



**Statement of Rebecca Dixon
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**Senate Committee on the Judiciary
Subcommittee on Immigration, Citizenship, and Border Safety**

Hearing: The Essential Role of Immigrant Workers in America (May 12, 2021)

NELP is a nonprofit research, policy, and capacity-building organization that for more than 50 years has sought to strengthen protections and build power for workers in the United States, including people who are unemployed. For decades, NELP has researched and advocated for policies that create good jobs, expand access to work, and strengthen protections and support for underpaid and jobless workers both in the workplace and when they are displaced from work. Our primary goals are to build worker power, dismantle structural and institutional racism, and to ensure economic security for all.

By design, the current immigration system pushes our nation's approximately seven million undocumented workersⁱ into a second-class status in the workplace. Even when labor and employment laws extend rights and protections to workers, employers and their agents routinely use workers' immigration status to chill worker organizing.ⁱⁱ They threaten to report workers and/or their family and friends to immigration authorities when workers exercise their rights, for example; they abuse the I-9 work authorization process to target workers who speak up; and they report workers to law enforcement, which in many jurisdictions can subject immigrants to grave immigration-related consequences. The threat of using immigration status against a worker or their family and friends ripples across workplaces and industries, bringing down wages and conditions for all workers and making fair competition more difficult for law-abiding businesses. Employer retaliation and abuse of immigration status also compound how the broader immigration enforcement system subjects immigrants to the specter of detention and deportation every day.

Due to the country's focus on anti-immigrant enforcement instead of broad immigration reform that would protect workers and families of all statuses, our immigration laws perpetually work to undermine our labor laws. For example, we now have decades of evidence that work authorization requirements mainly function to provide opportunities for employer exploitation.ⁱⁱⁱ The consequences for all workers, employers, and our entire country have never been so clear and so devastating as what we have witnessed during the ongoing COVID-19 pandemic. More than five million undocumented workers have been forced to work in unprotected and often dangerous conditions to provide food, transportation, care, cleaning services, and more.^{iv} Countless frontline undocumented immigrant workers have also been forced to put themselves and their families at risk by working during the pandemic despite having a higher likelihood of underlying health conditions that increase their chances of death or serious complications from COVID-19.^v

What workers have faced in the meat and poultry industry during the pandemic offers a telling illustration of what undocumented status can mean for workers and their broader communities. The overwhelming majority of meat and poultry workers are Black, Latinx, and immigrant workers, many of them refugees.^{vi} The current industry norm is for workers to work side by side along both sides of a conveyor belt in cold, damp, and dangerously loud conditions, while making forceful cuts or movements with sharp tools.^{vii} The line moves at breakneck speed with each worker handling dozens of birds *per minute*.^{viii} Even before the pandemic, poultry workers faced workplace injury rates that were, on average, 50 percent higher than all other private sector workers, with injury rates in red meat plants even higher.^{ix} These conditions, along with a total failure by government and employers to institute COVID-19 protections, have resulted in more worker deaths in meat and poultry plants during the pandemic than in the past 15 years.^x Communities around meat and poultry plants also experienced similar health consequences. States with concentrations of meat and poultry plants, such as North Dakota, Nebraska, Iowa, and Minnesota, saw some of the highest numbers of COVID-19 cases by population.^{xi}

What happened in the meat and poultry industry did not have to happen. It was a choice made by employers backed by government policies, unlike workers' *lack of choice* to continue working in unsafe conditions to provide for themselves and their families. Ultimately, we all face the same virus that does not distinguish between immigrant and non-immigrant, and we will face future viruses and challenges like it. As we aim to build a stronger economy and country post-COVID, it is essential that every policy effort center the fact that worker health is public health, and worker rights are human rights. Better working conditions have always depended on strong labor standards and worker organizing. Our current system undermines the right of all workers to work towards a more just future.

We urge lawmakers to not wait a moment longer and include in the next recovery package a pathway to citizenship for all 11 million undocumented immigrants in this country. Frontline immigrant workers do not exist separate from all other immigrants, and our recovery, future public health, and potential as a country depend on recognizing that our fate is intertwined. Depriving some workers or some persons of some rights will only weaken us all.

In addition to creating a pathway to citizenship, NELP urges Congress to take the following steps as part of any immigration or labor reform effort to create a nation where all people can work and thrive with dignity:

1. Ensure that the Occupational Safety and Health Administration (OSHA) issues an **OSHA Emergency Temporary Standard (ETS)** to protect workers from COVID-19. To date, the federal government has issued no mandatory standard to protect workers during the COVID-19 public health crisis, a failure that puts every person's public health at risk.
2. **Reject proposals to grant employers broad immunity** for failing to implement protective measures that can prevent workers—and the public—from contracting COVID-19.^{xii}
3. **Work to expand our unemployment insurance system** to allow all workers, including undocumented workers, to access support during periods of unemployment.

4. **Adopt the Raise the Wage Act of 2021 (H.R. 603, S.53)** to gradually increase the minimum wage to \$15 for all workers.
5. **Establish a federal right to paid sick time** for all workers.
6. **Adopt the Protecting the Right to Organize (PRO) Act of 2021 (H.R. 842, S. 420)** to strengthen workers' ability to organize.
7. **Adopt the Protect Our Workers from Exploitation and Retaliation (POWER) Act^{xiii}** to ensure that workers can report violations of labor rights without fear of immigration-based retaliation and other immigration enforcement that can prevent workers from filing complaints and participating in investigations of employers.
8. **Ensure that the U.S. Department of Labor (USDOL), the U.S. Equal Employment Opportunity Commission (EEOC), and the National Labor Relations Board (NLRB) receive substantially greater funding** to allow those agencies to enforce our labor and employment laws.

ⁱ Nicole Prchal Svajlenka, Center for American Progress, *Protecting Undocumented Workers on the Pandemic's Front Lines* (Dec. 2, 2020), <https://www.americanprogress.org/issues/immigration/reports/2020/12/02/493307/protecting-undocumented-workers-pandemics-front-lines/>.

ⁱⁱ See, e.g., Rebecca Smith et al., *ICED OUT: How Immigration Enforcement Has Interfered with Workers' Rights* (Oct. 2009), https://s27147.pcdn.co/wp-content/uploads/2015/03/ICED_OUT.pdf; Tom Spiggle, *Why Workplace Abuse Plagues Undocumented Workers*, *Forbes*, Aug. 22, 2019, <https://www.forbes.com/sites/tomspiggle/2019/08/22/why-workplace-abuse-plagues-undocumented-workers/?sh=298873a049b2>; Daniel Costa, Economic Policy Institute, *Employers Increase Their Profits And Put Downward Pressure on Wages And Labor Standards by Exploiting Migrant Workers* (Aug. 27, 2019), <https://www.epi.org/publication/labor-day-2019-immigration-policy/>; New York State Office of the Attorney General, AG James: Bill Protecting Immigrant Workers from Workplace Harassment Signed into Law, Press Release, July 29, 2019, <https://ag.ny.gov/press-release/2019/ag-james-bill-protecting-immigrant-workers-workplace-harassment-signed-law>; Hillary Black, *Can Employers Outsource Retaliation to Their Lawyers? The Ninth Circuit Says No*, *On Labor*, Feb. 20, 2019, <https://onlabor.org/can-employers-outsource-retaliation-to-their-lawyers-the-ninth-circuit-says-no/>.

ⁱⁱⁱ See, e.g., Michael J. Wishnie, *Prohibiting the Employment of Unauthorized Immigrants: The Experiment Fails*, 2007 U. Chi. Legal F. 193, 195 (2007).

^{iv} FWD.us, *Immigrant Essential Workers are Crucial to America's COVID-19 Recovery* (Dec. 16, 2020), <https://www.fwd.us/news/immigrant-essential-workers/>.

^v See, e.g., Melanie Benesh, Environmental Working Group, *Work Conditions Make Farmworkers Uniquely Vulnerable to COVID-19* (May 13, 2020), <https://www.ewg.org/news-insights/news/work-conditions-make-farmworkers-uniquely-vulnerable-covid-19>; Samantha Artiga et al., Kaiser Family Foundation, *Communities of Color at Higher Risk for Health and Economic Challenges due to COVID-19* (Apr. 7, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/communities-of-color-at-higher-risk-for-health-and-economic-challenges-due-to-covid-19/>; Eva Clark et al., *Disproportionate Impact of the COVID-19 Pandemic on Immigrant Communities in the United States*. *PLoS Negl Trop Dis.* 2020;14(7):e0008484. Published 2020 Jul 13. doi:10.1371/journal.pntd.0008484, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7357736/>.

^{vi} Deborah Berkowitz, National Employment Law Project, *Health and Safety Protections for Meatpacking, Poultry, and Agricultural Workers* (Mar. 2, 2021) at 3, <http://stage.nelp.org/wp-content/uploads/Testimony-of-Debbie-Berkowitz-NELP-Before-House-Subcommittee-on-Labor-HHS-Ed-and-related-agencies.pdf>.

vii *Id.*

viii *Id.*

ix *Id.* at 3–4.

x *Id.* at 4.

xi *See, e.g.,* Mike Dorning, *Meatpacking Plants Linked to Up to 8% of Early U.S. COVID Cases*, Insurance Journal, Nov. 7, 2020, <https://www.insurancejournal.com/news/national/2020/11/27/591963.htm>.

xii Rebecca Dixon, National Employment Law Project, *Examining Liability During the COVID-19 Pandemic* (May 2020), <https://s27147.pcdn.co/wp-content/uploads/Rebecca-Dixon-testimony-senate-corporate-immunity-covid.pdf>.

xiii National Immigration Law Center, *The POWER Act: Protect Our Workers from Exploitation and Retaliation Act* (Nov. 2019), <https://www.nilc.org/issues/workersrights/poweract/>.