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WORK-RELATED IMMIGRATION POLICY IN THE UNITED STATES: PAST AND PRESENT PROBLEMS

RÉSUMÉ

La politique d'immigration liée au travail aux Etats-Unis est profondément défailante, imposant des restrictions excessivement strictes à l'immigration et ne protégeant pas suffisamment les droits des travailleurs migrants. Les politiques anti-immigrants engagées par l'Administration Trump ont exacerbé les problèmes préexistants et intensifié le climat d'hostilité à l'égard des immigrés. Une réforme législative s'avère nécessaire pour instaurer un traitement égal et équitable des travailleurs immigrés.

MOTS CLÉS: *Immigration, visas de travail, travailleurs invités, travailleurs sans papiers, contrôle aux frontières.*

ABSTRACT

United States work-related immigration policy is deeply flawed, creating overly stringent restrictions on immigration and failing to adequately protect the rights of migrant workers. The Trump administration's anti-immigrant policies have exacerbated pre-existing problems and created a new level of hostility toward immigrants. Legislative reform is needed to establish equal and equitable treatment of immigrant workers.

KEYWORDS: *Immigration, Work Visas, Guest Workers, Undocumented Workers, Border Control.*

The 2016 election of Donald Trump as president of the United States has placed increased focus on US immigration policies, largely due to Trump's anti-immigrant rhetoric initiating his political campaign and continuing into his presidency. The Trump administration's strategy is built on a foundation of racism, xenophobia, and islamophobia that scapegoats immigrants of color, and in particular, immigrants from Latin America and Muslim-majority countries. The administration has carried out its strategy by escalating US Immigrations and Customs Enforcement (ICE) raids and deportations of unauthorized immigrants residing in the US, adopting broad bans on entry into the United States from certain Muslim-majority countries, and intensifying an obsession with «security» along the US-Mexico border. The Trump administration's anti-immigrant rhetoric includes racist statements used to assert that immigrants of color pose a national security threat. Trump's ability to achieve such success through these attacks, however, should also be analyzed in relation to the existing problems in US immigration policies, which have created overly stringent restrictions on immigration into the US and have failed to protect the rights of immigrants working in the US.

This article examines current US work-related immigration policy, which was in effect prior to the Trump's election and which is deeply flawed. Such long-term policies have resulted in an immigration system that places unfair restrictions on authorized temporary guest workers while in the US, creates incentives for employers to exploit workers, and creates conditions in which authorized and unauthorized immigrant workers experience violations of their employment rights but are afraid to file legal complaints. This article discusses the long-term immigration policies that have resulted in these problems and the need for legal reform of the US immigration system **(I)**. The article also critiques the Trump administration's anti-immigrant policies and programs, which have exacerbated pre-existing problems and created a new level of hostility toward immigrants **(II)**.

I - WORK-RELATED IMMIGRATION POLICY IN THE UNITED STATES

A - CATEGORIES OF VISAS

As of 2012, immigrants residing in the US made up about 13 percent of the US population. Slightly less than half of these 40 million immigrants are naturalized US citizens¹. US immigration law creates categories of visas, including those that authorize employment

1 D. Costa, D. Cooper, and H. Shierholz, *Facts about immigration and the U.S. Economy*, Economic Policy Institute, 12/08/2014, p. 1: <https://www.epi.org/publication/immigration-facts/>

in the US. «Employment-based» immigrant visas, also known as «preferences», grant legal permanent resident status and create an eligibility for citizenship after five years in that status². In most cases, a US employer files a petition for the visa on behalf of the worker, based on the individual's abilities in high-skilled areas such as science and research³.

In contrast, temporary or «nonimmigrant» visas include the «H» category that authorize the individual to work for a set period of time, usually for approximately ten months for a specific employer and renewable in one-year increments for up to three years⁴. These include H-2 «guest worker» programs, generally in low-wage, lower skilled jobs, for temporary agricultural work (H-2A visas) and for temporary non-agricultural work in seasonal industries, including seafood processing, construction, hotels, and national disaster recovery work (H-2B visas)⁵. There is no regulatory limit on the annual number of H-2A visas, but there is a cap on H-2B visas. Approximately 100,000 H-2A and 66,000 H-2B temporary work visas are issued per year⁶, although in 2019, the Department of Homeland Security increased the H-2B annual limit by an additional 30,000 visas⁷. Workers on temporary H-2 visas lose their authorized visa status if they change employers⁸.

Another temporary work visa, the H-1B visa, is designed for higher skilled workers in specialty occupations requiring a college degree or equivalent, particularly in the information technology industry⁹. There is a statutory cap of 65,000 H-1B visas per year, although more are often issued under exceptions to the cap¹⁰. The H-1B visa has advantages over the H-2A and H-2B visas, as H-1B visa holders may change employers while in the US and are provided with opportunities to apply for resident status and eventual citizenship in the US¹¹. Although J-1 visas, which are temporary visas, are part of a federal cultural exchange program, they also include low-wage work in occupations such as au pairs, maids and housekeepers¹².

2 *Ibid.*, p. 10.

3 *Ibid.*

4 *Ibid.*, p.11.

5 8 U.S.C. para. 1101(a)(15)(H)(ii)(a) ; 8 U.S.C. para. 1101(a)(15)(H)(ii)(b) ; 8 C.F.R. para. 214.2(h) ; K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, vol. 31, 2009, p. 134; D. Costa and al., *Facts about immigration and the U.S. Economy*, Economic Policy Institute, 12/08/2014, *op. cit.*, p. 12.

6 The total visas issued for all temporary worker visa categories is approximately one million; K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, *op. cit.*, p. 135.

7 D. Costa, *Congress and Trump discover bipartisanship on immigration - but only to increase H-2B visas for captive and underpaid migrant workers*, Working Economics Blog, Economic Policy Institute, 2/04/2014: <https://www.epi.org/blog/congress-and-trump-discover-bipartisanship-on-immigration-but-only-to-increase-h-2b-visas-for-captive-and-underpaid-migrant-workers/>

8 K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, *op. cit.*, p. 135 ; D. Costa et al., *Facts about immigration and the U.S. Economy*, Economic Policy Institute, *op. cit.*, p. 14.

9 8 U.S.C. § 1101(a)(15)(H)(i)(b); 8 C.F.R. § 214.2(h). K. Griffith, *ibid.*, p.131.

10 *Ibid.*

11 *Ibid.*

12 D. Costa, «Modern-day Braceros», *Working Economics Blog*, Economic Policy Institute, 31/03/2017: <https://www.epi.org/blog/modern-day-braceros-the-united-states-has-450000-guestworkers-in-low-wage-jobs/>

Some visa categories are not considered «employment-based» but permit the individual to be employed in the US. These include visas based on refugee status, diversity (lottery) visas, or visas granted because of a family relationship with a US citizen or legal permanent resident¹³.

B - SYSTEMIC FLAWS IN THE TEMPORARY VISA PROGRAMS

The system of guest worker programs in the US has long been criticized as deeply flawed, plagued by some of the same problems of exploitation and abuse as the US «Bracero» agricultural guest worker program that existed from 1942 to 1964¹⁴. The current H-2A and H-2B guest worker program was created by the 1986 federal Immigration Reform and Control Act (IRCA)¹⁵, which amended the H2 program in the 1952 Immigration and Nationality Act¹⁶. The central problem is the control of employers over the H-2 guest workers, which creates what critics refer to as a system of «indentured servitude»¹⁷. This control is built into the structure of the H-2 program, which prohibits H-2 guest workers from changing employers in the US. Employers reportedly routinely abuse this control through actions such as confiscating workers' identity documents and threatening workers with deportation¹⁸.

Another flaw of the H-2 guest worker program are the low-wages. Although federal regulations require employers to pay H2 workers either a «prevailing» or «adverse effect» wage rate, in practice many employers pay lower rates, even less than the federal minimum hourly wage of \$7.25¹⁹. Moreover, guest workers are victims of other forms of «wage theft» by employers who underreport the hours worked, fail to pay for overtime, make deductions from workers' pay, or fail to reimburse workers for their travel and visa expenses²⁰. Similarly, the «indentured» nature guest workers' employment make them vulnerable to other violations of US labour law, including unsafe working conditions, and

13 D. Costa and al., *Facts about immigration and the U.S. Economy*, Economic Policy Institute, *op. cit.*, p. 10.

14 M. Bauer and M. Stewart, «Close to Slavery: Guestworker Programs in the United States», *Southern Poverty Law Center*, 2013, p. 3: https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf

15 8 U.S.C. § 1101-1537.

16 8 U.S.C. § 1101(a)(15)(H)(ii)(A); A. Read, «Learning from the Past: Designing Effective Worker Protections for Comprehensive Immigration Reform», *Temple Political & Civil Rights Law Review*, vol. 16, 2007, p. 430.

17 See, e.g., M. Bauer and M. Stewart, «Close to Slavery: Guestworker Programs in the United States», *Southern Poverty Law Center*, *op. cit.*, p. 2 ; B. Ashby, «Indentured Guests - How the H-2A and H-2B Temporary Guest Worker Programs Create the Conditions for Indentured Servitude and Why Upfront Reimbursement for Guest Workers. Transportation, Visa, and Recruitment Costs is the Solution», *U. Mem. L. Rev.*, vol. 38, 2008, p. 895.

18 M. Bauer and M. Stewart, «Close to Slavery: Guestworker Programs in the United States», *Southern Poverty Law Center*, *op. cit.*, p. 14.

19 *Ibid.*, p.18.

20 *Ibid.*; A. Bernhardt and al, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, National Employment Law Project, 2009, p. 42: <file:///C:/Users/rl15/AppData/Local/Temp/Broken LawsReport2009.pdf>

discrimination based on race, national origin, and union activities²¹. Further, many guest workers' economic conditions are worsened by having gone into debt to pay high fees to labour recruiters who act as middlemen for US employers²². Given these conditions and their complete dependence on their employer, guest workers fear retaliation from their employer, including discharge or being blacklisted from future employment, if they file complaints about violations of their labour rights.

These structural flaws of H-2 guest worker programs are intertwined with class, race, and gender-based systemic inequalities. In the US workforce, women and people of color are significantly more likely to earn poverty-level wages than are white men²³. Women, minorities, and immigrants are overrepresented among low-wage workers²⁴. The H-2 guest worker programs reveal the same impact of race, gender and class-based inequalities. About 80 percent of H-2 workers come from Mexico²⁵. Race and gender inequalities also affect migrant workers through the exclusions of certain categories of workers from basic labour rights in the US. The Fair Labor Standards Act of 1938 (FLSA)²⁶ excludes agricultural workers and domestic workers from overtime pay provisions²⁷. The exclusion of agricultural workers and domestic employees from coverage under the National Labor Relations Act²⁸ leaves these low-wage employees without federal statutory rights to unionize, collectively bargain, or engage in other protected concerted activity. These statutory exclusions were made as concessions to southern congressmen in exchange for their support of New Deal legislation²⁹. The exclusions have a disproportionately negative impact on women and people of color, including guest workers, who are heavily concentrated in agricultural

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- 21 M. Bauer and Stewart, «Close to Slavery: Guestworker Programs in the United States», *Southern Poverty Law Center*, op. cit., p. 31; C. DiSanto, «Beauty and the H-2 Beast: How the Equality State Fails its Female Guest Workers», *Wyo. L. Rev.*, vol. 18, 2018, p. 335.
 - 22 M. Bauer and M. Stewart, «Close to Slavery: Guestworker Programs in the United States», *Southern Poverty Law Center*, op. cit., p. 9; K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, op. cit., p. 138.
 - 23 In 2011, 32 percent of women earned poverty-level wages, as compared to 24.3 percent of men. L. Mishel, «Economic Snapshot», *Economic Policy Institute*, Sept. 19, 2012: <https://www.epi.org/publication/women-earn-poverty-level-wages/>. In 2017, 8.6 percent of white workers, 19.2 percent of Hispanic workers, and 14.3 percent of black workers were paid poverty wages. D. Cooper, «Workers of color are far more likely to be paid poverty-level wages than white workers», *Working Economics Blog*, *Economic Policy Institute*, Jun. 21, 2008: <https://www.epi.org/blog/workers-of-color-are-far-more-likely-to-be-paid-poverty-level-wages-than-white-workers/>
 - 24 *Ibid.*; K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, op. cit., p. 216.
 - 25 M. Bauer and M. Stewart, «Close to Slavery: Guestworker Programs in the United States», *Southern Poverty Law Center*, op. cit., p. 5; D. Costa and al., *Facts about immigration and the U.S. Economy*, *Economic Policy Institute*, op. cit., p. 16.
 - 26 29 U.S.C. §§201 and seq.
 - 27 K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, op. cit., p. 146.
 - 28 29 U.S.C. Sec. 152(3).
 - 29 J. Perea, «The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act», *Ohio State L. J.*, vol. 72, 2011, p. 96.

and domestic labour.³⁰ Both the FLSA and NLRA exclude «independent contractors» from protection³¹. This may have a negative impact on workers in the H-2B non-agricultural jobs program, particularly where employers seek to avoid legal obligations by misclassification of employees³².

Although the J-1 visa cultural exchange program has received broad positive support, there have also been problems with exploitation, subjecting J-1 visa holders to labour abuses similar to H-2 workers³³. Some employers have used J-1 visa holders as substitutes for low-wage labour that would have been held by H-2B workers³⁴. In other cases, J-1 visa holders have experienced extremely poor working conditions in J-1 positions, such as au pair jobs³⁵.

While H-1B visas have significant advantages over H-2A and H-2B visas, including higher wages in skilled jobs, the ability to change employers in the US, and the opportunity to apply for permanent resident status, there have also been problems with enforcement of labour rights in the H-1B program³⁶. This is, in part, due to the dependency of H-1B visa holders on their US employers to sponsor them for permanent resident status³⁷.

C - LABOR CONDITIONS AND VIOLATIONS OF RIGHTS OF UNDOCUMENTED WORKERS

Individuals with temporary work visas account for only a small percentage of migrant workers in the US. It is estimated that there are about 11 million unauthorized immigrant workers - that is, without required work visas - in the US³⁸. Most of these are low-wage and low-skilled workers³⁹ who have lived in the US for many years⁴⁰. They work throughout the US across a broad range of industries, including agriculture, meatpacking and poultry, construction, forestry and landscaping, domestic service, hotels, and restaurants⁴¹.

30 K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, *op. cit.*, p. 142; L. Compa, «Migrant workers in the United States: Connecting domestic law with international labor standards», *Chi.-Kent L. Rev.*, vol. 92, 2017, p. 229: «Immigrant workers [...] comprise an estimated three-fourths of the farm labor force».

31 K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, *op. cit.*, p. 146.

32 *Ibid.*, p. 142.

33 C. DiSanto, «Beauty and the H-2 Beast: How the Equality State Fails its Female Guest Workers», *Wyo. L. Rev.*, *op. cit.*, p. 34.

34 *Ibid.*, p. 342.

35 *Ibid.*, J. Chuang, «The U.S. au pair program: Labor exploitation and the myth of cultural exchange», *36 Harv. J.L. & Gender*, vol. 36, 2013, p. 290.

36 K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, *op. cit.*, p. 13.

37 *Ibid.*, p. 134.

38 D. Costa, «California leads the way», *Economic Policy Institute*, 22/03/2018, p. 4: <https://www.epi.org/publication/california-immigrant-labor-laws/>

39 K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, *op. cit.*, p. 125.

40 D. Costa, *Modern-day Braceros*, Working Economics Blog, *op. cit.*, p. 6: «Two-thirds of the entire unauthorized population has lived in the United States for at least 10 years».

41 L. Compa, «Migrant workers in the United States: Connecting domestic law with international labor standards», *Chi.-Kent L. Rev.*, *op. cit.*, p. 213.

Without a work visa, undocumented workers are even more vulnerable to employer exploitation and abuse than are guest workers in the H-2 programs. Additionally, a Supreme Court decision in 2002 makes it more unlikely that undocumented workers will engage in union activities under the NLRA. Although undocumented workers are employees covered by the NLRA⁴², in *Hoffman Plastic Compounds v. NLRB*⁴³, the Court severely restricted the NLRB's power to award remedies to undocumented workers. In its 5-4 decision, the Court held that the NLRB was barred from awarding reinstatement or backpay to undocumented workers as a remedy for violations of the NLRA. The Court viewed such remedial awards as undermining the policies of IRCA, which «makes it unlawful for employers knowingly to hire undocumented workers or for employees to use fraudulent documents to establish employment eligibility»⁴⁴.

As the four dissenting justices in *Hoffman Plastic* noted, the Court's holding, in effect, immunizes employers from paying NLRA remedies where the employer commits unfair labour practices such as discharging undocumented workers for attempting to form a union⁴⁵. As the dissent stated, a «backpay order [under the NLRA] will not interfere with the implementation of immigration policy. Rather, it reasonably helps to deter unlawful activity that both labour laws and immigration laws seek to prevent»⁴⁶. In 2011, the NLRB applied *Hoffman Plastic* to hold that employers are not required to pay remedies even where they knowingly hire an undocumented worker and then commit an unfair labour practice against that worker⁴⁷. The combined effect of these two decisions encourages employers to risk violating IRCA in exchange for the «benefit» of union avoidance⁴⁸. Given the concentration of immigrant workers in low-wage jobs with poor working conditions, this will make unionization even more difficult in industries where there is the greatest need for unions and collective bargaining⁴⁹. Undocumented migrant workers, fearing employer retaliation that may include ICE raids during union organizing campaigns, will be unlikely to assert their collective and individual rights under the NLRA, Title VII and other employment

42 *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984).

43 535 U.S. 137 (2002).

44 *Ibid.*, p. 141.

45 *Ibid.*, p. 156.

46 *Ibid.*, p. 153. See, L. Compa, «Migrant workers in the United States: Connecting domestic law with international labor standards», *Chi.-Kent L. Rev.*, *op. cit.*, p. 229.

47 *Mezonos Maven Bakery, Inc.*, 357 NLRB 47 (2011).

48 See K. Griffith, «U.S. Migrant Worker Law: The Interstices of Immigration Law and Labor and Employment Law», *CLLPJ*, *op. cit.*, no. 111 (Although enforcement of IRCA sanctions against employers has generally been viewed as ineffectual, increased ICE raids on workplaces may have gained employers' attention.)

49 L. Compa, *Blood, sweat and fear: Workers' rights in U.S. meat and poultry plants*, Human Rights Watch, 2004: <https://www.hrw.org/report/2005/01/24/blood-sweat-and-fear/workers-rights-us-meat-and-poultry-plants> (documenting widespread employer violations of labor rights of authorized immigrant workers and undocumented workers in the beef, pork and poultry industries, including safety and health and retaliation for engaging in union activities). L. Compa, «Unfair advantage: Workers' freedom of association in the United States under international human rights standards», *Human Rights Watch*, 2000: <https://www.hrw.org/reports/pdfs/u/us/uslbr008.pdf> (documenting widespread employer violations of authorized immigrant workers and undocumented workers' rights to unionize in a wide range of industries, including manufacturing, agriculture, food processing, nursing homes, and hotels).

legislation⁵⁰. Authorized workers, including H-2 guest workers, will also likely be afraid of being targeted for additional scrutiny⁵¹.

II - THE ANTI-IMMIGRATION AGENDA OF THE TRUMP ADMINISTRATION

From the start of his presidential campaign in 2015, Trump has promoted a xenophobic agenda targeting immigrants from Latin America and Muslim-majority countries. Trump has repeatedly referred to Mexican immigrants as criminals, drug smugglers, and rapists, has called undocumented immigrants «animals», and has claimed that terrorists are coming through the US-Mexico border⁵². The Trump administration has used three main strategies to put its anti-immigrant agenda into practice: asserting unilateral presidential power to control the borders to protect national security, criminalizing unauthorized immigrants through escalating ICE raids and deportations **(A)**, and taking retaliatory action against states and local jurisdictions that resist this agenda **(B)**.

A - ASSERTION OF PRESIDENTIAL EXECUTIVE POWER TO CONTROL THE BORDERS

Trump's central strategy for putting his anti-immigrant agenda into practice has been to assert his presidential executive power to act unilaterally in the interests of national security. Trump employed this strategy in announcing his «travel bans», consisting of three consecutive presidential executive orders banning individuals from specified Muslim-majority countries from entering the US. Further, Trump used this strategy in declaring a national emergency to justify his administration's actions of increased militarization along the US-Mexico border. By asserting presidential power to act unilaterally, the Trump administration seeks to avoid oversight by the legislative and judicial branches of government. Trump has been at least partially successful in implementing his strategy, although there have been important instances of resistance from legislatures, the courts, and the public.

1 - Travel bans

Almost immediately after his inauguration, Trump issued an executive order imposing a broad ban on entry into the US of citizens of certain Muslim-majority countries, followed by a revised executive order with a 90-day ban on approving new visas from six Muslim-majority nations, and a third revised executive order restricting travel to the US by citizens from six Muslim-majority countries (Iran, Libya, Yemen, Somalia, Syria, and Chad) and two countries that are not majority-Muslim (North Korea and Venezuela)⁵³. Multiple federal courts issued

50 L. Compa, «Blood, sweat and fear: Workers' rights in U.S. meat and poultry plants», *Human Rights Watch*, *op. cit.*, p. 87 ; L. Compa, «Unfair advantage: Workers' freedom of association in the United States under international human rights standards», *Human Rights Watch*, *op. cit.*, p. 41.

51 L. Compa, *Blood, sweat and fear: Workers' rights in U.S. meat and poultry plants*, Human Rights Watch, *op. cit.*, p. 103.

52 G. Korte and A. Gomez, «Trump ramps up rhetoric on undocumented immigrants: "These aren't people. These are animals"», *USA Today*, 16/05/2018: <https://www.usatoday.com/story/news/politics/2018/05/16/trump-immigrants-animals-mexico-democrats-sanctuary-cities/617252002/>; C. Woodward, «AP fact check: Trump's mythical terrorist tide from Mexico», *AP News*, 8/01/2019: https://www.apnews.com/4a7792c523ab4b5984893b38_c988_d70b

53 See A. Howe, *Trump issues new order on travel*, SCOTUS blog, 24/09/2017: <http://www.scotusblog.com/2017/09/trump-issues-new-order-travel/>

orders against enforcement of the travel bans, finding that the President had exceeded his authority in issuing the executive orders, based on evidence of the administration's national origin and religious discrimination and the lack of evidence showing a national security need for the executive order⁵⁴. However, in June 2018, the US Supreme Court, by a 5-4 vote, upheld the constitutionality of the third, and final, travel ban⁵⁵. The Court majority relied on the national security justifications for the ruling and held that the travel ban is fully consistent with Congress's deference to presidential authority under the federal Immigration and Nationality Act to determine whether allowing noncitizens to enter «would be detrimental to the interests of the United States»⁵⁶. The Court also ruled that the travel ban is permitted by the Establishment Clause of the First Amendment to the US Constitution, which prohibits the government from favoring one religion over another⁵⁷. Justice Sotomayor, in dissent, accused the Court of «blindly» endorsing «a discriminatory policy motivated by animosity toward Muslims»⁵⁸ and of «leav[ing] undisturbed» a discriminatory policy that «now masquerades behind a façade of national-security concerns»⁵⁹.

Through the use of his executive power to assert national security bases for the travel ban, Trump has wielded a cudgel against the public interest in immigration policy that welcomes a diversity of visitors to the US, whether they are entering the US to engage in work, vacations, education, or personal matters.

2 - Increased control measures at the US-Mexico border

Based on the same strategic use of executive power, the Trump administration asserts national security bases for restricting entry at the US-Mexico border to individuals from the Northern Triangle countries of Honduras, Guatemala, and El Salvador who are seeking asylum in the US due to a fear of violence or persecution in their home countries⁶⁰. The rhetoric used by Trump and members of his administration extends their racist attacks to asylum seekers, including claims that they will bring «large-scale crime and disease» into the US⁶¹. While there are good reasons for treating people equally under progressive immigration policy that increases mobility across borders, the Trump administration's rhetoric is aimed at exclusions on the basis of race and class. Thus, Trump paints all people of color entering the US at the southern border with the same racist brushstroke, whether the individuals are seeking asylum from dangerous conditions in their home countries, seeking employment in the US, or seeking to reunite with family members.

54 See e.g., *Hawaii v. Trump*, 878 F. 3d 662 (9th Cir. 2017), *cert. granted*, 138 S.Ct. 923 (2018); *Int'l Refugee Assistance Project v. Trump*, 857 F. 3d 554 (4th Cir. 2017).

55 *Trump v. Hawaii*, 585 U. S. ___, 138 S.Ct. 2392 (2018).

56 138 S.Ct. at 2408.

57 *Ibid.*, p. 2421.

58 *Ibid.*, p. 2448.

59 *Ibid.*, p. 2433.

60 M. Shear and Z. Kanno-Youngs, «Trump Administration to push for tougher asylum rules», *New York Times*, 9/04/2019: <https://www.nytimes.com/2019/04/09/us/politics/asylum-seekers-trump-administration.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>

61 C. Da Silva, «Donald Trump says migrants bring "large scale crime and disease" to America», *Newsweek*, 1/12/2018: <https://www.newsweek.com/donald-trump-says-migrants-bring-large-scale-crime-and-disease-america-1253268>

The list of Trump's actions based on claims of national security include his insistence on building a border wall between the US and Mexico. When Congress refused to appropriate the funds for this purpose, the impasse with Trump led to a partial shutdown of the federal government in December 2018 and January 2019⁶². Trump declared a national emergency in February 2019, based on his unfounded assertion of a "national security crisis on our southern border" and his plan to divert billions of dollars to his border wall from congressionally funded military construction projects⁶³. Trump justified his national emergency declaration with the false claim that «We have an invasion of drugs and criminals coming into our country»⁶⁴. A federal judge has issued a preliminary injunction against the diversion of funds based on the likelihood that Trump's actions violates the separation of powers doctrine⁶⁵. The world has witnessed in horror as the Trump administration engaged in human rights violations at the border, including taking children from their parents and placing them in detention facilities⁶⁶. In Trump's latest political action, he threatened to institute tariff to pressure Mexico to keep asylum seekers from crossing the border into the US⁶⁷.

B - VISA-RELATED ISSUES

The Trump administration has cancelled the plan that the Obama administration followed for deportation of unauthorized immigrants, prioritizing removal of individuals with criminal records and recent arrivals⁶⁸. This shift in priorities by the Trump administration includes increased audits by ICE of employer I-9 records verifying employee visa authorizations and increased ICE raids and arrests at workplaces and other venues⁶⁹. ICE has even sought to arrest unauthorized immigrants at administrative hearings about employment claims filed by the immigrant workers⁷⁰.

Trump has also threatened to take action against the estimated 800,000 young, undocumented immigrants who came to the US as children and who are protected from deportation by the Deferred Action for Childhood Arrivals (DACA) program, which had been created by the Obama administration in 2012. In September 2017, the Trump administration

62 N. Fandos, S. Stolberg and P. Baker, «Trump signs bill reopening government for 3 weeks in surprise retreat from wall», *New York Times*, 25/01/2019: <https://www.nytimes.com/2019/01/25/us/politics/trump-shutdown-deal.html?module=inline>

63 P. Baker, «Trump declares a national emergency, and provokes a constitutional clash», *New York Times*, 15/02/2019: <https://www.nytimes.com/2019/02/15/us/politics/national-emergency-trump.html?module=inline>

64 *Ibid.*

65 J. De Real, «Federal judge blocks part of Trump's plan to build a border wall», *New York Times*, 24/05/2019: <https://www.nytimes.com/2019/05/24/us/judge-blocks-trump-border-wall.html?module=inline>

66 C. Long and R. Alonso-Zaldivar, «Trump administration's zero-tolerance immigration policy sowed confusion from the start», *Chicago Tribune*, 1/07/ 2018: <https://www.chicagotribune.com/nation-world/ct-zero-tolerance-immigration-policy-20180701-story.html>

67 See M. Shear and M. Haberman, «Mexico agreed to take border actions months before Trump announced tariff deal», *New York Times*, 8/06/2019.

68 D. Costa, «California leads the way», *Economic Policy Institute*, *op. cit.*, p. 16.

69 *Ibid.*, p. 12.

70 *Ibid.*, p. 14.

announced that it will end DACA⁷¹. Fifteen states have sued the administration, alleging that the rescission of DACA is unlawful⁷². Several lower federal courts have issued preliminary injunctions against the termination of DACA⁷³. The case is currently pending before the US Supreme Court on the question of whether the Trump administration violated federal administrative law in rescinding DACA⁷⁴.

In response to the Trump administrations' aggressive immigration-related enforcement actions, a sanctuary movement has spread nationwide to multiple states, cities and other localities⁷⁵. The U.S. Attorney General has attempted to withhold federal funding from state and local governments that have declared themselves sanctuaries or that refuse to assist the federal government in enforcing immigration law. In September 2017, a federal judge issued a nationwide preliminary injunction blocking the Trump administration from withholding public safety grants to sanctuary cities that do not cooperate in federal immigration enforcement⁷⁶.

In October 2017, California enacted two new laws declaring California a sanctuary state and limiting cooperation by the state with federal immigration officials. The state law restrictions include requiring federal immigration officials to produce a judicial warrant to gain access to California workplaces⁷⁷. In 2018, a federal circuit court of appeals declared unconstitutional the Trump administration's executive order withholding federal funds from sanctuary cities and counties⁷⁸. The court held that the executive branch may not refuse to disperse the federal grants in question without congressional authorization.

71 M. Shear and J. Hirschfeld Davis, «Trump moves to end DACA and calls on Congress to act», *New York Times*, 5/09/2017: <https://www.nytimes.com/2017/09/05/us/politics/trump-daca-dreamers-immigration.html>

72 J. Linderman, «Advocacy groups file lawsuit over DACA in Maryland», *Associated Press*, 5/10/2017: <https://apnews.com/ce1f387389824500915a7c073e32f786>

73 «Status of current DACA litigation», *National Immigration Law Center*, 7/06/2019: <https://www.nilc.org/issues/daca/status-current-daca-litigation/>

74 Amy Howe, *Symposium: Justices to review dispute over termination of DACA*, SCOTUS blog (Sep. 10, 2019, 3:06 PM): <https://www.scotusblog.com/2019/09/symposium-justices-to-review-dispute-over-termination-of-daca/>

75 J. Lee, «Redefining the Legality of Undocumented Work», *Calif. L. Rev.*, vol. 106, 2018, p. 1639.

76 D. Cassens Weiss, «Federal judge in Chicago blocks Trump Administration's hold on grants to sanctuary cities», *ABA Journal*, 15/09/2017: <http://www.abajournal.com/news/article/federal-judge-in-chicago-blocks-trump-administration-hold-on-grants-to-sanc>

77 L. Mahoney, «California freezes ICE access to workplaces», *Daily Labor Report*, vol. 192, 5/10/2017, p. 8.

78 *City & County of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018).

Conclusion

Immigration policy in the US has long been in need of reform. The current immigration system, particularly with regard to temporary guest worker programs, has serious systemic flaws that create incentives for employers to exploit workers, with little recourse for them to file complaints alleging violations of their labour rights. Undocumented workers are even more vulnerable to such exploitation. Within this flawed system, the Trump administration's anti-immigrant policies and programs have used racism and xenophobia to create an even deeper level of hostility toward immigrants.

Legislative reform is needed to establish equal and equitable treatment of migrant workers. A strong social movement made up of a wide range of organizational allies - including the labour movement and immigrant rights movement - will be needed to achieve such legislation establishing collective and individual rights.

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