

**FAIR TREATMENT OF UNAUTHORIZED RESTAURANT WORKERS  
AS A SUSTAINABLE COMPETITIVE ADVANTAGE**

Robert A. Page, Jr., Southern Connecticut State University

Robert A. Smith, Jr., Southern Connecticut State University

Smita Shrestha, Southern Connecticut State University

**ABSTRACT**

The US restaurant industry is a multibillion-dollar revenue generating machine. The relatively low food costs have been sustained, in part, on the backs of illegal immigrant workers who are systematically underpaid, overworked, and otherwise exploited. In the restaurant industry approximately one quarter of the lower paying positions are staffed by illegal immigrants. Given that US industries in the service, construction, and food sectors are dependent on illegal workers to the point of advertising for them in their native lands, the term “illegal” is disingenuous and illogical. If immigrants are invited either expressly or impliedly, the real dichotomy is between “invited” and “uninvited” immigrant workers. Immigration reform efforts at the federal level have repeatedly failed. The viable solution of promoting the fair treatment of unauthorized workers where they actually live and work and how this will create competition for their valuable, economic work among the states, will be introduced. Fair treatment of invited immigrants, undocumented and unauthorized or not, is explored as a source of sustainable competitive advantage. Four potential strategies are evaluated: fair compensation, fair supply chain, standards of advocacy, and training and support. The long-term economic outcomes of these strategies for the food service industry will be analyzed by comparing and contrasting the costs and complexities involved in each approach.

*Keywords:* Immigration Law Reform, Social Responsibility, Competitive Advantage, Restaurant Workers.

**INTRODUCTION**

Over the past decade, fair standards for lower paid workers has been popularized in the US. The Fair Trade movement has improved the treatment of foreign workers, and minimum wage standards have been raised in some states for domestic workers. Illegal, unauthorized workers continue to be abused and exploited in major industry sectors without respite. Given the growth and popularity of the sanctuary movement protecting illegal immigrants, this paper explores strategies to improve the treatment of illegal, unauthorized workers. Fair treatment can pose a potential source of sustainable competitive advantage, despite anti-immigrant political sentiments.

Riding a wave of anti-illegal immigration sentiment in America, Donald Trump became president with the promise of cracking down on immigration, particularly illegal immigration. Trump has a five-step plan regarding illegal immigrants ranging from partially banning immigration to

deporting undocumented immigrants to building a wall near the USA-Mexican border to prevent further immigration (Thomas, 2015). However, it would decrease the number of illegal immigrants in the US and affect the labor force. American business and the politicians they own actively oppose Trump’s immigration policies (Andersen, 2016). If illegal immigrants stopped working, not only would average prices increase, but many menial jobs would go unfilled. Many sectors of American business are dependent on unskilled immigrant labor. “Immigrants provide much of the low-skill labor for these industries. Without the immigrant labor, prices consumers pay for hotels and restaurants would be substantially higher, and some agriculture might migrate offshore” (Furchtgott-Roth, 2014, para. 9).

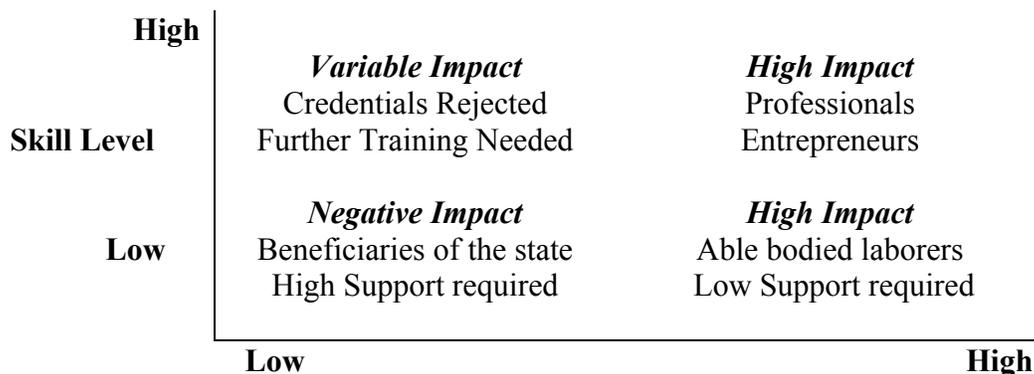
The construction, maintenance, and for-profit prison sectors also utilize large numbers of illegal workers (Flannery, 2013). America needs illegal immigrants because they overwhelmingly fill jobs Americans are not interested in, given their pay, hours, and working conditions (Bittman, 2015). They also deliver impressive economic benefits (tax revenues, entrepreneurial businesses, etc.). This work relationship can serve to create an implied contract between the immigrant workers and society giving the immigrant workers membership status in society (Jones-Correa & de Graauw, 2013).

Beyond unskilled labor, the high technology industry has also become dependent on a continuous flow of inexpensive professionals:

In March 2013 tech industry groups such as the Information Technology Industry Council, The Internet Association, and the Silicon Valley Leadership Group joined together to push for immigration reform. In a letter addressed to “The Honorable Barack Obama” tech company CEOs argued that “the United States has a long history of welcoming talented, hard-working people to our shores [and] immigrant entrepreneurs have gone on to found thousands of companies with household names like eBay, Google, PayPal and Yahoo. These companies provide jobs, drive economic growth and generate tax revenue at all levels of government. (Flannery, 2013, p. 2)

From an industry perspective able-bodied immigrants are welcome, whether documented or not, because of their positive economic impact (Gutiérrez, 2016; Marquardt, Steigenga, Williams, & Vásquez, 2013). These tradeoffs are illustrated in Figure 1:

Figure 1. Economic Impact of Immigrants



## **Economic Contribution**

The government already has the H-1B temporary visa process to import large numbers of highly skilled immigrants to service the high technology sector, and the H-2A temporary agricultural worker visa, both indenturing them to a specific company sponsor (Hesson, 2015). However not in sufficient numbers, so businesses and cities actively recruit illegal immigrants with marketing campaigns south of the border, and in Russia (Furchtgott-Roth, 2014; Gutiérrez, 2016; Hesson, 2015; Penaloza, 1995). Tyson actually developed a human smuggling service to ensure the timely arrival of sufficient unauthorized workers to its production facilities (Barboza, 2001). What is less well known is semi-legal status for illegal workers who become independent contractors, particularly if they incorporate as an LLC, since all Immigration and Naturalization Service [INS] action against them is suspended (Carcamo, 2013).

Consequently, the Pew Research Center argues that the term “illegal” immigrant is inappropriate. They think the term “undocumented” does not go far enough, and prefer “unauthorized” (Krogstad, Passel, & Cohn, 2016). Further, the authors argue that the real dichotomy is between invited and uninvited workers. If we invite them, they have to be welcomed, not stigmatized. This is an advance on the “wanted” versus “unwanted” immigrant categorization used in the past (Wright, C.F., 2016).

## **TRENDS IN THE FOOD INDUSTRY**

The food industry is expected to reach \$783 billion in the United States in 2016. Over 1 million new restaurant locations were opened in the United States in 2016 (National Restaurant Association, 2016). It is a highly profitable industry. This industry plays a major role in the US economy as its workforce makes up a major ten percent of the overall US workforce (National Restaurant Association, 2016). It can be divided into three sectors: The Quick Service Restaurants [QSRs], fast casual restaurants, and luxury dining restaurants.

QSR restaurants focus on providing fast, inexpensive food with counter service. They also have a drive-thru option, with no table service. They are more popularly known as fast food chains. The popular ones today are McDonald's, Wendy's, Taco Bell, and Burger King. Their food is not produced by a skilled cook, but a collection of workers who are trained to do small, specific steps to get to the final burger, or taco (Kwansa & Parsa, 2014). Quick Service Restaurants made a staggering revenue of 206.3 billion dollars in 2016, the most out of the three segments. There were a total of 186,977 fast food eateries in 2016 (Harrington, Ottenbacher, & Fauser, 2017). The QSR have taken inspiration from the recent success of the casual food scene and implemented features for a wider customer appeal. For example, McDonald's announced their 24-hour breakfast, which saw its business increase by 5.4 percent (Harrington et al., 2017).

The fast casual restaurants are a notch above the Quick Service Restaurants. They consist of food made on the spot, in contrast to the pre-assembled food at fast food places. They use fresher ingredients, offer flexible menus, and upgraded equipment. One meal at fast food restaurants costs around \$5- \$6, whereas fast casual segment prices its average meal from \$9 to \$13 (Ferdman, 2015). Despite its high cost in comparison to QSR, fast casual food has thrived in the American food scene. It witnessed a 600 percent growth since 1999, ten times the growth of fast food (Euromonitor, 2016). According to Technomic's “The top 500 Chain Restaurants” report, the

growth can be attributed to the freshly made food that is catered to individuals and have an improved taste compared to fast food (Kelso, 2014). Most fast casual are franchisees and a “cheap eat” for the customer (Kwansa & Parsa, 2014). Some popular fast casual restaurants include Chipotle, Shake Shack, Panda Express, and Panera.

Despite their rising popularity, the QSRs remain the top earner due to the evolving economic snapshot of America. The middle class in America is slowly disappearing and being replaced by lower-income households. The middle class were once the nation’s economic majority, but all that changed in early 2015 (Pew Research Center, 2015). This correlates to the declining performance of the mid-level restaurants. Boston Market, Olive Garden, and their peers are losing ground to the QSRs.

Fine dining restaurants consist of quality food, top-notch presentation, dedicated table service, upscale ambience, and expensive prices. They are the high-end eateries such as Dozo and Carrabbas. Such restaurants focus on the amalgamation of food and pleasant atmosphere to provide a memorable dining experience. Most fine dining restaurants are independently owned and have a loyal fan following, despite the high price tag. They are the preferred choice when consumers have a special event in their life such as a birthday or graduation and want to splurge. Fine-dining restaurants price their food at ranges much higher than QSR or fast casual restaurants. The average gross profit margin in this category is around 60 percent (Browne, 2017; Lander, n.d.).

While the middle class may be shrinking, the upper and lower classes continue to grow (“The American middle class is losing ground.,” 2015). The wealth disparity can be seen by the massive difference in net worth. Accordingly, fine dining restaurants should enjoy, at minimum, stable patronage. Fine dining restaurants remain cost sensitive because in order to break even, restaurants need to produce a profit margin from 32 to 38 percent (Nessel, n.d.).

### **Minimizing Costs with Undocumented Workers**

According to the Department of Labor, in 2013 foreign born worker:

- About 38 percent (9.5 million workers) were from Mexico and Central America
- 28 percent (7 million workers) were from Asia (including the Middle East).
- 10 percent were from Europe
- 10 percent were from the Caribbean (Mosisa, 2013)

Approximately one fifth of the workforce of the restaurant industry consists of invited but undocumented immigrants. They make up approximately 20 percent of the nation’s chefs, cooks, and 28 percent of the dishwashers (McCarthy, 2016). This constant supply of invited but undocumented labor is fueled by the global trend of immigration (Dinan, 2016). Invited but undocumented immigrants have a major impact on the restaurant industry.

According to the Washington Post, more “illegal” immigration occurred in 2016 than in 2015. More than 370,000 “illegal” immigrants have been caught trying to enter the United States in 2016, including approximately 38,000 families (Dinan, 2016). Immigrants are travelling in packs to escape the grim reality of criminal gangs and employment. The Central American regions such as Guatemala, Honduras, and El Salvador have been plagued with such activity and led to this

increase (Dinan, 2016). “Illegal” immigration may be a polarizing issue in the United States, but it has been an economic blessing to the restaurant owners. The immigration has supplied a range of cheap labor who are willing to work in the back of the restaurant. So, the restaurant industry has benefited from the wave of undocumented migration to the states.

Many restaurants are considered “small businesses” with fewer than 50 full-time employees. As such, these businesses are not subject to an Employer Shared Responsibility payment to the IRS for failing to provide health insurance to their full-time employees (“Affordable Care Act Tax Provisions for Small Employers,” 2017). The added cost of providing insurance in a small workforce can be an uncertain investment for restaurant owners, due, in part, to the high turnover rate in this particular industry (Fox, V., 2017). According to a recent survey by the National Restaurant Association (2016), more than half of restaurant owners find it a challenge to find and keep good workers. To preserve profits, restaurants control their labor costs by paying lower wages to workers who lack job prospects. With invited but undocumented immigrant workers, they have a pool of workers who are reliable and hard workers. “We always, always hire the undocumented workers,” a Manhattan restaurateur stated in a New York Times Article (Kershaw, 2010, para. 13). “...they are willing to do the work...willing to learn. Third, they are not paid as well. It’s an economic decision” (Kershaw, 2010, para. 13). Payroll is a large portion of a restaurant's net profits. This permits American consumers to enjoy low cost food. In the words of a restaurateur: “We’ll have to pay higher wages, [if we hire legal employees], more taxes and then we will have to charge more” (Kershaw, 2010, para. 19).

Ironically, invited but undocumented immigrant workers are covered by labor laws including the Fair Labor Standards Act, Equal Employment Opportunity Commission (EEOC) and The Occupational Safety and Health Act (OSHA) that establish legal standards for the work environment. A non-exempt employee has to be provided with minimum wage per hour that s/he works. According to the Department of Labor, the national minimum wage is around 7 dollars and 25 cents, although the amount varies by state. A person working in California has to get paid \$10.00, compared to a person working in Arizona at \$8.05 per hour (Department of Labor, 2017). Moreover, all the hours that an employee worked must be compensated. Any extra hours must be paid at a premium rate; it is usually at a time-and-a-half rate. The restaurant must properly train their employees and provide necessary equipment. Employees should have access to first aid kits in cases of emergency. The Equal Employment Opportunity Commission (EEOC) protects workers from racial, color, religious, age, and gender discrimination (Department of Labor, 2017). Being able to ignore these standards and their direct and indirect costs can be lucrative.

### **Exploitation**

The invited but undocumented immigrant workers have a lot at stake. They have crossed into a foreign country illegally in hopes of a better life than the one they have left behind. They need to start looking for a job as soon as possible to settle debts and earn money. It is challenging in America to find a job when you have no legal documentation. The immigrants could hold degrees or experiences from their native country to be employed in a white collar job, but it is useless as they lack proper documentation (Gammeltoft-Hansen & Sorensen, 2013; Kukushkin & Watt, 2009). So, they hold a deep appreciation for any job that they can find. They do not shy away no matter how labor intensive the positions are, whether they are prep cook, dishwasher, or night

porter positions. Their discipline and reliability is reflected in the high number of immigrants in the restaurant business (McCarthy, 2016).

Exploitation is one of the unfortunate realities of the successful restaurant industry. Invited but undocumented immigrant workers are at the mercy of their employers (Bittman, 2015; Marquardt et al., 2013). They are the most vulnerable segment of the workforce, comprising 27% of labor in this industry. A study done by Restaurants Opportunities Centers United, “Behind the Kitchen Door” resulted in some alarming restaurant labor statistics. Half of the workers do not get paid for overtime work. Eighty-seven point seven percent of employees do not have paid sick days. There was racial discrimination and pay disparity where 28% of workers reported being passed over for a promotion due to their race. Thirty-four point six percent of workers reported having to work under time constraints that may have harmed the health and safety of consumers (Jayaraman, 2013). They live lives of abject poverty (Marquardt et al., 2013).

Invited but undocumented immigrant workers face additional hurdles while working in the restaurant industry. They often work in dangerous conditions, where there is a significant possibility of getting injured (Gammeltoft-Hansen & Sorensen, 2013). They do not receive the medical care they need, nor they do they receive the worker’s compensation that legal workers receive. They can be fired from a job with no compensation for the hours worked (Marquardt et al., 2013). If employees try to speak out about their treatment, they are threatened with deportation. The Boston office of the US Department of Labor conducted 165 investigations in the restaurant industry in fiscal year 2013. They found multiple wage law violations and collected more than a million dollars from the guilty restaurant party (“Service not included: Restaurant industry serves up injustice to workers,” 2014).

Invited but undocumented immigrants are fearful that since they do not have legal documentation, they are at fault and will get deported (Bittman, 2015). There are also instances where employers knowingly interfere with their workers’ visa process. The employers could be the sponsors, so they are in charge of providing the working visa for their workers. They deliberately allow the visa to expire, which makes these workers extremely vulnerable, and dependent on one employer. They are more likely to face deportation due to their status loss. They also have a difficult time looking elsewhere for a job with the same illegal status so they have no choice but to continue working for the same employer (Marquardt et al., 2013).

Unfortunately, invited but undocumented immigrants are unaware that they have workplace rights. They are often unaware that they have the right to report crimes and misdemeanors occurring against them (Marquardt et al., 2013). Boston Globe reported about Filiberto Lopez, a worker at an East Peruvian restaurant. He worked 80 hours per week, but was only paid \$5 with no overtime. He was mistreated by his boss but he did not know how to leave the situation. “I didn’t speak English and didn’t have legal documents . . . I assumed I had no rights at all” (“Service not included: Restaurant industry serves up injustice to workers,” 2014, para. 14). Lopez has helped Massachusetts Coalition for Occupational Safety and Health identify other workplaces that abuse and take advantage of workers like Lopez (“Service not included: . . .,” 2014).

Fear of retribution can be mitigated by the fact that undocumented workers’ employers are also breaking federal laws by hiring them in the first place. Anna Karewicz, Polish organizer for

ARISE, tells immigrants they shouldn't acknowledge threats of deportation since employers are often breaking the law themselves. Any worker, irrespective of their legal status has rights (Mehner & McClane, 2010). Illegal immigrants are without proper visas to stay in USA so they do not necessarily have the right to stay here. However illegal immigrants still have the constitutional rights to safety and property just like any American, according to Richard Hanus, a Chicago area immigration lawyer (Hanus, 2013)

### FAIRNESS AS A SUSTAINABLE COMPETITIVE ADVANTAGE

The question becomes, given the increasingly cost sensitive nature of the restaurant industry, can fair treatment become a differentiator that can attract customers despite adding some level of cost? Start-ups may find the possibility attractive to distinguish themselves from the competition. Over one million new restaurant locations were opened in the US in 2016, despite the disadvantages of start-ups:

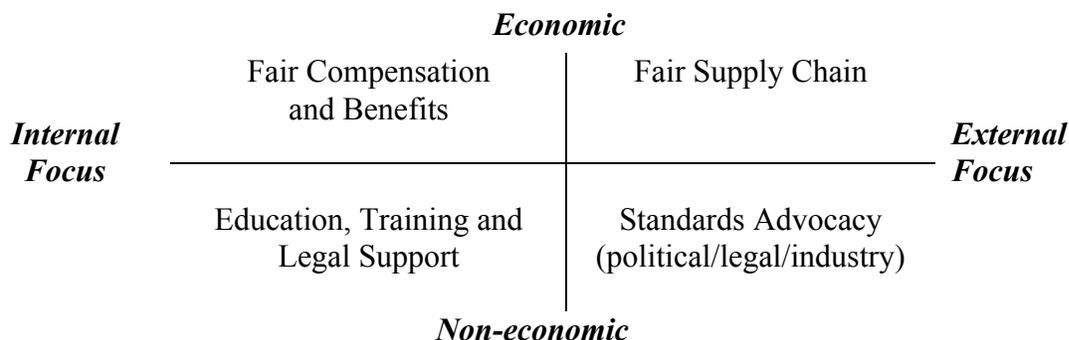
- higher average costs than already-established restaurants
- low negotiating power with their suppliers
- suboptimal locations
- under-developed loyal customer base (National Restaurant Center, 2016)

The benefits being socially responsible and at least minimizing the exploitation of undocumented workers are considerable:

- Reputation and image as socially responsible
- Expansion of customer base to immigrant-friendly customer segments
- Avoiding unionization drives
- Employee motivation, productivity, and engagement (American Management Association [AMA], 2016; Hesson, 2015)

Currently businesses are considering the following strategies to improve fair treatment of immigrants as a competitive advantage, as illustrated in Figure 2:

Figure 2. Fairness as a Strategic Differentiator



## **Fair Compensation**

Customers have shown some willingness to pay more for fairly compensated foreign workers. This is epitomized by the fair trade movement, which guarantees that the workers producing certified products are receiving a living wage for their labor in relatively safe working conditions (Darian, Tucci, Newman, & Naylor, 2015). The movement developed as the oppressive exploitation of foreign workers became well-publicized, coupled with public campaigns that simultaneously identified corporations that relied on these predatory practices, and those that rejected them (O'Rourke, 2005). Non-governmental organizations [NGOs] developed large coalitions of various stakeholders to launch a moral appeal for fair trade standards to consumers, which was largely effective in influencing consumer preferences (Darian et al., 2015; O'Rourke, 2005). In turn, this created real advantages for producers: “Generalizing across commodities, at a minimum, fair trade standards are enacted by a price premium, a guaranteed price floor, long-term trading contracts, easier lines of credit, and shorter supply chains” (Sumner, 2015, p. 121).

There are currently efforts to improve treatment of low paid US workers, including immigrants, by boosting the Federal minimum wage, and pushing for a \$15 dollar / hour base wage in the food industry – the “Fight for 15” (Bittman, 2015). Should this movement catch on, pushing for a fair trade standards deal within the United States becomes feasible.

There is also a business case for fair treatment grounded in the demographic trends of the US population. A growing segment of the consumer base is likely to look favorably upon patronizing organizations with an enlightened view toward the fair treatment of immigrants:

Beyond motives of altruism lay considerations of the bottom line. Foreign-born residents now make up 13 percent of the U.S. population, a not-to-be-ignored share of the consumer market. The next generation is more lucrative still: One in four American residents younger than 18 has an immigrant parent. (Hesson, 2015, para. 14)

This could translate into a real source of sustainable competitive advantage in regions with sufficient immigrant population density.

## **Fair Supply Chain**

Companies have started to become more socially responsible by working with suppliers to ensure workplace compliance. Manufacturers and purchasers are instructing their suppliers and subcontractors to comply with the law and employment standards while employing employees in offshore lands. The latest research on the topic also shows a connection between consumer's spending habits and their social responsibility. The social conscious way of living is more than an ideology and has started to impact business. Fair-trade is no longer relegated to simply coffee beans and organic fruit. An experiment by *The Socially Conscious Consumer?* tested whether consumers would choose ethically labeled products over counterparts given the choice. Results demonstrated that labels with information about fair labor standards had a “substantial” effect on shoppers (Hiscox & Smyth, 2011). Despite higher prices, consumers choose products that carry signs of fair labor.

Apparel companies are following suit and listening to their consumers' demands: "Consumers concerned with working conditions, environmental issues and outsourcing are increasingly demanding similar accountability for their T-shirts" (Clifford, 2013, para. 2). Nike and Walmart, two companies infamous for their labor standards, are working on an index to measure their company's labor, social and environmental points. Wal-mart received added pressure (Clifford, 2013).

The consumer's paradigm shift to ethical shopping came through a building collapse in Dhaka, Bangladesh. Numerous industry accidents occur across the world in factories, and plants worldwide, but none of them were as influential as the Rana plaza collapse. This was the catalyst which put the spotlight on working conditions in factories across different industries. An eight-story garment factory, the Rana plaza in Bangladesh collapsed, and killed 1,100 workers leaving 2,500 workers injured. Despite being affiliated with international companies such as Children's Place and Walmart, the Rana factory had numerous building code violations and was deemed unsafe to work by an engineer, with deadly results (Mortimer, 2015). Amongst the prying eyes of the entire world, multinational companies had no choice but to pledge toward improving work conditions. The reform came in the shape of an accord, *Accord of Fire and Building Safety in Bangladesh*. This was a five-year legally binding agreement between international brands, retailers and trade unions. It was designed to protect Bangladesh's apparel industry by implementing public disclosures, democratically elected health and safety committees, independent inspection programs, and empowering workers (Greenhouse, 2013).

This started a chain of inquisitive consumers who questioned their manufacturers regarding the source of their products. According to the founder of Good Cloth, "It [Rana Plaza collapse] caused policy shifts but it also caused a really noticeable shift in consumer awareness" (Westervelt, 2015, para. 18). Customers demanded transparency from companies and held them accountable for their workers, then patronized companies whose supply chains avoided such problems. Restaurants can cater to these preferences as well. That reflects on the restaurant's buzz and business.

### **Fair Standards Advocacy**

Employers who treat and pay their employees well, regardless of immigration status, are undermined by employers who exploit their immigrant workers whether they are documented or not. A way to ensure equity among employers is to create uniform standards that ensure workers are treated fairly regardless of immigration status. Legal reform that would require employers to afford the same rights to documented and undocumented workers would create equity among employer cost structures.

As discussed previously, a vast number of invited but undocumented workers in the U.S. are forced to stay in the shadows and tolerate blatant violations of their labor and civil rights for fear of being arrested and deported. In 2013, several invited but undocumented construction workers in Louisiana organized and met with their employer to demand unpaid wages. Rather than hearing the workers' concerns, the employer's response was to have immigration officers and police greet the workers with their guns drawn (Montouvalou, 2013). As such, reform is needed that will allow immigrant workers, regardless of status, to safely assert their rights and find manageable paths

toward citizenship while preserving the economic benefits this class of worker has on the U.S. economy.

First, businesses can and do support immigration reform, including paths to citizenship for invited but undocumented workers having a positive economic impact on the economy. Having large numbers of hard-working cheap labor and innovative cheap professionals should not be underestimated (Fox, L., 2014; Marks, 2013). Wright (2016, p. 1) summarizes: “Such actions can help to generate public support for greater numbers of wanted immigration that can meet skills shortages or make net fiscal contributions, such as those on skilled and work visas.” Provisions that link such pathways with legally limited rights of new immigrants to access the welfare state provisions available to citizens and permanent residents remains controversial (Ruhs, 2013; Wright, 2016).

Second, business can pressure government to ensure the INS is not used as a tool of intimidation. Proposals for an expanded and improved guest worker program have been met with much resistance, and need support. The increase in immigration enforcement since 2001 has caused an increase in the marginalization of undocumented workers by employers. Workers with temporary migrant visas are often left at the mercy of a single employer who can – and often does – take advantage of the immigrant worker by paying them an unfair wage. Wages paid to temporary agricultural workers are typically \$10 less per hour than they are for other workers (Republic, 2015). The guest worker program has been likened to modern indentured servitude as the workers in this program are seen as expendable. While they have certain federal “rights,” enforcement of these workers’ rights under this program has been woeful. When the work visas expire the worker faces the possibility of deportation (Bauer & Stewart, 2013).

Third, businesses can lobby for limits on periods of indentured servitude. Currently, employers have the advantage of abusing their power over migrant workers. Discouraging worker organization, poor wages and deplorable working conditions persist (Zatz et al., 2016). A way to curb employers’ abusive tactics would be to allow guest workers to change jobs after a certain amount of time with the ability to secure permanent citizenship if they comply with their work visas. Channeling the future flow of unskilled immigrant workers strategically while providing a path toward legal work, would help prevent the financial strain on consumers and the affected industries that depend on these workers (Holzer, 2011).

Businesses can also consider supporting proposals for “whistleblower” visas. Recognizing the exploitation of immigrant workers by many employers, in 2015 Senator Bernie Sanders proposed sweeping reform. Sanders’ plan would have empowered invited immigrants, regardless of documentation status, to report unfair treatment in the workplace without fear of imminent deportation or retribution from employers. Under Sander’s plan, immigrant workers who reported unfair working conditions that they witnessed or directly incurred, would be eligible for “whistleblower” visas. Whistleblower immigrants would also have a right to state-appointed legal counsel if facing deportation, a right they currently do not have (Attanasio, 2015). Further, they could leave their current employer for other employment without visa repercussions (Attanasio, 2015).

In conjunction with reform at the federal level, a viable way to balance the economic benefits of low-skilled laborers with enforcing their labor rights seems routed in competition among the states. A “bottom-up” approach to immigration reform would create competition among the states to attract the much-needed, inexpensive labor skills of unauthorized workers to their state (Bhagwati & Rivera-Batiz, 2013). As states lose vast amounts of inexpensive labor, their politics will shift toward enforcing more accommodating laws. Unauthorized workers “are already voting with their feet, leaving or bypassing states that treat them harshly and flocking to those with more benign policies” (Bhagwati & Rivera-Batiz, 2013, p.14). While the states do not have jurisdiction to regulate immigration in the areas of civil rights and border protection – which have exclusive federal jurisdiction – the states can do things to make life a bit easier for unauthorized workers such as granting drivers’ licenses, funding university scholarships, and making healthcare more accessible (Bhagwati & Rivera-Batiz, 2013).

Finally, businesses can publicize, and encourage the government to publicize, the fact that invited but undocumented workers are not a threat to American workers. Most unskilled immigrants tend to fill jobs American workers are simply not interested in (Fox, L., 2014). Further, the loss of immigrant labor does not translate into economic gain. For example, Arizona took a tough stand against unauthorized immigrants. While a recent sizeable departure of unauthorized workers from Arizona created less competition for native-born low skilled workers, it reduced the state’s gross domestic product by approximately two percent and the state’s employment rate fell by 2.5 percent. Native-born workers and legal Latino immigrants got fewer than ten percent of the jobs previously held by unauthorized workers (Ewing, 2016).

### **Targeted Support**

There are no formal training and development programs for unauthorized workers in the private sector because it is illegal for American businesses to hire any recruit who fails to provide proper documentation. Informally, many corporations provide a variety of programs offering additional training and education to improve undocumented workers’ marketable skills, and provide legal support to improve their status:

The private sector, too, has shown an interest in bringing immigrants into the mainstream of American life. Citigroup is promoting citizenship efforts in Maryland, while another big bank, BB&T, has been holding educational forums across the Southeast to explain a federal program that issues work permits to young undocumented immigrants. Retailers such as American Apparel go out of their way to help foreign-born employees learn English and apply for citizenship. (Hesson, 2015)

These are minor adaptations on existing programs to make documented immigrants feel welcome in American businesses. More of these features can be adapted for undocumented workers:

- Support diversity, including management sensitivity programs
- Offer flexible schedules and extended time off
- Education, training, and certificate programs
- Provide legal counselling and immigration documentation
- Offer professional language and communication skills training programs

- Include orientation and coaching programs to bridge cultural transitions
- Incorporate foreign holidays and celebrations into events calendars.
- Creative compensation such as airfare discounts and travel incentives (AMA, 2016; Kukushkin & Watt, 2009)

There is a public sector initiative to provide support of unauthorized workers from both “Sanctuary” areas and religious organizations such as the Catholic Legal Immigration Network.

There is no specific legal definition for what constitutes a sanctuary jurisdiction but the term is widely used to refer to American cities, counties or states that protect undocumented immigrants from deportation by limiting cooperation with federal immigration authorities. Some decline to use city or state tax dollars to enforce federal immigration laws. Many prohibit local officials from asking people about their immigration status. Sanctuary policies can be mandated expressly by law or practiced unofficially. (“What are sanctuary cities?,” 2016, para. 2; see also Chen, 2015)

According to the Centre for Immigration Studies, over 300 US cities, counties, and states offer some degree of sanctuary, most notably the cities of New Orleans and Boston, and the entire states of California, Connecticut, New Mexico and Colorado (“What are sanctuary cities?,” 2016). Some cities and states provide unauthorized workers with identification cards, driver’s licenses, and other documents that are necessary for modern living (Davis, 2013). San Francisco offers a variety of training programs to assist unauthorized workers with language, culture, and vocational issues (Finnegan, 2009).

Education has become the first major industry to experiment with the “sanctuary” model for its students. This movement began in K-12 (Nájera, 2016), but now extends through colleges and universities as well (McGirt, 2016) – even reaching the Ivy Leagues. A variety of NGOs are beginning to offer support services and training on supporting undocumented students to interested colleges and universities. For example, United We Dream’s mission is to “seek to address the inequities and obstacles faced by immigrant youth and believe that by empowering immigrant youth, we can advance the cause of the entire community—justice for all immigrants” (United We Dream, 2016, para. 2). They offer a series of Dream Educational Empowerment Programs (DEEP), including UndocuPeers: Liberating Campus Climate, a four-hour interactive ally certification training. Further, colleges and universities are developing educational certificate programs specifically targeting undocumented workers. This began with Freedom University, sponsored by the University of Georgia for residents of Georgia. This approach went national with American Dream University, sponsored by the National Labor College and the University of California at Los Angeles’ Center for Labor Research and Education (Young, 2012).

## IMPLICATIONS

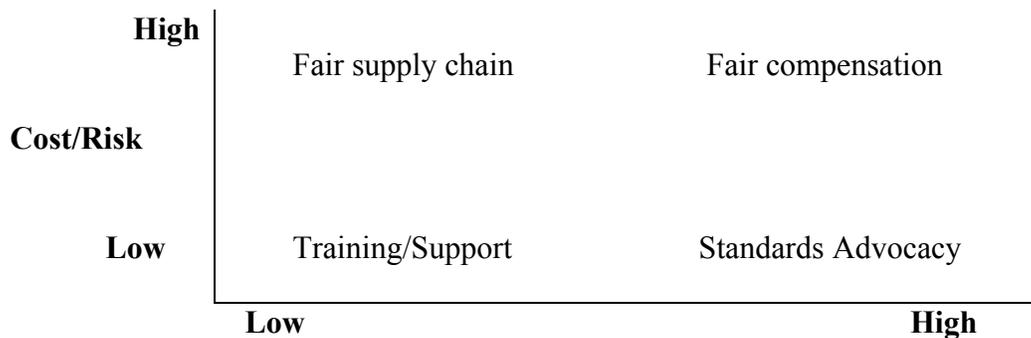
According to a Department of Homeland Security estimate in 2011, approximately 11.5 million unauthorized immigrants are residing in the U.S. Over half of these immigrants are from Mexico. Aside from the economic benefits discussed earlier, even federal programs depend on invited but undocumented worker support. While some avoid paying taxes altogether, a significant number of unauthorized workers’ pay federal taxes. By providing employers with an otherwise valid social

security number no longer in use, employers deduct far more federal taxes from unauthorized workers’ paychecks than they will ever receive in benefits in the form of Social Security or Medicare. According to the Social Security Administration, if it “were not for illegal immigrants, the Social Security Trust Fund would be depleted five or six years earlier than current projections” (Brannon & Albright, 2016, p. 4).

The success of these initiatives is largely dependent on whether concerted marketing and coalition building efforts can legitimize the role and need for invited but undocumented workers, and support their fair treatment in the eye of the public. Such support has already been secured overseas for foreign workers. Over half of global consumers surveyed by Nielsen expressed a willingness to pay a higher price for products and services provided by companies with a commitment to positive social and environmental outcomes (“Doing Well by Doing Good,” 2014). Consumers are stating that social purpose influences their purchasing decisions. If Americans can reconcile themselves to the necessary reality and need for immigrants, the negative social and political stigma of “illegal” will fade, particularly when they have been invited by US corporations (Marquardt et al., 2013).

The selection of an immigrant friendly strategy involves tradeoffs between costs, risks, difficulty and feasibility. Two strategic orientations have emerged: a low risk strategy of minimizing costs through advocacy and support efforts versus a higher risk strategy of “fairness now.” These strategic orientations can be illustrated by contrasting the degree of cost and risk with the challenges and complexities of effective implementation, as illustrated in Figure 3:

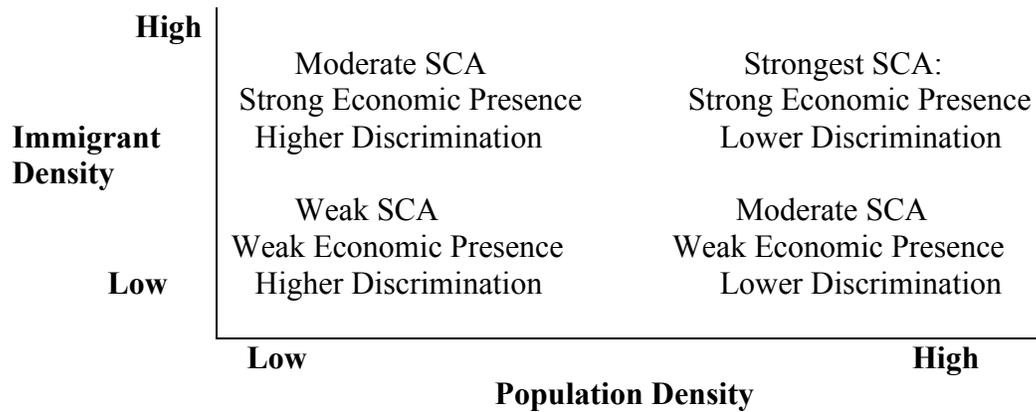
Figure 3. Immigrant Friendly Strategic Tradeoffs



**Difficulty/complexity**

The issue of fair treatment of unauthorized workers as a competitive advantage is not so much a matter of “if” but of “where.” Urban areas are much more tolerant of illegal immigrants than rural areas (Marquardt et al., 2013; Penalosa, 1995), and potentially rewarding new markets depend on a sufficient subpopulation density of immigrants and mixed households with goodwill for businesses that treat unauthorized workers fairly, raising potential economic impact. These relationships can be modelled in Figure 4:

Figure 4. Immigrant Friendly Strategic Tradeoffs



Consequently, in many parts of the country this is a good opportunity for the restaurant industry to provide higher wages and implement better treatment of its under-appreciated immigrant workforce, and utilize those facets to help maximize profits and increase goodwill. To marginalize and exploit immigrants who have been enticed and invited to the U.S. to benefit its economy is not only disingenuous, but hypocritical. Doing so makes the U.S. minimally different than the countries many of our invited immigrant workers flee from. Is this a form of American apartheid? The practice of apartheid segregated black South Africans from white South Africans and stripped them of rights, political freedom, and employment opportunities. Black South Africans were required to carry permits to travel between cities and forced to find employment in low-skill environments. This is similar to the status of invited but undocumented immigrants in present day America. While they do not have the rights given to an ordinary citizen, their economical labor is essential in American industry (Goodman, 2014).

Accepting and profiting from certain behaviors – in this case, the hard work of immigrant workers regardless of their status, creates an implied contract. Implied contracts have the same legal effect as express contracts. In determining whether an implied contract exists based on a set of facts, the apparent intention of the involved parties is considered (Hartzog, 2014). In addition to the contractual rights that exist between the immigrant worker and the employer, these rights also exist between society and the immigrant. In this case, not only does the employer directly benefit from economical, efficient labor from the immigrant worker, society does as well. This non-accidental, acquiescence to immigrant workers arguably creates implied contractual rights for these individuals as members of our society (Jones-Correa & de Graauw, 2013). Benefiting from and tolerating immigration that is “outside” the law “effectively invites immigration outside the law” (Jones-Correa & de Graauw, 2013, p. 193). Consequently, such immigration cannot be labeled illegal because we have informally expanded the law to include them for our own benefit.

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