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THE DIRTY SIDE OF DOMESTIC WORK: 
AN UNDERGROUND ECONOMY 
AND THE EXPLOITATION OF 
UNDOCUMENTED WORKERS

NANCY ZARATE BYRD*

The image of an immigrant woman in the role of a domestic worker dominates our culture and mirrors the reality of an underground economy in the United States. Political and economic situations in Latin American and Caribbean countries have fueled legal and illegal immigration to the United States, which has become a source of cheap labor for U.S. employers.¹ In television shows and movies, the domestic worker is routinely portrayed as a person of color who speaks broken English and will never be able to fully assimilate into the dominant culture of the United States. The character of Rosario in the popular, Emmy Award-winning television series Will and Grace was a live-in domestic worker, who was an undocumented Latina, who spoke very broken English, who never wore anything besides a maid’s uniform, and who eventually had to marry one of the show’s gay male characters so that her employer would not

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“lose” her to deportation. The character of Agador, a Latin male domestic in the movie The Birdcage, was portrayed in a similar fashion; he spoke poor English and could not wear shoes because he had never done so in his country. The simple message is repeated in many other movies and television shows: if you are a United States citizen, do not bother with your own dirty work, because there is bound to be an immigrant available and willing to do it for you.

Significant advances have been made in the area of workers’ rights in the United States, particularly in establishing minimum standards for working conditions and fair wage standards. One area that remains virtually unregulated, however, is domestic work in private homes. Individuals employed in this type of work are usually immigrant women of color who are often hired on the basis of their culture, race, gender, ethnicity, and class status. Immigrant females who come to the U.S. to work as domestics are typically among the poorest in their native country and become among the poorest in our country as well. Their low socio-economic and undocumented status makes them among the most vulnerable workers in our society. Yet, they possess minimal, if any, legal protection. Laws such as the National Labor Relations Act ("NLRA"), the Occupational Safety and Health Act ("OSHA"), the Fair Labor Standards Act ("FLSA"), and Title VII regulate employers’ conduct towards employees and set minimum standards that employers must meet regarding working conditions; however, these laws generally do not reach women who work as domestics.

As a result, immigrant women who are employed as domestic workers are marginalized, and thus, are more likely to encounter abuse, exploitation, or various types of harassment. Men

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and women hired illegally are at the mercy of their employers because of fear of deportation. This severe imbalance creates a hierarchy of workers, at least from the employers' perspective, where undocumented workers occupy the lowest niche. The attitude seems to be, "If they don't like it, they can go back to their country." Although it could be argued that laws such as the NLRA and Title VII extend to undocumented workers, the likelihood of a worker coming forward is small, due to lack of knowledge regarding their legal rights and an overpowering fear of deportation. Moreover, as will be discussed, even if workers come forward, very few cases survive the threshold issue of citizenship status.

Undocumented immigrant women hired as domestic workers are the most invisible laborers in the United States; their status is defined by their race, gender, class, and citizenship status, and the fact that they are not protected by current labor laws creates an underground economy.4 This article analyzes why, despite the many advances in employment law in the United States and despite the steady discourse of intersectionality in the critical race theory, undocumented women of color hired as domestic workers continue to be pushed to the social fringe with little attention given to their plight. Additionally, the expansion of current labor laws to include domestic workers will be explored as a method to improve public policy in this area. I argue that, not only should the theory of intersectionality be used in the analysis of this issue, but also, that the theory should be expanded to include citizenship status, race, gender, and socio-eco-

4 Peggie R. Smith, Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform, 48 Am. U.L. Rev. 851, 923 n.437 (1999) (stating that in 1989 it was estimated that in New York City there were between 250,000 and 450,000 undocumented immigrants working as domestics).
nomistic status to fully address the issues confronting women of color employed in this area.

Part II of this article provides an overview of the historical development of domestic work in the United States, including analysis of why some employers expect their employee to undertake chores that they themselves will not do. It is important to understand how attitudes towards domestic workers have developed in the United States in order to engage in meaningful discussions regarding potential solutions for this type of discrimination and abuse. Part III discusses how race, gender, class, and citizenship status interact to continue the subordination of immigrant women. This section addresses how the experiences of women of color in domestic roles are viewed through the lens of the white woman's experience. For example, where a dual income couple may see the educational or professional opportunities available to the woman outside the home as a chance for personal fulfillment or as an opportunity to attain a better lifestyle for the family, for the domestic worker the job equates to survival and the ability to provide the basic necessities for her family. Part IV discusses some of the more prevalent types of abuse and exploitation encountered by undocumented immigrant women. Part V examines the law as it exists today in the United States and how it, along with interpretation by courts, serves to promote an underground economy and the continued exploitation of domestics. Finally, Part VI proposes that applying an expanded version of the theory of intersectionality when analyzing cases brought under Title VII involving undocumented immigrant women serves the purpose of the Immigration Reform and Control Act (IRCA) and promotes good public policy.

I. INTRODUCTION

In 1993, President Bill Clinton nominated Zoe Baird for the post of Attorney General. Although well-qualified, Ms. Baird
withdrew from the nomination when it was reported that she had hired an undocumented immigrant as a nanny. The backlash that ensued, however, focused on the fact that Ms. Baird hired an undocumented person and failed to pay the required taxes, rather than on the Peruvian woman hired, the terms of her employment, and her treatment while employed. In fact, the nanny, Lillian Cordero, was immediately deported. Her meager wages, approximately $5.00 an hour to care for two children, never became part of the discussion. The debate was framed from the perspective of Zoe Baird; a white working mother who had broken the law because she could not find quality childcare. The experience of Lillian Cordero, why she left her country, why she accepted that job, was seemingly irrelevant. Seventeen years later, little has changed in the United States as it pertains to how women of color hired as nannies or housekeepers are perceived. The debate is still framed through the lens of entitlement that families in the United States, and white women in particular, have with regards to being able to hire, and in most cases exploit, immigrant women to work in their homes.

IRCA reflects Congress’ attempt to curb illegal immigration by criminalizing the hiring of undocumented workers through sanctions imposed on employers caught hiring an undocu-
Criminalizing employment for an entire group of people, however, has created an underground economy which continues to grow as more employers weigh the risk of breaking the law with the economic benefits of hiring people who have no recourse to remedy their exploitation. Many employers chose to break the law, for example, in the fields of meat packing and agriculture. These workers, however, are at least in a group setting with other employees and are more visible, which can mitigate abuse; on the other hand, domestic workers are hidden from public view and are on their own to attempt to handle abusive situations. An undocumented worker paid sub-minimum wages or otherwise abused will usually not protest, in part because of lack of knowledge of what legal recourses are available but primarily because of fear of deportation. Many undocumented domestic workers are single parents or are responsible for supporting parents or other family members in their native country, so the loss of a job, regardless of poor working conditions, is not an option. The potential loss of financial security and threat of deportation, compounded with the lack of formal employment terms or a contract, leave immigrant women in a position to attempt to deal with abuse or harassment on their own or not at all.

Within the area of domestic work there has developed a type of hierarchy, with live-in domestics at the lowest rung, particularly those undocumented and relegated to the status of what

11 Leticia M. Saucedo, The Employer Preference for the Subservient Worker and the Making of the Brown Collar Workplace, 67 Ohio St. L.J. 961, 976 (2006) ("The inclusionary character of discrimination occurs when a protected group is perceived as better equipped for the least desirable jobs, and an individual from that group is treated accordingly").
12 Kaufka, supra note 2, at 173.
Professor Garcia calls “ghost workers.” In addition to citizenship status, the hierarchy is influenced by factors such as gender, class, and race. For example, employers can have different expectations of a domestic worker depending on the country of origin of the person. Couples who were interviewed and asked to explain the difference between a nanny and a domestic generally replied that the country of origin prescribed the title and the range of duties assigned. To understand the development of this hierarchy and generate possible solutions, it is important to expand the discourse of intersectionality to include all of the relevant factors, such as race, gender, citizenship status, and class.

II. Domestic Workers in the United States

The face of the domestic worker has changed throughout the history of the United States. In the pre-Civil War period, domestic work was relegated to African-American women, most of whom were slaves. The abuse inflicted upon live-in domestics, both as slaves in the South and non-slave servants in the North, was instrumental in creating the attitude towards women doing this type of work. The post-Civil War era brought little change to African-American women employed as domestics; although no longer slaves, they remained subordinated economically, politically, and socially. The attitude towards domestic workers in the United States is rooted in the oppression of the African-American race; it was appropriate for menial and degrading work to be passed along to African-American women because

15 Young, supra note 9, at 59 (a Filipino woman would be referred to as a domestic and would be expected to do all housekeeping and childcare; a woman from Australia or New Zealand would be hired as a nanny who would only do childcare; best to hire a European if the tasks will be mainly childcare, some light housekeeping, and prepare an occasional meal).
16 Graunke, supra note 1, at 136-37.
17 Id. at 140-41.
the women themselves were not considered worthy of more dignified employment. The image of a domestic worker or servant was fused with the image of an African-American woman, and that image has not only endured but has expanded to include all women of color. Mary Romero recounts the experience of an African-American woman in New York: “I wheel my two-year-old daughter in a shopping cart through a supermarket in Eastchester in 1967, and a little white girl riding past in her mother’s cart calls out excitedly, ‘Oh look, Mommy, a baby maid.’” Thus, the identity of today’s white women took shape in the context of their privileged status and the subordination of African-American women; it continues to be defined paradoxically to the experience of immigrant women of color.

Low wages, harsh working conditions, along with advances in civil rights and an increase in educational opportunities, are some of the reasons why the demographics of the domestic labor force began to change in the United States. By the late 1980’s, only 3.5% of the domestic workers were African-American women. By the late 20th century, immigrant women from Latin America, the Caribbean, and Asia had become the new faces of domestic workers. An employer looking for someone to work in his home is more likely to select a woman who is a recent immigrant, undocumented, and willing to work for cash and no benefits. Moreover, the availability of affordable and quality childcare in the United States has not kept pace with the ever increasing professional opportunities available to American women outside of the home, leading many parents to hire

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18 David M. Katzman, Seven Days A Week: Women and Domestic Service in Industrializing America 245-46 (1978) (stating that by 1920 in the United States 71% percent of Black women working outside of the home were employed as household laborers but white women comprised less that 2% of that field).
20 See Graunke, supra note 1, at 150.
21 Id. at 151.

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immigrants to fill the gap. By 2001, the U.S. Department of Commerce reported that about 80% of dual income households used an outside cleaning service; this figure does not include undocumented women hired as domestics.

New opportunities for women in the United States and other developed countries created a market for domestic workers, which has resulted in an unregulated area of employment marked by low wages and poor working conditions. It is extremely difficult to assess an accurate number or racial breakdown of women working as domestics; however, it is known that since the 1970’s domestic work in the United States has been largely performed by immigrant women. Though fully aware that they are breaking the law, many employers who hire undocumented women to work in their homes do not think of themselves as contributing to the problem, but rather, as helping out by employing someone who is already here. After all, if the nominee for the office of Attorney General of the United States could rationalize her illegal behavior, what chance does the average suburban couple have of understanding the ramifications of hiring an undocumented worker?

22 Young, supra note 9, at 53-54.
23 Kaufka, supra note 2, at 165.
24 Id. at 166-167, 173 (also discussing the “female underside of globalization” of “women from poor countries migrating to do the ‘women’s work’ of more affluent countries”); See also Carol Sanger, Separating From Children, 96 COLUM. L. REV. 375, 428-29 (1996) (discussing the difficulties women encounter when looking for adequate childcare).
25 Graunke, supra note 1, at 150.
26 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, 609 (1993) (stating that “[e]mployers continue to use undocumented workers because of a perceived lack of enforcement, low fines relative to the benefit of hiring these workers, the possibility of technically following the law while still employing undocumented workers, and the ability to discharge workers prior to INS inspections”); Romero, supra note 5, at 1046-47.
A. The Blurred Line Between Work and Personal Life

As discussed above, undocumented immigrant women are slaves to their citizenship status because, in their view, their choices are non-existent—they either endure substandard working conditions with low wages or face deportation. For the live-in worker, the danger of abuse and exploitation is even greater, because there is no differentiation between the workplace and her residence.27 Many employers rationalize paying low wages with the explanation that they are helping the worker to save money by providing room and board or are helping in other ways that are beneficial to the employee.28 Thus, employers position themselves in the role of do-gooder rather than that of a legitimate employer, which perhaps frees them from considering the underlying exploitation which is taking place. Although both live-in workers and day workers can be vulnerable to exploitation, for the live-in, the risk is magnified because the lines between professional and personal are virtually non-existent. The lack of clear boundaries and terms of employment result in long work hours, no health benefits, no vacation or sick leave, and social isolation.29 The live-in worker loses her personal identity and is seen by the employer as a commodity who will

27 Kaufka, supra note 2, at 173.
28 Romero, supra note 5, at 1048 (discussing how employers rationalize low wages because they offer other “privileges,” such as taking a part-time job outside of the home or allowing the employee time off to take an English class); HUMAN RIGHTS WATCH, supra note 3, at 8, n.21 (reporting that as per the Fair Labor Standards Act, employers may either deduct the “fair value” of room and board if they keep records justifying the deductions or take deductions according to formulae to calculate allowable deductions).
29 See Joy M. Zarembka, America’s Dirty Work: Migrant Maids and Modern-Day Slavery, in GLOBAL WOMAN 142, 142-43 (Barbara Ehrenreich & Arlie Russell Hoschchild eds., 2002) (Describing the story of Maria Jose Perez, an immigrant from Bolivia. Her employer confiscated Ms. Perez’s passport and forced her to work at least twelve hour days for less than one dollar per hour. Her employer also refused to take her to a doctor after she reported to him that a friend of the family had raped her).
not object to “staying late” or working on her day off. After all, where else is she going to go?

Upon arriving at their new place of employment and new home, many live-in workers also find that they are relegated to a utility closet, basement, or other inappropriate locations within the family home. One of the women interviewed by sociologist Pierrette Hondagneu-Sotelo, Maria del Carmen, recounted her living conditions in a shack in her employer’s back yard where she lived for three years with no heat, saying “It was like a room for a dog. My bed and my suitcase and a chair is all that fit in that room.” When asked why those types of conditions are tolerated, most women say that they have no other choice. In Maria del Carmen’s case, she was saving to buy a house in Mexico and felt that she could not return to her country until she had reached her goal.

Most employers do not resort to physical or sexual abuse to subordinate their domestic workers. Some resort to what Professor Romero refers to as emotional labor, by expecting them to fill the role of “protomothers” and caring for the female employer and her family. The domestic worker is seen by the female employer as someone who can understand what she is going through in juggling home and career, simply because they are both women. Of course, that perception completely ignores the divide between class, race, and citizenship status. Advice regarding maids was common in ladies’ magazines in the early years of the feminist movement, like the following excerpt on how to emotionally bond a domestic worker to the family:

If you are so fortunate as to find a maid you love with your whole heart, you might try binding her to you by having a child or two born during her

30 See generally Graunke, supra note 1, at 161.
31 WOMEN AND WORK: EXPLORING RACE, ETHNICITY, AND CLASS 114 (Elizabeth Higginbotham and Mary Romero eds. 32 Id.
33 ROMERO, supra note 19, at 106.
tenure. Not high wages or Christmas gifts or blue-chip stock or every weekend off will prove so much a lure as children to whom she has grown attached.\textsuperscript{34}

Despite the best of intentions, even the most well-meaning of employers engage in exploitation when there is an undocumented worker in their home. The inherently unbalanced power relationship makes it impossible for the worker to be treated fairly and with the dignity and respect that everyone deserves. Most employers are not culturally sensitive, for example, they may refer to all Latinas as Mexicans or may not understand how difficult it is for immigrants to understand the way a white middle class family lives.\textsuperscript{35} Some employers attempt to "identify" with the worker's culture, even to the point that the employer ignores the underlying and blatant difference in class. One worker, Mrs. Rivera, interviewed by Professor Romero, recalled that her employer had many expensive Santos and other religious antiques purchased on trips to New Mexico.\textsuperscript{36} When the employer engaged Mrs. Rivera in conversation regarding the artifacts, she was surprised to find out that the worker did not own any such antiques, because she could not afford them.\textsuperscript{37} The employer's inability to understand differences in cultures, which exist even among people from the same country, can also be expressed with regard to food, asking workers to prepare some of their "ethnic" food or to explain their culture or customs, which further draws attention to the otherness of the domestic.\textsuperscript{38}

Yet, in spite of the numerous, well-documented types of abusive and exploitative situations that are common for domestic workers to encounter, there still exists a resistance to any type

\textsuperscript{34} Id. at 107.  
\textsuperscript{35} Id. at 112.  
\textsuperscript{36} Id.  
\textsuperscript{37} Id.  
\textsuperscript{38} Id.
of regulation. Some scholars argue that opposition or concern over regulating household work stems from the preoccupation with keeping the government out of our homes. Opponents of regulation seem to subscribe to the notion that as employers, they have a quasi-property right over the person employed in their home. That view is particularly strong when it comes to live-in domestics who are expected to be available for their employers at all times. Thus, as a result of its refusal to enact any type of legislation to regulate this area of employment, the government is complicit in the commodification of immigrant domestics "as useful appendages of middle-class society, leaving [domestics] to fend for themselves or hope for benevolence." 

III. RACE, GENDER, CLASS, CITIZENSHIP STATUS

The lack of regulation of domestic work and relatively minor punishment for people who hire undocumented workers has left the door wide open for people to choose a domestic worker based on specific racial, ethnic, and gender preferences. For example, Kristi L. Graunke discusses how lighter-skinned Latinas are the preferred domestic worker in the Los Angeles area, because they are viewed as reliable, hardworking, submissive, and less likely to gossip about family matters to people in the community. Hidden motives on the part of a male employer may

40 Smith, supra note 4, at 914.
41 Id. at 914-15. See also DONNA L. VAN RAAPHORST, UNION MAIDS NOT WANTED: ORGANIZING DOMESTIC WORKERS 1870-1940 3 (1988) (arguing that the reason domestic workers are unrepresented in labor scholarship is because domestic work is seen as a women's issue rather than an issue regarding employment and the work is regarded as a "normal feminine function"); State v. Cooper, 285 N.W. 903, 905 (Minn. 1939) (emphasizing that the worksite of a domestic worker, the employer's private home, should be treated differently from a public workplace because the private home is "a sanctuary of the individual").
42 See Graunke, supra note 1, at 153.
also lead him to hire someone based on perceived sexual and ethnic stereotypes, such as the perception that Latina women are hypersexual.\footnote{See Maria L. Ontiveros, \textit{Three Perspectives on Workplace Harassment of Women of Color}, 23 Golden Gate U. L. Rev. 817, 818 (1993) (stating that “Unlike white women, [women of color] are not privileged by their race. Unlike men of color, they are not privileged by their gender.”); \textit{See also Id.} at 820 (discussing the sexual perceptions associated with ethnic women).}

The theory of intersectionality, the idea that a minority individual can experience discrimination on the basis of a mix of several characteristics rather than just one, is valuable in furthering our understanding of how we relate to each other. Professor Kimberle Crenshaw argues that failure to use an intersectional approach results in an analysis of discrimination viewed through the experiences of the privileged few.\footnote{Kimberle Crenshaw, \textit{Demarginalizing the Intersection of Race and Sex: A Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics}, 1989 U. CHI. LEGAL F. 139, 140 (1989).} Although Crenshaw’s argument mainly addresses the subordination of African-American women, it also applies to immigrant women because their experiences have also been marginalized in the discourse.

The women’s “liberation” and feminist movement in the United States identified the burden of housework as one of the first obstacles women needed to overcome.\footnote{Romero, \textit{supra} note 19, at 97.} White middle-class women began to look at higher education and employment outside the home as either: a fulfilling personal experience (1) to which they were entitled or (2) to increase the family’s socioeconomic status.\footnote{Vellos, \textit{supra} note 13, at 410-11.} Yet, the only way to fully achieve that experience was to pass along the housework and childrearing to someone else. Since the role of husbands and fathers did not expand as wives and mothers stepped outside of the home to work, women of color became the gap fillers. Romero calls this effect “escap[ing] the double day syndrome”: the practice of middle-

\begin{footnotesize}
\begin{enumerate}
\item See Maria L. Ontiveros, \textit{Three Perspectives on Workplace Harassment of Women of Color}, 23 Golden Gate U. L. Rev. 817, 818 (1993) (stating that “Unlike white women, [women of color] are not privileged by their race. Unlike men of color, they are not privileged by their gender.”); \textit{See also Id.} at 820 (discussing the sexual perceptions associated with ethnic women).
\item Romero, \textit{supra} note 19, at 97.
\item Vellos, \textit{supra} note 13, at 410-11.
\end{enumerate}
\end{footnotesize}
and upper-middle class women hiring poor women of color to perform their housework and child care so that they do not have to perform a "second-shift" when they get home from work.\textsuperscript{47}

Accounts by women hired as domestic workers make it clear and undeniable that their race, gender, class, and citizenship status play a pivotal role in their employers' decisions to hire them and in how they are subsequently treated.\textsuperscript{48} The laws and courts of the United States, however, remain largely constructed to deliberately disregard this intersectionality of characteristics. Professor Nancy Ehrenreich argues that as long as race and gender issues are treated as separate and distinct problems, Americans will continue to be distracted by the process of putting subordinated groups into opposition with one another.\textsuperscript{49} The U.S. government remains complicit in perpetuating the stereotypical view that devalues the work of domestic workers. For example, the U.S. Department of Labor (DOL) classifies household workers and nannies as unskilled, and those two occupations are the lowest paid jobs tracked by the DOL.\textsuperscript{50}

\textsuperscript{47} Romero, \textit{supra} note 19, at 98.

\textsuperscript{48} Graunke, \textit{supra} note 1, at 153; See generally Romero, \textit{supra} note 19 (interviews with various women who worked as domestics and detailing their experiences) and Women and Work, \textit{supra} note 31 (also detailing various accounts of women employed as domestics).

\textsuperscript{49} Nancy S. Ehrenreich, \textit{O.J. Simpson and the Myth of Gender/Race Conflict}, 67 U. Colo. L. Rev. 931, 947 (1996) ("The fact of the matter is that white supremacy and patriarchy support each other. Conservatives showed their knowledge of this fact very cleverly in the Thomas/Hill episode, pitting white women and people of color against each other to obtain the confirmation of a very disappointing replacement for Thurgood Marshall on the Supreme Court.").

In our society, housework has traditionally been thought of as women's work and that view prevails, except that the realm of housework has been divided into the “spiritual” and the “menial.”\textsuperscript{51} Spiritual work includes the upbringing of children and overall management of the home and is associated with privileged white women; while, menial work is associated with unpleasant tasks that do not require intellectual skills and is associated with immigrant and working class women.\textsuperscript{52} Society, at least in the United States, is not yet able to consider housework and childcare as being anything other than the woman's domain and that view continues to be reinforced by the actions of the government. Further, the occupation of domestic work has gone unregulated for so long that low wages and poor working conditions are almost expected; thus, relegating the work to people who have no other options, in effect, “ghettoizes” that segment of the population.\textsuperscript{53} An expanded approach to intersectionality is necessary, because it is difficult for women who hire domestic workers to understand the underlying dichotomy of the employer-employee relationship and their own participation in the subordination of other women. Regina Austin writes that even the most progressive middle class woman can lose sight of the problem, because:

\begin{quote}
\ldots where domestic service is concerned, the cutting edge of some of the most progressive antiracist, profeminist counterideologies may be dulled by self interest \ldots Our inclusion in the camp of the oppressed privileges us to employ the techniques of liberation on our own behalf \ldots We do not always situate ourselves with reference to other races, ethnicities, gender, or classes.\textsuperscript{54}
\end{quote}

\begin{footnotesize}
\textsuperscript{51} Young, \textit{supra} note 9, at 7.
\textsuperscript{52} \textit{Id.}
\textsuperscript{53} Kaufka, \textit{supra} note 2, at 172.
\textsuperscript{54} Regina Austin, \textit{Of False Teeth and Biting Critiques: Jones v. Fisher in Context}, 15 \textsc{Touro L. Rev.} 389, 397-98 (1999); \textit{See also} Angela P. Harris, \textit{Race and Essentialism in Feminist Legal Theory}, 42 \textsc{Stan. L. Rev.} 581, 586-90
\end{footnotesize}
Mary Romero discovered in her research that many people who employ a domestic worker do not consider themselves as "employers" but rather as helping a poor immigrant woman. By placing themselves in the role of do-gooder, employers can ignore the reality of what their lawbreaking is actually providing: the exploitation of someone who is subordinate to themselves. Professor Romero argues that when it comes to immigration and employment legal discourse, intersectionality has ignored and marginalized women engaged in domestic work. Although employment areas such as manufacturing, meat processing, construction, and hotel housekeeping also engage in identifying the subservient workers by considering race, gender, and citizenship status, this is especially true for the domestic worker. The highly personalized nature of the work leads potential employers to specifically consider characteristics of certain races and ethnicities that they believe make a good worker. Of course, they rationalize their behavior by explaining that the person hired will be in their home and so the employer is entitled to consider all factors in making his decision. Expanding the theory of intersectionality to include class, gender, and citizenship status provides a starting point for the analysis needed to address the problems facing immigrant women hired as domestics.

The intersection of class, race, and gender also helps explain the position of the white middle class female in the role of employer. Professor Romero suggests that the history of race relations in the United States leads some white women to hire women of color to work in their home and then try to be "kind" to them, as if to affirm their non-racist image. For example, one common practice of this "kindness" among employers is that of

(1990) (arguing that feminist legal theorists tend to speak in a homogenized voice from the view of the white, privileged woman, which does not account for experiences of women of color).

55 Romero, supra note 5, at 1047.
56 See generally Romero, supra note 5.
57 Saucedo, supra note 11, at 973.

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giving their domestic workers her family's old clothes. The act both reinforces the female employer's superior view as a color-blind, generous person and reaffirms the distinction in class between the two women. Again, the employer places herself in the do-gooder role by engaging in an act that would not be considered appropriate with an employee who is a white female U.S. citizen. "It is almost inconceivable that the same woman would consider offering her old linen jacket to her secretary." 

There also exists a duality in the female employer's reason for hiring a woman of color; on the one hand, she attempts to reaffirm her non-racist attitudes, while on the other hand, she may be attempting to buy status. This is particularly evident in cases where the live-in worker is made to wear a uniform when guests are present. Thus, women of color serve as "contrast figures for strengthening employers' egos and class and racial identities." Using the domestic employee serves as a contrast to reinforce the white female privilege while muting the experience of the immigrant woman.

IV. ABUSE AND EXPLOITATION

As previously mentioned, abuse endured by immigrant women while working as domestics ranges from economic exploitation to severe sexual and physical abuse. Some employers may rationalize the low wages by explaining that their worker is treated well, again, rationalizing behavior that they would certainly not accept were it their own employer offering such an explanation to them. Other employers lie to women about the potential additional opportunities that they will have, such as to engage in part-time work on the side to make up for the low

58 Romero, supra note 19, at 110.
59 Id.
60 Id. at 109.
61 Id. at 72.
62 Id. at 112.
63 Women and Work, supra note 31, at 115.
wages they are paying. Hondagneu-Sotelo interviewed women in the Los Angeles area about their experiences as domestic workers. One woman who arrived in 1984 worked for an affluent family in Marin County, earned $90 a week. Her employer lured her into taking the job with the offer of room and board and a promise to help her find a part-time job on the side, but the part time work never materialized. Women who live with their employers are even more vulnerable than those who return to their own homes at the end of the day, because their experience is typically defined by isolation, especially if the woman is undocumented. That type of isolation is more akin to a domestic violence situation due to the degree of control exercised by the employer(s).

Women who work as domestics in a private home typically come to be seen and unseen: seen as an economic commodity and unseen as a person and an individual. The duality of a domestic’s existence as perceived by her employer is illustrated in Annie Marie Quinlob’s case. Ms. Quinlob was smuggled into Guam from her native Philippines by her employer. Almost immediately after arrival, her employer confiscated her passport and her return ticket to the Philippines and informed Quinlob that she would have to work as his maid to offset what he had spent in transporting her. Quinlob eventually submitted to her employer’s demands for sex in return for his promise to secure a Guam I.D. card that would allow her to seek other employment. Although Quinlob’s employer was eventually punished, most women are paralyzed by fear and do not report the abuse.

In fact, the treatment that some immigrant women experience as domestic workers has been compared to domestic abuse.

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64 Id. at 114-115.
65 Id. at 115.
66 Graunke, supra note 1, at 152-53.
67 Id. at 161.
68 U.S. v. Sanga, 967 F.2d 1332, 1335 (9th Cir. 1992).
69 Id. at 1334.
70 Id. at 1335.
mainly because the domestic worker is exposed to the worst aspects of being a female who is considered somewhat part of the family and is a low status, undocumented worker.\textsuperscript{71} The three main characteristics of domestic violence are also prevalent in cases of abuse among domestic workers: (1) the creation of a one-sided dependent relationship, (2) isolation, and (3) psychological abuse.\textsuperscript{72} The inherent unbalanced relationship, discussed above, creates a relationship where the domestic worker is completely dependent on her employer for shelter, wages, and protection from deportation. The employer can maintain control by reminding the employee that if she loses the job, she will be stranded in a foreign country without a home or money, or worse, simply deported.

The experience is worse for women who do not have relatives or friends in the United States. In those situations, it is easy for an employer to manipulate the worker into isolating herself within the home through fear, because a recently arrived immigrant will not know the culture, much less the laws of the United States or who to turn to for help.\textsuperscript{73} Such was the situation that Fransesca Ekka found herself in after she was hired to work in the home of an affluent couple in Miami.\textsuperscript{74} Ms. Ekka, a native of a rural village in India, was recruited and brought to the United States by Mr. and Mrs. Mahtani as an \textit{au pair}.\textsuperscript{75} However, shortly after arriving in the U.S., her passport was confiscated, and she was put to work doing all of the cooking, cleaning, and caring for two children and the family's two dogs

\textsuperscript{71} Graunke, \textit{supra} note 1, at 155.
\textsuperscript{72} See generally, Graunke, \textit{supra} note 1.
\textsuperscript{73} Graunke, \textit{supra} note 1, at 162 (Graunke describes the experience of a teenage Cameroonian woman who was denied access to anyone outside the home of her employers. She was not physically abused, but even after five years of employment, most of the employers' neighbors did not even know of her.).
\textsuperscript{74} Mireya Navarro, \textit{In the Land of the Free: A Modern Slave}, N.Y. \textsc{Times}, Dec. 12, 1996, at A22.
\textsuperscript{75} Id.
and was never paid. The abuse quickly became physical, and she ultimately endured seven months of beatings and humiliating treatment before reaching out for help.

As with victims of domestic abuse, the Mahtanis used isolation, threats, and physical abuse to control Ms. Ekka. Ms. Ekka’s case demonstrates how the prevailing views of domestic workers have turned society, in general, into a silent accomplice of abuse. Ms. Ekka reached out, first, to a family friend of the Mahtanis; she explained her situation and asked for the person to intercede on her behalf. Despite the family friend’s promise to help, her situation did not change. Ms. Ekka also reached out to the driver of the Mahtani children’s school bus, showing him burns that had been inflicted on her by Mrs. Mahtani with an iron. The bus driver told Ms. Ekka that he could not help and directed her to call the police. The Mahtanis pled guilty to forcing Ms. Ekka into involuntary servitude, inducing her to reside in the United States illegally, and harboring her in violation of immigration laws. This case illustrates how, even in such an extreme situation of clear abuse and exploitation, there is no economic redress for the victim. Even though the employers were subject to a fine and light sentences, there was no opportunity for Ms. Ekka to obtain back wages; the most she could hope for was to not be deported back to India.

76 Id.
77 Id. (Prosecutors also documented that Ms. Ekka was tied with a leash around her neck, had her head dunked in soapy water and held under until she could not breathe, was dropped off in remote abandoned locations and left there for days at a time).
78 Navarro, supra note 74. (Ms. Ekka’s employers told her that no one would help her and “burned her address book and mail to further isolate her.”).
79 Id. (supra note 74).
80 Id.
81 Id.
82 Id.
83 Id.
84 Id. 

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Domestic workers also endure sexual harassment, although it does not always result in sexual assault. Professor Romero observed the inappropriate behavior of her male colleague towards his 16-year-old live-in worker, Juanita; the colleague constantly flirted and made sexist remarks despite Juanita's obvious discomfort. Immigrant women working as live-in domestic workers are in the awkward position of being in the presence of family members but still remaining an outsider. Male members of the family may see the domestic worker through the lens of racial, gender, and ethnic stereotypes and believe that a comment they would never make to the 16-year-old friend of their daughter is somehow acceptable to a 16-year-old immigrant working in their home.

Other forms of psychological abuse and degrading treatment can be directed at domestic workers by the children of the employers, often with the parent's knowledge. Allowing their children to disrespect their employee is part of the "quasi-familial status" of the live-in domestic worker. In effect, the employer is telling the domestic worker that the behavior and wishes of a spoiled child are much more valued than the dignity of the worker, and thus, also putting the employer's children in a superior and dominant position over the employee.

VI. THE LAW AND ITS SHORTCOMINGS

IRCA made it a criminal act for employers to knowingly hire an undocumented worker, but it has not stemmed the tide of unauthorized immigration to the United States, nor has it made a significant impact in reducing undocumented hiring. What it has accomplished, however, is the cultivation of a shadow econ-

85 Romero, supra note 5, at 1045.
86 See generally, Romero, supra note 5.
87 Graunke, supra note 1, at 168-69 (also citing Pierrette Hondagneu-Sotelo's interviews with domestic workers who described being kicked or slapped by their employer's children).
omy grown on the backs of abused and exploited undocumented workers. Despite the growing market for household workers, the minimum wage laws of most states do not extend to domestic workers employed in individual homes.\(^8\) The lack of employment law protection for undocumented domestics is particularly troubling when compared against the income earned by those *documented* women employed as domestic workers. In 2002, the U.S. Bureau of Labor Statistics reported that the median income for a legally employed maid in an individual home was $17,330.\(^9\) Further, because immigrants typically send a large portion of their earnings to their home country, they live on even less.\(^1\) Labor laws in the U.S. continue to be driven by anti-immigration sentiments, even though the legislative intent may be entirely different. For example, the legislative history of IRCA specifically addresses remedies available to undocumented workers regarding unfair labor practices, stating that “the committee does not intend that any provisions of this Act would limit the power of State or Federal labor standards agencies such as the . . . Equal Employment Opportunity Commission . . . to remedy unfair practices committed against undocumented employees.”\(^2\) Yet, despite the apparent intent of Congress to hold employers to the same fair employment practices for documented and undocumented workers, reality is quite different.

Anti-immigrant sentiments have increased in the United States in recent years, largely as a result of the events of 9/11 and the downward spiral of the economy. Immigrants, in general, are seen as potential security threats or as thieves of scarce economic resources to which only United States citizens are en-

\(^8\) Young, *supra* note 9, at 30.
\(^9\) Kaufka, *supra* note 2, at 173 (also reporting that in 2002 a family of three earning $17,330 per year was just above the poverty line).
\(^1\) *Id.*
By 2001, it was estimated that females outnumbered males who had emigrated to the United States. The anti-immigrant backlash is more focused and harsher on women, in part because a child born to an immigrant woman in the United States automatically grants her citizenship status, referred to as “baby-dropping.” Further, since most immigrant women who work as domestics in the United States are poor, the anti-immigrant perception is that once they have a child who is a citizen, making them eligible for social services, they will further drain the economy of resources.

The heightened negative treatment of immigrant women supports the argument that the consideration of citizenship status overlaps with the consideration of gender and class in creating the negative perception of domestic workers. Thus, citizenship status is only the initial threshold for a domestic worker who wishes to attain remedy through the legal system. The current trend in U.S. courts of shutting noncitizen plaintiffs out creates a whole layer of disenfranchised people, denying them any kind of legal recourse. Even if cases were allowed to proceed without meeting that initial threshold, plaintiffs still would not succeed if courts do not employ an expanded intersectionality approach.

Professor Maria L. Ontiveros is a strong proponent for extending Title VII protection to undocumented immigrants. Among other things, she stresses that to focus on the employee’s citizenship status simply reinforces the “otherness” of the person and only serves to diminish his or her worth and minimize the harm he may have experienced. She further argues that by

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94 Kaufka, supra note 2, at 166.
95 Young, supra note 9, at 41.
96 Id.
97 See generally, Ontiveros, supra note 26.
focusing on the employee’s wrongdoing (e.g., entering the U.S. without authorization), courts are given permission to use balancing tests, wherein they consider improper factors to arrive at a decision. Although her argument is for extending legal protection to persons employed in manufacturing or processing jobs, an analogous argument can be made for domestic workers because, as discussed above, immigrant women suffer discrimination based on factors other than citizenship status.

Title VII only reaches an employer if he employs fifteen or more employees. Obviously, that definition excludes the vast majority of people who employ domestic workers. The challenge is to change how we view the public/private dichotomy of employment. What was once commonly referred to as “women’s work,” caring for the family, housework, and spousal relations, is the private area, whereas the public area deals with matters relating to economics, employment, and policy. Professor Patricia Hill Collins argues that the public/private sphere does not work for African-American women, because they engage in work that blurs the line between the two. Again, this argument can be extended to immigrant women of color. Like African-American women, immigrant women are culturally tied to domesticity, and their experiences as domestic workers are the result of a combination of their gender, race, citizenship status, and class.

Therefore, rather than viewing the work domestics engage in as a natural extension of their gender and race, it should be analyzed like any other employee’s participation in the private sphere of employment. Extending protection to domestic work serves to curb employers’ perceptions that immigrant

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98 Ontiveros, supra note 26, at 616-17.
100 Young, supra note 9, at 65-66.
102 Young, supra note 9, at 10.
women are expendable. Yet, this will not happen so long as the initial threshold for remedy remains documented status. A shift needs to occur to put the focus in these cases on the actions of the employer, not on the citizenship status of the employee. That shift seems a distant hope at the moment due to the current anti-immigration sentiment and poor economic outlook, in which citizens are more interested in finding out who is to blame for the decline of the economy and for terrorist acts rather than in seeking to invest in long-term and humane solutions.

A recent United States Supreme Court case highlights the reticence of courts to look past citizenship status and apply an extended intersectionality approach to employment cases involving undocumented immigrants. Although the case involves undocumented males working in a factory and does not directly apply to Title VII, it illustrates how courts continue to exclude and marginalize immigrants when it comes to labor rights. In that case, the Court held that the National Labor Relations Board ("NLRB") did not have the authority to award back-pay to an undocumented worker who was unlawfully laid off for attempting to unionize. The Court reasoned that to allow the NLRB to enforce the backpay award would be contrary to Congress' intent in enacting IRCA. To rule otherwise would be to overlook that intent and "allow it to award backpay to an illegal alien for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud."

The worker at the center of the case, Jose Castro, admitted during a compliance hearing before an Administrative Law Judge that he was not legally admitted into the United States and that he had used the birth certificate of friend to obtain employment. In light of that information, the NLRB ruled that

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103 Romero, supra note 5, at 1061.
105 Id. at 149.
106 Id. at 141.
the amount of the award should run from the date Castro was fired to the date that Hoffman first learned of Castro’s undocumented status. The Court rejected the NLRB’s argument that IRCA did not prevent backpay to undocumented persons who have secured employment by presenting false documents but who, nonetheless, were subjected to unlawful employment practices. As is typical with cases involving undocumented immigrants, the Court focused on the act of the aggrieved worker rather than on the unlawful practices of the employer. The Court acknowledged the employer’s lawbreaking actions but reasoned that the sanctions imposed by the NLRB were punishment enough. The sanctions consisted of a cease-and-desist order, the conspicuous posting of notice disclosing the violation, and the conspicuous posting of a flyer informing workers of their rights.

The Court’s rationalization for allowing an employer to go unpunished is a further example of the attitude towards what many in the United States have come to see as an expendable source of cheap labor. Although that case involved male immigrants in a factory setting, the impact of the Hoffman decision reaches immigrant women working as domestics. We are back to where this analysis started: the experience of immigrants with U.S. labor laws is, first and foremost, dictated by their citizenship status. If a large company was found to have committed a blatant act of unlawful employment discrimination against a group of people but only has to account for it if those persons were documented, what chance does one woman have against a private employer?

The distorted view through which courts analyze these types of claims was highlighted in the line of questioning directed at attorney Paul Wolfson from the Solicitor General’s office, who

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107 *Id.* at 142.
108 *Id.* at 149.
109 *Id.* at 152.
110 *Id.*
represented the NLRB and the INS and focused almost entirely on the actions of the undocumented worker and the problems facing the U.S. regarding illegal immigration. After Mr. Wolfson explained to the Court that the INS agreed with the NLRB that awarding back-pay in this case did not interfere with the intent of IRCA, Justice Scalia replied that "... it explains why we have a massive problem of illegal immigration, if that's how the INS feels about this." Effectively, the Hoffman decision affirms, not only that the threshold for these types of cases continues to be citizenship status, but also that even if the plaintiff clears that hurdle and is heard, no consideration will be given to the underlying factors that led to the employer’s abuse. The case demonstrates how anti-immigrant sentiments prevent granting basic rights and protections to an incalculable number of “ghost workers” in the United States and relegates a large segment of the population to an employment ghetto.

A. Looking Towards the Future

Exploitation and abuse encountered by undocumented domestic workers is a complex issue with no clear or easy solutions. A deeper analysis and discourse is needed if the problem is to be addressed in a manner that balances the national security and immigration policies of the United States with the humane treatment of people who reside here, regardless of their citizenship status, race, gender, or class. Extending the protec-

112 Id. at 28.
113 Oral arguments in the Hoffman case were heard four months after the events of 9/11; See also Fang-Lian Liao, Illegal Immigrants in Garment Sweatshops: The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, 3 Sw. J.L. & TRADE AM. 487, 502 (1996) (arguing that Article 4 of the Universal Declaration of Human Rights prohibiting slavery and servitude applies to illegal workers because “they have no choice but to work in atrocious conditions or face deportation”) and Kaufka, supra note 2, at 172.
tion of Title VII to domestic workers, regardless of citizenship status, would deter U.S. citizens from breaking the law by hiring undocumented persons, and deterrence of discrimination is one of the stated purposes of the legislation. If more employers are held accountable when abuse or exploitation comes to light, the cost-benefit analysis, which most engage in when deciding to break the law, would no longer be useful; this would eventually help to curb the underground economy.

It is important to note that any discussions regarding possible solutions to this issue need to extend well beyond the rights of domestic workers. For example, the overall continued subordination of women plays a significant role in the perpetuation of the subordination of immigrant women. Increasing numbers of white citizen females continue to enter the workforce outside of the home, yet there is no accompanying support system to offset the gaps in household-related tasks and childcare. This article does not argue for the proposition that immigration laws should be abandoned as a means to solve the childcare dilemma facing millions of working parents in the United States. It is

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114 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2000); See also Romero, supra note 5, at 1061.
115 Peter Margulies, Stranger and Afraid, Undocumented Workers and Federal Employment Law, 38 DePaul L. Rev. 553, 570 (1989) (arguing that extending employment law remedies to undocumented workers would curb the market for their labor, which would in turn reduce the economic incentives which make illegal immigration an appealing option).
116 Twila L. Perry, Caretakers, Entitlement, and Diversity, 8 Am. U.J. Gender Soc. Pol’y & L. 153, 156 (2000) (stating that “[s]uch a focus makes it very difficult for feminist scholars to avoid what I believe is a very important issue for feminist theory: the contradiction between the way in which caretaking work and related tasks in the home are valued when they are done by wives, as compared to the way the very same work is valued when done by paid domestic workers. Confronting and moving toward resolution of this contradiction would be an important step toward unity between women”).
important, however, to consider all of the factors which contribute to the decision that many Americans make to break the law when they hire an undocumented person to work in their home.

To achieve the goal of extending labor laws to protect domestic workers, substantive discussions of the underlying factors must occur. Expanding the theory of intersectionality to include the factors discussed here is a good start to an attempt to include the experiences of immigrant women working as domestics. Additionally, a better effort to engage legislators in the debate is necessary if any significant measures are to be achieved. To that end, advocates of extending U.S. labor laws to protect domestic workers realize there is strength in numbers and have begun to organize. Domestic Workers United (DWU) is a New York City organization that hosted the first national convention for domestic workers earlier this year.118 DWU is one of 20 organizations from across the country that have joined forces to form the National Domestic Worker Alliance (Alliance) to campaign for state and federal laws to guarantee basic rights for domestic workers.119 The Alliance developed the Domestic Worker’s Bill of Rights, which includes provisions for sick days, vacation, advance notice of termination, and severance pay and is lobbying legislators to adopt them into state or federal law.120 It is reassuring to learn of efforts like those of the Alliance; however, they face an uphill battle, particularly if anti-immigrant sentiment continues to play such a central role in the discussion for potential solutions.

Despite some success in prosecuting cases under federal anti-trafficking laws, such as in the cases of Ms. Quinlob and Ms.

118 Nieves, supra note 1; See also Suzanne Goldberg, In Pursuit of Workplace Rights: Household Workers and a Conflict of Laws, 3 Yale J.L. & Feminism 63, 67 (1990) (developing outreach strategies to give domestic workers legal remedies).
119 Nieves, supra note 1.
Ekka, there is no guarantee under those laws that the victim will be awarded restitution, even in the most severe cases of abuse. In the case of Ms. Quinlob, she was able to obtain restitution, because her employers were prosecuted under the Victim and Witness Protection Act of 1982. Although it is important to prosecute employers who abuse and exploit, prosecutions under anti-trafficking legislation tends to focus on the employers’ immigration-related offenses. Again, this illustrates that when abusive situations involving domestics come to light, punishment and sanctions against the perpetrators are sought mainly to protect the government’s interests, rather than that of the victim’s interests. Prosecutions such as these would have more of an impact, as far as deterrence for others who may be considering hiring an undocumented person, if there were a dual focus: the enforcement of immigration and labor laws.

V. Conclusion

The case of Zoe Baird’s failed nomination to the office of Attorney General presented the United States with a good springboard for addressing the issues of undocumented domestic workers. Yet, the discussion was never properly focused, because the main character was mistaken to be Zoe Baird rather than Lillian Cordero. Today, we continue to measure the experiences of immigrant women from the point of view of the white citizen female. We also continue to accept the rationalizations from those doing the hiring and, when a case of abuse comes to light, it is easier to dismiss it as an isolated occurrence rather than an opportunity to look at the underlying factors. Attitudes toward the immigrant women working in homes will not change until our society accepts the fact that the domestic employee-employer relationship is inherently unbalanced and exploitative,

122 Graunke, supra note 1, at 175.
regardless of how "kind" the employer thinks he is. The continued marginalization of immigrant women working in this field only perpetuates the employment ghetto created by the lack of government regulation and enforcement of labor laws.

The goal of curbing immigration, particularly when unauthorized, is consistently a political hot topic, and hostilities towards anyone perceived to be an immigrant are highly visible in our society. Yet, there is no discussion regarding the employers who are hiring undocumented immigrants, and thus, are continuing to perpetuate this underground economy. Our understanding of the intersection of race, gender, class, and citizenship status is a necessary factor in holding meaningful discourse to address this gap in U.S. employment law. In fact, applying an expanded understanding of intersectionality to legislative actions and judicial analysis of employment law is the only way to begin to address the seemingly insurmountable problem of undocumented workers and their continued exploitation in the United States. Additionally, it is important to understand that the factors which have led to the creation of this underground economy are tied to our societal view of what is considered women’s work. This article does not assume that this is an easy problem to solve. The problem’s complexity, however, is not a valid reason for denying basic labor and human rights to undocumented workers hired by U.S. citizens, many of whom understand that this practice is against the law and who take advantage of their privileged position over those workers.