrace the very national boundary which serves to effect, and justify, immigrants’ exclusion.”<sup>105</sup>

Immigration scholar Kevin Johnson has stated that the immigration system directly exemplifies the concepts expressed in the intersectionality theory.<sup>106</sup> He states:

Intersectionality proves to be especially valuable in fully appreciating the relationship between race and class in the U.S. immigration laws. Many, although not all, immigrants are people subordinated on multiple grounds. A significant component of the immigrant community—especially among the undocumented—is comprised of poor and working people. The majority of immigrants in modern times are people of color. Immigrants as a group find themselves marginalized in U.S. society by their immigration status, with “undocumented” status more stigmatizing and subordinating than ‘lawful’ status (although lawful immigrants are still afforded fewer legal and social privileges than U.S. citizens). As the concept of intersectionality suggests, poor and working immigrants of color are marginalized on multiple grounds. They are generally subordinated in American social life based on characteristics of race, class and immigration status.<sup>107</sup>

When examining the social construct of Marina’s work in the meat processing plant, it is important to account for her multiple grounds of identity—her ethnicity (Mam Mayan), class (poor), gender (woman), education (third grade), and immigration status (undocumented).<sup>108</sup> There are also multiple layers within these categories such as illiteracy, lack of legal capacity, and language barriers that impact how the immigration system facilitated her subordination.<sup>109</sup> To understand Marina’s story, one

105. *Id.* at 585.

106. Johnson, *Race and Class*, *supra* note 8, at 2 (“There is no better body of law to illustrate the close nexus between race and class than U.S. immigration law and its enforcement. At bottom, U.S. immigration law historically has operated—and continues to operate—to prevent many poor and working noncitizens of color from migrating to, and harshly treating those living in, the United States.”). See also Ruben J. Garcia, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 CHICANO-LATINO L. REV. 118 (1995).

107. Johnson, *Race and Class*, *supra* note 8, at 4–5. See also Crenshaw, *supra* note 8, at 1245–47 (explaining how the 1990 marriage fraud provision amendments to the Immigration and Nationality Act failed to take into account women of color, which facilitated circumstances in which “many immigrant women were reluctant to leave even the most abusive of partners for fear of being deported”).

108. Crenshaw, *supra* note 8 at 1245 (“Focus on the intersections of race and gender only highlights the need to account for multiple grounds of identity when considering how the social world is constructed”).

109. Johnson, *Race and Class*, *supra* note 8, at 4 (explaining that “[t]he concept of ‘intersectionality,’ one of the rich insights of Critical Race Theory, has proven to be an important tool for understanding how membership in more than one marginalized group can increase the magnitude of the disadvantages facing particular subgroups”). See also Browne & Misra, *supra* note

must examine each dimension of her identity with an eye toward critically analyzing how all of her identities intersect and impact each other. The concept of intersectionality as applied to the indigenous, female, undocumented, unskilled Guatemalan worker exemplifies that multiple systems of subordination, racism, ethnocentrism, patriarchy, and economic disadvantages all interact within the immigration system, disempowering immigrants like Marina.

In examining the female Guatemalan indigenous worker, the question arises as to what extent and in what point in time do the intersecting categories of race, class, immigration status, and gender influence her migration to and her position as a worker in the United States. At different points in time, it is possible that her gender and ethnicity may be the intervening factors influencing her treatment within the workplace. At other times, it may be possible that only her gender affects the inequities she faces in the workplace.

Many intersectionality theorists acknowledge that there is disagreement amongst scholars “whether intersectionality exists at all times and in all places (even if it changes forms) or whether under some conditions, one category might actually supersede the other in determining labor market experiences and outcomes.”<sup>110</sup> This underlying tension pervaded my examination of Marina’s story as I examined how she came to the United States and her treatment while employed at the Pilgrim’s Pride poultry plant. It is evident that intersectionality is not a unilateral analysis, it is a multi-layered analysis.<sup>111</sup> There is no perfect equation in which gender plus race plus immigration status equals discrimination in an immigration raid or at work.<sup>112</sup>

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8, at 489 (citing PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS AND THE POLITICS OF EMPOWERMENT* (1999)) (“Multiracial feminist theorists argue that race and gender are socially constructed, not only influencing individual identities but also providing principles of organization in the social system. Further, these categories are mutually constituted to produce and maintain social hierarchy.”).

110. Browne & Misra, *supra* note 8, at 492.

111. Johnson, *Public Benefits*, *supra* note 8, at 1515 (citing Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies*, 1989 U. CHI. LEGAL F. 139, 140) (“[F]ocus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. . . . Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated”); Harris, *supra* note 8, at 588 (citing Deborah K. King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology*, 14 SIGNS 42, 51 (1988)) (stating “that the result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems: ‘racism + sexism = straight black women’s experience,’ or ‘racism + sexism + homophobia = black lesbian experience’”).

112. Harris, *supra* note 8, at 585 (“[G]ender essentialism is the notion that a unitary ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience. The result of this tendency toward gender essentialism . . . is not only that some voices are silenced in order to privilege others (for this is an inevitable result of

As Marina's story exemplifies, "different forms of discrimination are more often than not experienced simultaneously by marginalized women."<sup>113</sup> It is a complex interplay. In employing a purely intersectional perspective to understand Marina's story, there can be no separation between the numerous categories into which Marina's identity falls (i.e., Guatemalan, indigenous, woman, uneducated, poor, undocumented, etc.). Instead, perceptions of Marina are formulated within the workplace based on her "entire constellation of social attributes."<sup>114</sup>

There is not one dimension to gender and racial discrimination, but many. In fact, there is a complex interplay between gender and race or ethnicity and the discrimination or violations therefrom. Only through a closer examination of the varying dynamics that shape the subordination of raced women can useful intervention and protection be developed.<sup>115</sup>

The question becomes: At what point do the different categories intersect or are they always operating at different points in time and collectively result in Marina's subordination?

It is important to examine Marina's story as an indigenous, female, unskilled laborer, while acknowledging that failure to recognize overlapping categories can deny human rights protections to all women and migrant workers.<sup>116</sup> In this analysis, it is also important to recognize that all of the categories are "relational" and "unstable."<sup>117</sup>

This article furthers the discussion of the intersectionality theory in the context of immigration law by examining the impact of immigration raids on indigenous, female, Guatemalan unskilled workers. The intersection theory provides the perfect lens to examine how the social construct of the U.S. immigration system facilitates the creation of an underground workforce of migratory laborers and subordinates workers like Marina and her male counterparts.

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categorization, which is necessary both for human communication and political movement), but that the voices that are silenced turn out to be the same voices silenced by the mainstream legal voice of 'We the People' . . .").

113. *Preparatory Committee, supra* note 8, at 10.

114. *Browne & Misra, supra* note 8, at 499.

115. *Preparatory Committee, supra* note 8, at 10.

116. *Id.* at 7. ("Indeed, while it is true that all women are in some way subjected to gender-discrimination, it is also true that other factors, relating to women's social identities, such as class, caste, race, colour, ethnicity, religion and national origin are 'difference that makes a difference' in the ways in which various groups of women experience discrimination.").

117. *Harris, supra* note 8, at 586 ("Even a jurisprudence based on multiple consciousness must categorize; without categorization . . . there can be no moral responsibility or social change. My suggestion is only that we make our categories explicitly tentative, relational, and unstable, and that to do so is all the more important in a discipline like law, where abstraction and 'frozen' categories are the norm.").

*B. Indigenous Guatemalans: Push Factors to the United States*

Indigenous Guatemalan women are at the margins in both the United States and their home countries.<sup>118</sup> In order to understand the status of indigenous female workers in the United States, one must understand the factors that push migration and the social constructs that facilitate migration to the United States. These factors color what indigenous immigrant women experience when they arrive in the United States.<sup>119</sup> The United Nations acknowledges that the lack of economic, political, civil, and social rights afforded to women within their home countries facilitates their migration.<sup>120</sup> Women experience subordination in their home countries and while abroad.<sup>121</sup> “Guatemala is the largest country in Central America, but it is also one of the poorest.”<sup>122</sup> Additionally, Guatemalan society is rigidly stratified along ethnic lines.<sup>123</sup> A huge factor that impacts Guatemalan indigenous female workers’ migration to the United States is the discrimination that they face in their home country.<sup>124</sup>

The Guatemalan Mayan population has been displaced repeatedly since the Spanish conquest in 1521.<sup>125</sup> After the Spanish Conquest, Mayans were stripped of their property and forced to farm the land.<sup>126</sup>

In the 1800s and early 1900s, Mayans who lived in Guatemala’s northwestern highlands spent most of the spring and summer months working on coastal sugar cane, tobacco, coffee and banana plantations, many owned by foreign corporations, such as U.S.-owned United Fruit Co. In the winter, they would return to their

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118. See *Preparatory Committee*, *supra* note 8, at 20–21 (explaining the discrimination migrant women face at home and abroad).

119. Mendelson, *supra* note 36, at 152 (explaining how migration is facilitated by more than just push and pull factors). Migration is also a product of individual action within social networks. Mendelson explains that “[i]mmigrant social networks first came into critical consciousness in response to the neoclassical model of migration proposed by economic models. Network theory arose as a reaction to traditional accounts of migration flows, which explained migration as a simple outcome of ‘push’ and ‘pull’ forces exerted on migrants. Focusing on the role of the social network as an engine for migration and a determinant of the direction and duration of migration, network theory envisions migration as a social product rather than simply as the aggregate result of forces exerted on individuals. Theorists such as Douglas Massey insist that immigration trends can not be explained without reference to the networks of information and social relationships that inform migration decisions and also cause self-perpetuation in migration flows.” *Id.*

120. *Preparatory Committee*, *supra* note 8, at 21.

121. *Id.*

122. Lawson, *supra* note 31, at 231.

123. DAVID STEPHEN & PHILLIP WEARNE, *CENTRAL AMERICA’S INDIANS* 11 (1989).

124. See *Preparatory Committee*, *supra* note 8, at 20–21.

125. Evans, *supra* note 3.

126. *Id.*

villages to cultivate their own bean and corn crops.”<sup>127</sup>

Indigenous Guatemalans were subjected to forced labor until 1954.<sup>128</sup> Ultimately, “[t]hirty-six years of conflict between indigenous peoples and the Guatemalan government led not only to millions of refugees fleeing the violence, particularly in the 1980s and 1990s, but also hobbled the Guatemalan economy so significantly that many families have had no choice but to seek work elsewhere.”<sup>129</sup> This internal migration pattern continues today for some poor Guatemalans.<sup>130</sup> “Others have chosen instead to migrate across international borders.”<sup>131</sup>

The historical treatment of indigenous persons in Guatemala has created a society rigidly stratified along ethnic lines.<sup>132</sup> The ethnic hierarchy is divided with “a small class of elite white Europeans at the top, followed by a group of mixed bloods known as *Guatemaltecos*, [then] urban Ladinos, followed by rural Ladinos, [and finally,] Indians firmly at the bottom.”<sup>133</sup> Indigenous persons in Guatemala make up approximately twenty-two different ethnic groups<sup>134</sup> and are approximately sixty-one percent of the population.<sup>135</sup> Seventy-six percent of the indigenous population is poor.<sup>136</sup>

“The ethnic pecking order matches the socio-economic pyramid almost exactly.”<sup>137</sup> The pyramid can be summarized as follows: (1) Europeans are “wealthy industrialists” and agricultural businessmen; (2) *Guatemaltecos* are professionals, military officers, industrialists, and farm owners; (3) Ladinos are business people or white collar employees, or in the rural areas small scale farmers; and (4) Indigenous people are typically “sub-subsistence farmers, ‘penny’ merchants, and migratory farm workers; and, in urban contexts, servants, maids, factory staff and construction workers.”<sup>138</sup>

127. *Id.*

128. See Lawson, *supra* note 31, at 229.

129. *Id.* at 228.

130. STEPHEN & WEARNE, *supra* note 123, at 12.

131. Evans, *supra* note 3 (“‘Migration has always been part of indigenous life,’ says Ricardo Falla, a Jesuit priest and Guatemalan anthropologist.”).

132. STEPHEN & WEARNE, *supra* note 123.

133. *Id.*

134. Compare STATE DEP’T REPORT, *supra* note 83, with FIAN Int’l, *The Right to Adequate Food of Rural and Indigenous Women in Guatemala 2* (2009), available at [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FIANInternational\\_Guatemala43.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FIANInternational_Guatemala43.pdf) (written submission in reference to the Seventh Periodic Report of Guatemala Committee on the Elimination of Discrimination against Women) (both reports differ in terms of the approximate number of Indigenous ethnic groups in Guatemala and the exact percentage of the population).

135. FIAN Int’l, *supra* note 134.

136. Lawson, *supra* note 31, at 231.

137. STEPHEN & WEARNE, *supra* note 123.

138. *Id.*



The ethnic discrimination is compounded and interacts to place indigenous Guatemalans at the bottom of the economic and social strata. They reside in mostly rural areas and suffer from extreme poverty.<sup>139</sup> The 2009 Human Rights Country Report found that indigenous persons “generally were underrepresented in politics and remained largely outside the country’s political, economic, social, and cultural mainstream due to limited educational opportunities, poverty, lack of awareness of their rights, and pervasive discrimination.”<sup>140</sup> In addition, “[r]ural indigenous persons had limited educational and employment opportunities. Many indigenous persons were illiterate, and approximately twenty-nine percent did not speak Spanish.”<sup>141</sup> Along these same lines, one author found:

In Quiché, 85 percent of the population is indigenous, mainly of Mayan descent. Eighty-two percent of the region’s population lives in rural areas, some of which lack basic infrastructure services such as water, electricity, health and sanitation. Two-thirds of the population is illiterate. Adolescents who graduate from primary school, which lasts for six years, have few opportunities to advance their education. Jobs are scarce, and those who are employed work mainly on small farms that grow corn and other produce.<sup>142</sup>

Indigenous women are even more affected by this status as “[m]ore than 50 percent of indigenous women over the age of 15 are illiterate, and a disproportionate number of indigenous girls did not attend school.”<sup>143</sup> Based on the unequal access to capital and education, indigenous women typically perform low-paying, high-workload domestic and agricultural work.<sup>144</sup> “Many peasant and indigenous women cannot make a living . . . from their land because it does not sufficiently produce, or because they have had to sell it and therefore are forced to work as agricultural workers on other people’s land.”<sup>145</sup> Indigenous people are also denied health care and education.<sup>146</sup> Most of their money goes towards basic survival.<sup>147</sup>

Guatemala has had a hard time instituting human rights for indigenous

139. Lawson, *supra* note 31, at 231.

140. STATE DEP’T REPORT, *supra* note 83.

141. *Id.*

142. Evans, *supra* note 3.

143. STATE DEP’T REPORT, *supra* note 83 (“According to the Ministry of Education, 76,232 preschool- and kindergarten-age indigenous children were enrolled in Spanish-indigenous language bilingual education programs.”).

144. FIAN Int’l, *supra* note 134.

145. *Id.* at 5.

146. STEPHEN & WEARNE, *supra* note 123, at 12.

147. *Id.* See also Lawson, *supra* note 31, at 232 (“Guatemalan women have far fewer educational, economic, and employment opportunities than their male counterparts.”).

populations after decades of violence.<sup>148</sup> Discrimination and poverty intersect to reinforce gendered violence against women in Guatemala. The prevalence and deep-rooted tradition of domestic violence in Guatemala is well documented in international human rights reports.<sup>149</sup> The violence against women in Guatemala has been labeled a serious epidemic.<sup>150</sup> The 2009 U.S. Department of State Report indicates that Guatemala is plagued by numerous societal problems which include widespread societal violence, corruption, inadequacies in the police and judicial sectors, and *discrimination and violence against women*.<sup>151</sup> Some of the discrimination women face is a result of cultural prejudices regarding the appropriate behavior for men and women.<sup>152</sup> This historical and societal inequality provides the backdrop for the pervasive human rights violations against women.

Despite recent legal reforms in Guatemala, domestic violence and sexual violence against women is still rampant. In Guatemala, many abusive relationships end in death.<sup>153</sup> Since 2000, more than 4,000 women and girls have been murdered in Guatemala.<sup>154</sup> Very few murders result in convictions.<sup>155</sup> The majority of these victims were poor women under the age of thirty.<sup>156</sup> Even now, Guatemala only enforces very weak legislation around prosecuting and punishing abusers.<sup>157</sup> Frequently, law enforcement officials, prosecutors, and judges view domestic violence as a “private matter” beyond the reach of law.<sup>158</sup> When the government is harboring this

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148. Lawson, *supra* note 31, at 230.

149. Angelica Cházaro & Jennifer Casey, *Getting Away with Murder: Guatemala's Failure to Protect Women and Rodi Alvarado's Quest for Safety*, 17 HASTINGS WOMEN'S L.J. 141, 143 (2006) (explaining that examination of the violence against women in Guatemala shows “underlying conditions that cause women . . . to flee their home countries and seek protection elsewhere”).

150. *Id.* at 149.

151. STATE DEP'T REPORT, *supra* note 83.

152. See *Guatemala: Events of 2009*, HUM. RTS. WATCH, <http://www.hrw.org/en/node/87522> (last visited Sept. 24, 2010).

153. See GUAT. HUMAN RIGHTS COMM'N/USA, *GUATEMALA'S FEMICIDE LAW: PROCESS AGAINST IMPUNITY?* 5 (2009) [hereinafter GHRC, FEMICIDE], available at [http://www.ghrc-usa.org/Publications/Femicide\\_Law\\_ProgressAgainstImpunity.pdf](http://www.ghrc-usa.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf) (explaining that over sixty percent of women murdered was a result of domestic violence).

154. *Id.* at 6 (reflecting data gathered for 2000–2008).

155. *Id.* at 5 (stating that from 2005–2007 only two percent of 2,000 cases, where a women was violently killed, were “resolved,” including cases resolved without a conviction).

156. JULIE SUAREZ & MARTY JORDAN, *THREE THOUSAND AND COUNTING: A REPORT ON VIOLENCE AGAINST WOMEN IN GUATEMALA 1* (2007), available at <http://www.ghrc-usa.org/Programs/ForWomensRighttoLive/ThreethousandandCounting,AReportonViolenceAgainstWomeninGuatemala.pdf>.

157. GHRC, FEMICIDE, *supra* note 153, at 2.

158. *Country at Crossroads: Country Report—Guatemala*, FREEDOM HOUSE (Oct. 2006), <http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrpage=31&ccrcountry=115>

view of domestic violence, the ongoing oppression of women in this male-dominated world only emboldens the abusers. The belief that they will not be punished is what fuels the cycle.<sup>159</sup>

*Matter of R-A-* is an infamous asylum case wherein the applicant was a victim of domestic violence from Guatemala.<sup>160</sup> The asylum seeker suffered several years of abuse from her husband.<sup>161</sup> Despite her attempts to obtain government protection, the police and the courts refused to intervene.<sup>162</sup> When she ran away, her husband found her and beat her unconscious.<sup>163</sup> Eventually, she left for the United States.<sup>164</sup>

In her asylum application, she alleged that the Guatemalan government failed to provide protection against her husband's abuse.<sup>165</sup> To qualify for asylum, a person must fear harm on account of her membership in a social group; because of this fear, the person does not want to return to her home country. Her asylum claim was based on the social group of married women in Guatemala who are unable to leave the relationship.<sup>166</sup> Indeed, this case is indicative of the systemic problems of violence in Guatemala that cause many women, including Marina, to flee from Guatemala fearing domestic violence in the absence of government protection.<sup>167</sup>

The ethnicity, class, and gender of indigenous women make them

("Little effort has been made either to prevent or to solve [crimes involving the rape, torture, and murder of women] . . . . At fault are poor police training, inadequate resources, and ingrained societal attitudes, which tend to dismiss the crimes as 'passionate problems.'").

159. *Freedom in the World—Guatemala*, FREEDOM HOUSE (2007), [http://www.freedomhouse.org/inc/content/pubs/fiw/inc\\_country\\_detail.cfm?year=2007&country=7186&pf](http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2007&country=7186&pf) ("Violence against women and children is widespread . . . . The numbers of women murdered in Guatemala have risen consistently for four consecutive years . . . . According to Guatemala's Human Rights Ombudsman, 70 percent of all homicides are not investigated, and in 97 percent of cases, no arrests were made. Human rights organizations have condemned the environment of impunity in which these crimes take place and have called for Guatemalan authorities to take immediate action. Early in 2006, the government started a commission to investigate crimes against women and implement mechanisms to prevent and punish them.").

160. *Matter of R-A-*, 22 I&N Dec. 906, 908 (BIA 1999; A.G. 2001).

161. *Id.* at 908–09.

162. *Id.* at 909.

163. *Id.* at 908–09.

164. *Id.* at 909.

165. *Id.*

166. *Matter of R-A-*, 22 I&N Dec. at 909.

167. *Id.* at 906, 910 (citing expert testimony) ("Dr. Bersing noted that spouse abuse was a problem in many countries throughout the world, but she said it was a particular problem in Latin America, especially in Guatemala and Nicaragua. As we understand her testimony, its roots lie in such things as the Latin American patriarchal culture, the militaristic and violent nature of societies undergoing civil war, alcoholism, and sexual abuse in general. Nevertheless, she testified that husbands are supposed to honor, respect, and take care of their wives, and that spouse abuse is something that is present 'underground' or 'underneath in the culture.' But if a woman chooses the wrong husband her options are few in countries such as Guatemala, which lack effective methods for dealing with the problem.").

highly vulnerable to violence.<sup>168</sup> Many of the women, including Marina, allege that they migrated to the United States to escape some type of domestic abuse or gendered violence that the government was unable to control.<sup>169</sup> They may apply for relief in the form of asylum or protection in the form of a U Visa, which permits victims of violence to remain in the United States. Many women who flee and seek protection are poor,<sup>170</sup> uneducated, and depend on their husbands for information regarding their legal status.<sup>171</sup> Therefore, these women, like Marina, lack resources to address the violence perpetuated against them. This flight from their home countries is an attempt to address abuse and expresses their opposition to societal norms that perpetuate violence against women.<sup>172</sup> Thus, gender and class intersect to create violence against women and the conditions that encourage women to flee from their home countries.

Many scholars recognize persons from Central America as economic migrants without taking into account the complex interplay of factors that drive a person to migrate to the United States.

Given the lower average annual incomes in the developing world compared to those in this country and the relatively great economic opportunity available in the United States, the per-country ceilings have class and racial impacts, tending to disproportionately affect people of color from developing nations. Many low- and medium-skilled workers of color from those nations seek to immigrate to the United States to pursue superior economic opportunities.<sup>173</sup>

In terms of push- and pull- factors, many persons from Central America migrate to the United States because of the low wages offered in their country and the ability to make more with U.S. companies.<sup>174</sup> Migratory

168. KAVITHA SREEHARSHA, AM. IMMIGRATION COUNCIL, REFORMING AMERICA'S IMMIGRATION LAWS: A WOMAN'S STRUGGLE 5 (2010), available at [http://www.immigrationpolicy.org/sites/default/files/docs/A\\_Womans\\_Struggle\\_062810.pdf](http://www.immigrationpolicy.org/sites/default/files/docs/A_Womans_Struggle_062810.pdf). See also FIAN Int'l, *supra* note 134, at 2.

169. Lawson, *supra* note 31, at 235.

170. Crenshaw, *supra* note 8, at 1245.

171. *Id.* at 1248.

172. See Leigh Goodmark, *When is a Battered Woman Not a Battered Woman? When She Fights Back*, 20 YALE J.L. & FEMINISM 75, 77 (2008) (“[W]omen who fight back are those with the fewest other options for addressing the violence against them. They are women who lack access to resources, women who may be afraid or unwilling to turn to the police or other professionals for assistance, and women whose marginalized status deprives them of the ability to make choices other than retaliation. They are women who may be conflicted about turning to the civil legal system and who find that when they do, and when they are honest about how they have defended themselves, they are penalized for exercising one of the few options open to them to prevent or escape from an assault.”).

173. Johnson, *Race and Class*, *supra* note 8, at 13.

174. *Migration from Guatemala*, *supra* note 2 (“According to the IOM (2006), households receive a monthly average of \$309 USD in remittances. The results of the annual survey indicate that

laborers then send money back to their families in their home country.<sup>175</sup> Many Guatemalans migrate internally and internationally to escape the factors discussed above.<sup>176</sup> In 2008, there were “[a]n estimated 1.4 million Guatemalans (11 percent of the population) liv[ing] in the United States, [with] as many as 60 percent [living in the United] States illegally.”<sup>177</sup>

### C. Immigration Status: Formal and Informal Migration

Marina’s story exemplifies how her immigration status makes her vulnerable to being subjected to many overlapping forms of subordination in numerous contexts.<sup>178</sup> Specifically, her status as an undocumented immigrant permits her employer to place her in the most arduous labor positions<sup>179</sup> and subject her to workplace violations, with the constant fear of deportation looming over her head, especially if she chooses to demand parity with others in the workplace. This Section discusses how the U.S. immigration system marginalizes immigrants like Marina and also reproduces the marginalization that occurs within sending countries.

The immigration system is based on three general ways to migrate to the United States: work, family, and diversity (i.e. through the lottery system).<sup>180</sup> Within this context, the U.S. immigration system places a higher value on the migration of skilled laborers from developed countries. The stereotype of the skilled laborer migrating to the United States is the Asian,<sup>181</sup> young male<sup>182</sup> immigrant with a Ph.D. degree working in the

50.3% of remittances are spent on basic consumption -food (43.1%), clothing and footwear (3.0%), transport (1.0%), household appliances (0.8%) and other expenses (2.4%).”

175. SOURCEMEX, *supra* note 2 (“Women account for US\$3 billion of the remittances sent by expatriates to Mexico,” said Ramirez Pineda, a member of the former governing Partido Revolucionario Institucional (PRI). In January–November 2003, Mexican expatriates sent about US\$12.3 billion in remittances back to Mexico.”). *See also* Evans, *supra* note 3 (“Guatemalan immigrants who find jobs at New Bedford seafood processing plants, landscaping businesses and factories send a portion of their wages—\$200 to \$500 per month—back home. The additional income doubles what the average Guatemalan earns in a year. Their families rely on the money, known as remittances, to cover everyday expenses for food, clothing, education and medical care. A large portion of remittances is spent on improving housing conditions.”).

176. Evans, *supra* note 3 (“To escape Guatemala’s crushing poverty, high unemployment and violent crime, many Quiche residents are migrating to New Bedford, Providence and other U.S. cities with growing Central American populations.”).

177. *Id.*

178. Bosniak, *supra* note 8, at 577 (stating that alienage is a category of exclusion and subordination).

179. THOMPSON, *supra* note 11, at 145, 190–91.

180. These methods are in addition to the system of fleeing persecution from one’s country in the context of requesting refugee or asylee status.

181. Guillermina Jasso, *Ethnicity and the Immigration of Highly Skilled Workers to the United States* (Inst. for the Study of Labor, Discussion Paper No. 3950, 2009) (finding that Asians constitute 80% of the skilled laborers legally migrating to the United States).

science and engineering fields.<sup>183</sup> The inverse is the stereotyped unskilled male migrant laborer who migrates to the United States without proper documentation. The unskilled male migrant laborer leaves his wife and family home, migrates to the United States to work in a factory or on a farm, and sends money to his wife and children in his home country. His counterpart is the female unskilled worker from Central America who, similar to the male, migrates to the United States, but perhaps for different reasons. She also begins working in the United States to support her family in her home country.<sup>184</sup> The migrant female is stereotyped as a domestic worker in service-oriented jobs.<sup>185</sup>

The issue of addressing how to fix the current standards for the migration of unskilled laborers and unauthorized migratory laborers is predicated upon the prototype unskilled, undocumented male worker.<sup>186</sup> According to the demographics of the unauthorized population in the United States, by age group, men and women are almost equal depending on which age group is examined.<sup>187</sup> In advocating for the rights of the unskilled

182. *Id.* (finding that highly-skilled immigrants are mostly male).

183. Frank D. Bean & Susan K. Brown, *A Canary in the Mineshaft? International Graduate Enrollments in Science and Engineering in the United States 3* (2005) (unpublished background paper) (prepared for the Forum on the Impact of Foreign Graduate Student Enrollment on the Economy, Universities, and Security; University of California, Irvine, October 16–17, 2005). “The main goals of the 1990 legislation were to increase the diversity of the country’s immigrants and to allow the entry of greater numbers of skilled workers.” *Id.* at 5 (citing ELAINE SORENSEN ET AL., *IMMIGRANT CATEGORIES AND THE U.S. JOB MARKET: DO THEY MAKE A DIFFERENCE?* (1992)).

184. Jasso, *supra* note 181 (finding that women are underrepresented among highly-skilled principals, reaching no higher than 38% in EB-3 versus 57% in the overall cohort); Cecilia Menjivar, *The Intersection of Work and Gender: Central American Immigrant Women and Employment in California*, 42 AM. BEHAV. SCIENTIST 601, 602 (1999) (“[I]n spite of the predominance of women in Central American migration, their specific experiences have not been placed at the center of analyses.”).

185. Romero, *supra* note 103.

186. Lawson, *supra* note 31, at 226–28 (stating that the international arena has historically focused on the needs of male migrant workers, accounting for the needs of women only as the wives of these workers; migration policies have also tended to ignore the specific circumstances surrounding women’s migration).

187. Michael Hoefler et al., *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009*, POPULATION REP., Jan. 2010, at 5, fig.3, available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2009.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2009.pdf) (reporting that during 2009 migration by males and females was essentially equal). The report shows the following approximations: under-eighteen year old male unauthorized migration totaled 0.7 million and female 0.6 million; ages eighteen through twenty-four year old male unauthorized migration totaled 0.9 million and female 0.5 million; ages twenty-five through thirty-four year old male unauthorized migration totaled 2.3 million and female 1.4 million; ages thirty-five through forty-four year old male unauthorized migration totaled 1.6 million and female 1.3 million; ages forty-five through fifty-four year old male unauthorized migration was equal, 0.5 million, for both male and female; and at ages fifty-five and over migration was equal, .2 million, for both male and female. *Id.* See also Johnson, *Public Benefits*, *supra* note 8, at 1517 (“[T]he stereotype of an undocumented person as a single young male from Mexico clearly no longer rings true at the end of the twentieth century.”) (citations omitted).

laborer, the outsider voice of indigenous women adds to the understanding of how the United States should address our immigration system in an economy that relies largely on both male and female undocumented migratory laborers. Marina fits within the unskilled worker category. She used the informal immigration process to gain entry into the United States.

In the informal process, employers recruit migratory workers in their home countries to work on their farms and factories. When the unskilled laborers come to the United States, employers accept false documentation and hire unskilled laborers to work at reduced rates, often in unsafe work conditions. When a worker threatens to report the employer for violations of the law, the employer threatens to call immigration to have the undocumented worker deported. This permits employers to continue to maintain employment of undocumented workers at lower wages and in abusive working conditions.

Many persons from Central America migrate to the United States for economic reasons.<sup>188</sup> Migrant laborers in developing countries perceive moving to the United States as a great opportunity to earn more money than they can in their home country, where wages are relatively low.<sup>189</sup> Migratory laborers then send money back to their families in the United States.<sup>190</sup> In addition, migrants moving to the United States are disproportionately people of color.<sup>191</sup>

In the formal immigration process for obtaining a visa to work in the United States, an applicant's race, class, education level, and gender play a significant role in a person's access to the resources. There are certain preference categories for employees who migrate to the United States. If you fall within one of these preference categories, you can migrate to the United States with your family and you have a pathway to receiving lawful permanent resident status and eventually apply to become a citizen. There are five different preference categories. The first category includes workers with extraordinary ability in the science, art, education, business, or

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188. *Migration from Guatemala*, *supra* note 2 ("According to the IOM (2006), households receive a monthly average of \$309 USD in remittances. The results of the annual survey indicate that 50.3% of remittances are spent on basic consumption -food (43.1%), clothing and footwear (3.0%), transport (1.0%), household appliances (0.8%) and other expenses (2.4%)").

189. Johnson, *Race and Class*, *supra* note 8, at 13. *See also*, Bosniak, *supra* note 104, at 584-85 ("When the provenance of the great majority of these aspiring immigrants is taken into account—they are most often from less developed countries with a history of economic and cultural subordination to the United States; they are most often people of color; and they are very often from the laboring classes in their home societies—their exclusion can seem more problematic still.")

190. SOURCEMEX, *supra* note 2.

191. Johnson, *Race and Class*, *supra* note 8, at 13 ("Given the lower average annual incomes in the developing world compared to those in this country and the relatively great economic opportunity available in the United States, the per-country ceilings have class and racial impacts, tending to disproportionately affect people of color from developing nations. Many low- and medium- skilled workers of color from those nations seek to immigrate to the United States to pursue superior economic opportunities.")

athletics; outstanding professors and researchers; and certain multinational executives and managers.<sup>192</sup> The second preference category contains members of professions holding advanced degrees.<sup>193</sup> The third preference category is for skilled workers without advanced degrees who can show their work is needed.<sup>194</sup> The fourth preference category is comprised of special immigrants, religious workers and certain long-term foreign employees.<sup>195</sup> The fifth preference category is intended to create jobs for American people who permit entrepreneurs who invest at least \$1 million each in enterprises that employ at least ten Americans to migrate to the United States.<sup>196</sup>

There is an unskilled laborer visa that gives migrant workers access to the lawful permanent resident process—the EB-3 visa.<sup>197</sup> Unskilled migrant workers fall within the third preference category.<sup>198</sup> In order to qualify for EB-3 visa, an immigrant must be able to perform unskilled labor; must have a U.S. employer sponsor who is offering a full-time job involving unskilled labor that is not on the Department of Labor’s list of jobs that do not qualify; and the employer must go through a labor certification process.<sup>199</sup> Typically, immigrants must wait several years to obtain this visa.

In 1990, Congress passed the Immigration Act in response to concerns that the U.S. economy needed more high-skilled workers.

This legislation, together with the 1986 Immigration Reform and Control Act (“IRCA”), constituted the most far-reaching shift in the country’s immigration laws since the 1965 amendments to the Immigration and Nationality Act, which abolished national origin

192. Stephen H. Legomsky & Cristina M. Rodriguez, *Deportation Procedure*, in IMMIGRATION AND REFUGEE LAW AND POLICY, 650 (5th ed. 2009).

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* U.S. State Department Visa Bulletin numerical limits for preference categories (First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences. Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference. Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers". Fourth: Certain Special Immigrants: 7.1% of the worldwide level. Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395). *Id.*

197. *Employment-Based Immigration: Third Preference EB-3*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov> (follow the hyperlinks: “Working in the United States,” then “Permanent Workers,” then “Employment-Based Immigration: Third Preference EB-3”) (last visited Oct. 30, 2010).

198. *Id.*

199. *Id.*



quotas as bases for immigrant admission.<sup>200</sup> The main goals of the 1990 legislation were to increase the diversity of the country's immigrants and to allow the entry of greater numbers of skilled workers.<sup>201</sup>

The 1990 Act established and streamlined various admission categories specially designed to attract highly-skilled knowledgeable migrants from around the world. These categories include the so-called "priority workers" category, which permits annual admission of up to 40,000 persons with extraordinary potential for contribution to their fields, such as noted professors and researchers, as well as other individuals who have attained widespread acclaim. The 1990 Act also permits entry for other professionals with advanced degrees and exceptional ability in science, the arts, or business.<sup>202</sup>

There are various class and race implications inherent in these categories.<sup>203</sup> First, this process for eligibility for any of the preference categories is typically very expensive and requires that the applicant work with the employer and an immigration lawyer to obtain a labor certification indicating that the position in which the employer is attempting to fill is one that American workers are not currently filling. Second, to fall within the majority of the categories, a person must be educated or have a special skill set. In many countries, a person's race and class largely determine access to education.<sup>204</sup> Marina, with a third grade level of education, would not have access to the resources or education to apply for this visa. "Faced with an employer-sponsorship system that hinges on education, specialized occupational needs, and economic opportunity, women are less likely than men to qualify under the current requirements of employment-based immigration."<sup>205</sup>

These preference categories are also based on the public charge concept.<sup>206</sup> Under the Immigration and Nationality Act, a migrant must prove that she will not become financially dependent on the state.<sup>207</sup> In applying for the unskilled non-immigrant visa, race, class, and gender

200. Bean & Brown, *supra* note 183, at 5 (citing FRANK D. BEAN & GILLIAN STEPHENS, AMERICA'S NEWCOMERS AND THE DYNAMICS OF DIVERSITY 2 (2003)).

201. Bean & Brown, *supra* note 183, at 5 (citing SORENSEN ET AL., *supra* note 183).

202. Legomsky & Rodriguez, *supra* note 192.

203. Johnson, *Race and Class*, *supra* note 8, at 13.

204. See STATE DEP'T REPORT, *supra* note 83 (articulating that most indigenous Guatemalan women, on average, have little or no education).

205. SREEHARSHA, *supra* note 168.

206. OFFICE OF COMMC'NS, U.S. CITIZENSHIP & IMMIGRATION SERVS., FACT SHEET: PUBLIC CHARGE (2009), available at [http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/2009%20Press%20Releases/Oct%202009/public\\_charge\\_fact\\_%20sheet\\_11\\_06\\_09.pdf](http://www.uscis.gov/USCIS/New%20Structure/Press%20Releases/2009%20Press%20Releases/Oct%202009/public_charge_fact_%20sheet_11_06_09.pdf).

207. *Id.*

impacts whether immigrants will have access to the proper resources (i.e. attorneys and employers) to permit them to apply for the visa. Accordingly, persons seeking to apply for any of the above preference categories must provide affidavits of support affirming that they have someone to financially support them.<sup>208</sup> It is obvious that an immigrant in Marina's situation would not be able to provide an affidavit of support affirming that she would not become dependent on the state.

Further, most of the immigrants who may be eligible for these preference categories typically do not come from developing countries. This fact has race implications as most developing countries are populated with persons of color.<sup>209</sup> In addition, highly skilled immigrants are mostly male, which excludes female workers.<sup>210</sup>

The unskilled migrant laborers are also missing from the preference categories. There are unskilled worker (non-agricultural) non-immigrant visas, which permit workers to come to the US temporarily—the H-2B Visa.<sup>211</sup> Most of the workers, like Marina, fall within this category. The H-2B visa is for employers with peak-load, seasonal, or intermittent needs to augment their existing labor force with temporary workers.<sup>212</sup> Workers may only stay for one year.<sup>213</sup> The Department of Homeland Security provides approximately 66,000 H-2B visas per year.<sup>214</sup> These visas are non-immigrant visas and do not permit the worker to obtain lawful permanent resident status. The process for applying for this visa is extremely long and difficult. It often requires the use of an immigration lawyer, which requires money. The U.S. economy relies on approximately 500,000 workers per year for unskilled labor;<sup>215</sup> however, for the year 2010, Congress capped the unskilled worker visas at 66,000.<sup>216</sup>

The gap between the number of unskilled H-2B visas issued and the number of workers on which the U.S. economy relies has, in part, facilitated the creation of the large unauthorized immigrant population. Unauthorized or undocumented immigrants are persons who entered the country without

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208. *Id.*

209. See Johnson, *Race and Class*, *supra* note 8, at 13.

210. Jasso, *supra* note 181.

211. LEGOMSKY & RODRIGUEZ, *supra* note 192.

212. *H-2B Temporary Non-Agricultural Workers*, U.S. CITIZENSHIP & IMMIGRATION SERVS., <http://www.uscis.gov> (follow "Temporary [Nonimmigrant] Workers hyperlink, then "H-2B Non-Agricultural Workers" hyperlink) (last visited Oct. 30, 2010) [hereinafter *H-2B Temporary Non-Agricultural*].

213. *Id.*

214. LEGOMSKY & RODRIGUEZ, *supra* note 192.

215. Bonnie Erbe, *Rising Unemployment Stalls Obama's Push for Immigration Reform—Good*, U.S. NEWS & WORLD REP., Apr. 27, 2009.

216. *H-2B Temporary Non-Agricultural*, *supra* note 212.

proper documentation and persons who were authorized to enter but overstayed their visas. Most unauthorized immigrants in the United States come from Mexico.<sup>217</sup> The next highest numbers of unauthorized immigrants come from El Salvador, Honduras and Guatemala, respectively.<sup>218</sup> In 2009, there were approximately 10.8 million unauthorized immigrants in the United States.<sup>219</sup> This decreased from 11.6 million unauthorized immigrants in 2008.<sup>220</sup> The decrease is attributed, in part, to the decline of the U.S. economy.

Employers go to unskilled laborers' home countries to hire workers. This helps to create an "illegal" or undocumented population in the United States.<sup>221</sup> Once migratory laborers arrive, they are afraid to challenge employers for fear of deportation. This creates a workplace environment that gives employers power to hire unauthorized workers at depressed wages, refuse to comply with safety standards, and refuse to permit workers to unionize. The workplace thus becomes ripe for indigenous Guatemalan workers to take these positions.<sup>222</sup> The result is a dual workforce in the United States where the law entitles one group to protection, and it deprives the other group, mainly poor persons, women, and persons of color, of basic rights.

The main issue with the immigration system lies in factors inside and outside of the United States. First, decades of unfair trade policies have depleted resources within Central America and Mexico.<sup>223</sup> Scholar Karen Bravo suggests that the problem lies in the failure to liberalize labor, which increases worker vulnerability to exploitation.<sup>224</sup> She argues that individual

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217. Hoefer et al., *supra* note 187, at 4, tbl.3 (indicating that unauthorized Mexicans made up 6,650,000 of the unauthorized immigrant population in 2009).

218. *Id.* (indicating that unauthorized El Salvadoran population made up 530,000 of the unauthorized immigrant population in 2009; the unauthorized Honduran population made up 320,000).

219. *Id.*

220. *Id.*

221. Evans, *supra* note 3 ("A lot of them choose to go to the U.S. because they have contacts there who call them and say they can get jobs," says Lucia Tecum Lindo, a student at a law school in Santa Cruz del Quiche, capital of the Quiche province [in Guatemala].").

222. See sources cited *supra* note 3.

223. John Steinbach, *The Obama Administration's Immigration Policy*, Z MAGAZINE, Dec. 9, 2009 ("The major 'push factor' driving mass migration to the north has been the widespread implementation of neo-liberal economic policies, such as [the North American Free Trade Agreement], that open borders to capital while closing them to labor, thus creating massive economic dislocation in Mexico and Latin America. The practical effect of this process of structural adjustment has been the displacement and unemployment of millions of rural farmers and urban workers, causing the massive migration. Those with no choice but to travel north to seek employment encounter ever rising anti-immigrant hostility.").

224. Karen Bravo, *Free Labor! A Labor Liberalization Solution to Modern Trafficking in Humans*, 18 TRANSNAT'L L. & CONTEMP. PROBS. 545, 548-49 (2009).

migrants seek to exchange their labor where it is valued at a higher market price either internally or internationally.<sup>225</sup> She also argues that heavily-policed borders prevent this exchange, and open human labor to exploitation.<sup>226</sup> There are two schools of thought concerning what produces economic stratification in this context.<sup>227</sup> One school of thought is that ideology and systems of meaning perpetuate race and gender inequality.<sup>228</sup> Another school of thought maintains that material interest and control over productive and political resources perpetuate inequality.<sup>229</sup> In the case of the migrant immigrant worker, there is a control over productive and political resources that perpetuates inequity.<sup>230</sup>

Immigration scholar Linda Bosniak discussed undocumented status and noted that “[i]t would be hard to find a group of people who live further at the margins, or closer to ‘the bottom,’ than the undocumented.”<sup>231</sup> She argues that including the undocumented population within the political and legal landscape is challenging where the boundaries of a nation–state form the normative universe for political rights.<sup>232</sup> She states that “[p]rogressives’ general presumption of the legitimacy of national borders serves to thwart any efforts [towards parity because] . . . it is precisely enforcement of these borders which produces the immigrants’ powerlessness here in the first place.”<sup>233</sup> Thus, including undocumented immigrants within the conception of a group entitled to rights would eviscerate the concept of national borders, as any immigrant would be able to unlawfully enter the country and demand entitlement to certain rights.<sup>234</sup>

In my article, *Sustaining Tiered Personhood: Jim Crow and Anti-Immigrant Laws*, I posited that the normative universe for political rights extended to immigrants who are within the U.S. borders, regardless of their

225. *Id.* ([I]ndividual migrants, who comprise a significant source of trafficked persons, seek to exchange their labor for value—to respond to market forces that promise higher prices for their labor across internal domestic and/or international borders. Those borders are now heavily policed and enforced, and unsanctioned crossing is essentially verboten. In seeking to trade their labor and to navigate the state-created barriers (i.e., borders) to transnational labor markets, individuals become more vulnerable to the predations of exploitative middlemen such as traffickers in human beings.”).

226. *Id.*

227. Browne & Misra, *supra* note 8, at 491.

228. *Id.* at 489 (citing COLLINS, *supra* note 105).

229. Browne & Misra, *supra* note 8, at 489 (citing LEITH MULLINGS, *ON OUR OWN TERMS: RACE, CLASS, AND GENDER IN THE LIVES OF AFRICAN AMERICAN WOMEN* (1997); and LYNN WEBER, *UNDERSTANDING RACE, CLASS, GENDER, AND SEXUALITY: A CONCEPTUAL FRAMEWORK* (2001)).

230. Steinbach, *supra* note 223.

231. Bosniak, *supra* note 104, at 577.

232. *Id.* at 580.

233. *Id.* at 591.

234. *Id.* at 589.

citizenship status.<sup>235</sup> Bosniak acknowledges that some international legal scholars have made this argument based on international law principles.<sup>236</sup> Based on case law, such as *Plyer v. Doe*,<sup>237</sup> which extended the right to attend school to undocumented children, the United States does not deny undocumented immigrants all personhood rights when they enter the country. Accordingly, I argue that the concept of personhood under the Fourteenth Amendment provides protection to all persons regardless of their immigration status, which precludes depriving undocumented immigrants of personhood rights.<sup>238</sup> Personhood rights should be guaranteed regardless of citizenship status.<sup>239</sup> The recognition of differences, like immigration status, which is justified on the basis of the nation-state and accepted as a norm, provides for the marginalization of undocumented and non-citizens as exemplified by Marina's story. Essentially, tiered personhood guarantees that the basic humanity of subordinated groups is denied because of their race, ethnicity, or nationality.<sup>240</sup>

#### *D. Gender: The Stereotype of the Unskilled Immigrant Worker*

Marina's story takes her outside of the "stereotypical" image of the Latina migrant working in domestic roles as maids or caregivers.<sup>241</sup> In the Pilgrims Pride poultry plant, Marina worked alongside her male counterparts. "Approximately 4.1 million immigrant women in the U.S. are undocumented."<sup>242</sup> "Many women, particularly those who are undocumented, are often more vulnerable than their male counterparts and lack the same economic opportunities."<sup>243</sup>

The issue of addressing how to fix the current standards for the migration of unskilled laborers and the unauthorized migratory laborer is predicated upon the prototypical unskilled, undocumented, male laborer even though females from Central America are migrating at similar rates to

235. Karla McKanders, *Sustaining Tiered Personhood: Jim Crow and Anti-Immigrant Laws*, 26 HARV. J. ON RACIAL & ETHNIC JUST. 163 (2010).

236. See Bosniak, *supra* note 104, at 605–12 (citing international law scholars).

237. *Plyer v. Doe*, 457 U.S. 202 (1982).

238. McKanders, *supra* note 235.

239. *Id.*

240. *Id.* Additionally, Bosniak acknowledges that larger international human rights standards may be able to govern protections for undocumented populations and cites scholars who have attempted to make this argument. She also states that international legal scholarship is the only area of law that has critiqued the use of borders for the protection of refugees. Bosniak, *supra* note 104, at 610.

241. Romero, *supra* note 103.

242. SREEHARSHA, *supra* note 168.

243. *Id.* at 4.

their male counterparts.<sup>244</sup> In advocating for the rights of the unskilled laborer, the outsider voice of indigenous women adds to the understanding of how the United States should address our immigration system in an economy that relies largely on undocumented migratory laborers. The United States must include the female laborer and see her as more than a domestic worker.<sup>245</sup>

The stereotyped immigrant woman takes care of her children, provides emotional support to her husband, and stays within the domestic realm. While the role of women has changed in the twenty-first century, women to some extent still feel the effects of what it means to step outside of the traditional gender norms. Given this context, indigenous women, who migrate to the United States to work, fall outside the norm of women who migrate to the United States without proper documentation. These women enter the workforce and become providers for their intermediate and extended families in the United States and in their home countries.<sup>246</sup>

Women who migrate with their children from Central America to the United States most often have to endure very harsh conditions where they are traveling with coyotes through the desert and in areas of very high crime.<sup>247</sup> For example, the Immigration Policy Center estimates:

Women who migrate unlawfully by crossing the U.S.-Mexico border, for example, are far more vulnerable to unsafe conditions and are particularly at risk for sexual assault. A United Nations representative estimated that 70% of women who cross [the border] without spouses or other families are sexually assaulted

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244. See SOURCEMEX, *supra* note 2.

245. Johnson, *Public Benefits*, *supra* note 8, at 1549 (“The illegal alien stereotype fails to incorporate women, despite the obvious fact that women immigrate, both lawfully and unlawfully, to the United States.”).

246. SOURCEMEX, *supra* note 2 (“[R]apid expansion of poverty in Mexico has forced an increasing number of women in rural areas to abandon their traditional role as homemakers and enter the work force . . . [Instituto Nacional de Mujeres] director Patricia Espinosa said job search has become the primary reason for Mexican women to enter the US, since they can earn more money in the US than they can at home. ‘It used to be that women traveled with their husbands as the “wife of the emigrant,”’ Espinosa told the Mexico City daily newspaper *La Jornada*. ‘Now we should simply call them women emigrants.’”).

247. *Id.* (“A total of 408 deaths of undocumented immigrants were reported in 2003, primarily in the arid deserts of Arizona and Southern California. This is an increase from 371 deaths reported in 2002.”). See also Menjivar, *supra* note 184, at 606–07 (“Most of the men and women with whom [the researcher] spoke commented on the perils of the trip [travel by land]: the abuses on the part of immigration officials in Mexico and, in many cases, the unscrupulous coyotes (smugglers) whom they hired to bring them to the United States. Many of these immigrants’ harrowing experiences during their journeys left them with more or equally severe trauma than the violence in their countries had caused. This trip is particularly dangerous for women who, in addition to extortion and robberies, are exposed to gender-specific crimes such as sexual assault and intimidation. Sometimes, however, women are able to negotiate better treatment by using their vulnerability as women to appeal to compassionate persons.”).

during the border crossing.<sup>248</sup>

“Immigrant women are more likely to experience exploitation while crossing the border, while working, and even in their own homes. Immigrant women are, in fact, the silent victims of the broken immigration system.”<sup>249</sup>

Other times women leave their children with relatives in their home countries until they can afford to have a coyote transport their children to the United States.<sup>250</sup> Under both sets of circumstances, these women step outside of traditional gender norms. Additionally, people often criticize immigrant women for subjecting their children to unsafe conditions in their attempt to give their children better lives.

The Latina female migratory laborer is stereotyped as migrating to work in domestic and service positions.<sup>251</sup> Marina’s role as a poultry plant worker falls outside of traditional gender norms for women who migrate to the United States for work. This places Marina’s work issues outside of the typically recognized issues of the female domestic migratory worker. “Without lawful permission to accept employment, undocumented immigrant women work for substandard wages, making 13.2% less than their immigrant male counterparts and 14.4% less than their female U.S. citizen counterparts.”<sup>252</sup>

Recognizing that women are migrating at similar rates to their male counterparts and are subject to different kinds of violence is important. The patterns of women migrating have implications on the families who are in the home countries and the U.S. citizen children that are born to the women once they come to the United States.

## V. CONCLUSION: DISSOLVING THE IMMIGRANT UNSKILLED LABORER CASTE SYSTEM

The many immigration raids across the country uncovered a workplace and immigration system that facilitates the subordination of minority workers of color. Racism, sexism, and ethnocentrism all interact with the immigration system to subordinate immigrant workers who, out of fear, deal

248. SREEHARSHA, *supra* note 168, at 5.

249. *Id.* at 4.

250. SOURCEMEX, *supra* note 2 (“Another trend, according to a joint US-Mexico study, is for immigrant smugglers to offer to smuggle in the children of undocumented workers already working in the US. The study—produced by the Instituto Nacional de Migracion (INM), the US State Department, and consular personnel from both nations—said one operation known as Gringo Coyote Company has targeted smuggling children as one of its many ventures.”).

251. *Preparatory Committee*, *supra* note 8, at 9. Crenshaw calls this issue “over inclusion” which is meant to capture the occasions in which a problem or condition that is particularly or disproportionately visited on a subset of women and is simply claimed as a women’s problem. *Id.*; see also Lawson, *supra* note 31, at 235 (discussing the migration of women to California to take on domestic roles as housekeepers and nannies).

252. SREEHARSHA, *supra* note 168, at 6.

with unsafe working conditions, irregular pay, discrimination, and harassment. Marina's story evinces how the Mam Mayan woman plays a role that is not traditionally explored in the context of immigration raids. Accordingly, the immigration reform movement should not adopt a single-axis framework, the unskilled immigrant male paradigm, to understand the plight of the indigenous unskilled worker. Marina's story, the Mam Mayan woman, debunks the myth of the Latina domestic worker and depicts a sect of immigrant women working in plants as unskilled workers and being subjected to unique forms of discrimination.

Marina, as an indigenous, Guatemalan woman is "othered" within the immigration and labor systems. Her "other" status leaves her vulnerable to exploitation when she arrives in the United States. Immigrant advocates must acknowledge how the Mam Mayan woman's story does not fit within the traditional paradigm of the skilled male immigrant worker, and how the immigration system and employers marginalized her in unique ways. Advocates must also recognize that the immigration system has requirements that permit the educated, wealthy, male immigrant worker to obtain a preference category visa to migrate to the United States with his family.

The solution to the current problems in the immigration system is not more workplace raids or policing of the workplace.<sup>253</sup> This solution would further subordinate marginalized populations, like indigenous Guatemalan women, because they are at the bottom of the social strata and bear the brunt of the enforcement in the immigration raids. Policymakers must go beyond the micro issues and acknowledge that at the center of the subordination of Marina are the borders wherein immigrants who do not have "legal" status are subordinated outsiders with no protections. Thus, policymakers must acknowledge that labor flows into the United States, and create a system that adequately responds to workforce needs. In making this acknowledgement, policymakers must develop policies that support labor flows. The consequence of not recognizing labor flows will be more violations of human rights at all levels as exemplified through Marina's story.<sup>254</sup> This

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253. *Id.* ("The immigrant rights movement widely applauded President Obama's decision to move away from the Bush administration's practice of massive workplace raids. However, on July 1, the Obama administration announced pending audits of the I-9 worker verification program at 652 companies nationwide, over 100 more than in all of 2008 under George W Bush. An I-9 is required to verify an employee's identity and to establish eligibility for employment in the United States. Every employee must complete an I-9 form at the time of hiring. Many of the same concerns listed for E-Verify also hold for the I-9. DHS Assistant Secretary for ICE Morton said, 'This nationwide effort is a first step in ICE's long-term strategy to address and deter illegal employment.'")

254. Bravo, *supra* note 224, at 547 (citing DOUGLAS S. MASSEY ET AL., *WORLDS IN MOTION: UNDERSTANDING INTERNATIONAL MIGRATION AT THE END OF THE MILLENNIUM* 293 (1998) ("[Legislatures] must develop policies that recognize the inevitability of labour flows within a globalized economy characterized by well-established regional networks of trade, production, investment, and communications. Attempts to suppress population flows that are a natural consequence of a nation's insertion into these economic networks will not be successful, but they will present grave threats to individual rights, civil liberties, and human dignity."))



ultimately will require more open borders that facilitate a person's right to enter and exit and exchange their labor.<sup>255</sup> The consequences of failure to recognize how existing policies impact those at the bottom results in a system that continues to perpetuate racism, sexism, classism, and fails to recognize the impact of the laws on the most vulnerable populations.

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255. *Id.* at 548–49 (“The solution proposed in this Article addresses the first two of these tensions. To combat human trafficking, this Article contends that the economic nature of humans—their economic roles in the global and economic system—must be recognized more fully. That recognition will require that human labor providers have the right to enter and exit individual domestic labor markets in response to economic stimuli and, therefore, are contrary to the contemporary default operation of barricaded national borders.”).

