

# The ALRA, Immigration Law and Worker Protection in the 21<sup>st</sup> Century

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# Presentation Outline

1. Immigration Relief for Agricultural Workers
2. Threats to Deport as Violations of ALRA AND as basis for Immigration Relief
3. ALRB as Immigration Lawyers

# Immigration Relief for Agricultural Workers

- Family-Based Relief

  - Family Petitions

  - DAPA

- Victims of Workplace Crimes

  - U and T nonimmigrant visas

# Family-Based Relief

Family based petitions – less useful today;  
inadmissibility grounds

DAPA – Deferred Action for Parents of  
Americans and LPR's

--estimated 25-45% of current ag. worker  
population eligible

# Victims of Workplace Crime – U Visas

Nonimmigrant visa available for victims who cooperate with law enforcement officials in the investigation/prosecution of 28 crimes, including:

Extortion

Sexual assault/rape

Obstruction of Justice

Fraud in Foreign Labor Contracting

# Qualifying Criminal Activities

**Abduction**

**Abusive sexual  
contact**

**Being held  
hostage**

**Blackmail**

**Domestic  
violence**

**Extortion**

**False  
imprisonment**

**Felonious assault**

**Fraud in foreign  
labor  
contracting**

**Incest**

**Involuntary  
servitude**

**Kidnapping**

**Manslaughter**

**Murder**

**Obstruction of  
justice**

**Peonage**

**Perjury**

**Prostitution**

**Rape**

**Sexual assault**

**Sexual  
exploitation**

**Slave trade**

**Stalking**

**Torture**

**Trafficking**

**Unlawful**

**criminal  
restraint**

**Witness**

**tampering**

# Involuntary Servitude

*A condition of servitude induced by means of—*

*(A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer **serious harm** or physical restraint; or*

*(B) the abuse or threatened **abuse of the legal process***

*--22 U.S.C. § 7102(5).*

# IS Examples

Threats of physical, psychological, financial restraint or harm

Threats to contact law enforcement/immigration to compel work

- Confiscation of identity documents, passports, travel documents
- Supporting facts: wage violations, inadequate food, housing, medical care, clothing; verbal/physical abuse, restricted contact, use of locks/fences to restrict mobility



# Blackmail/Extortion –

- Generally—use of a threat or fear to coerce someone to give up something of value
- Did employer threaten violence or to report immigration status to obtain property or money or force employees to take a position or to keep employees from taking a position?

# Fraud in Foreign Labor Contracting

solicit, or hire a person outside the United States ... for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations or promises regarding that employment shall be fined ... or imprisoned ... or both.”

--18 U.S.C. § 1351

# Fraud in Foreign Labor Contracting

- housing, transportation, ability to work for other employers, material aspects of work
- Broader than trafficking or involuntary servitude
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- Broader than trafficking or involuntary servitude

# Obstruction of Justice, Witness

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## Tampering

--Attempts to influence, obstruct, or impede any pending proceeding through use of threats or force;

pending proceeding through use of threats or force;

--Destruction, alteration, or falsification of records, including labor certification, wage/hour records, birth certificates

Sec. 1151.6. Any person who shall willfully resist, prevent, impede, or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this part shall be guilty of a misdemeanor...

# Law Enforcement Certification

- Judges

# ALRA and concerted activities

Sec. 1152: EE's shall have the right . . . to engage in collective or concerted activities for the purpose of protective bargaining or other mutual aid or protection.

Sec. 1153: It shall be an ULP for an agricultural employer . . . to interfere with, restrain, or coerce agricultural employees in the exercise of the rights guaranteed by section 1152.

# Threats to Deport Violate Sec. 1152

**P& Vanderpoel Dairy, 40 ALRB 8:** attorney asks about immigration status and identity theft

**Sam Andrews v. UFW, 12 ALRB 24:** discriminatory application of undocumented worker hiring policy

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**Rita Agricultural Svcs v. UFW, 9 ALRB 31:** employer constitutes unlawful refusal to cooperate activity

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**Bertuccio v. UFW, 4 ALRB 91:** promises of help with immigration matters considered for their

Policies that imply deportation

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Do policies that perpetuate an environment of fear of deportation and interference with employment and rights to engage in with



# Threats to Deport as Obstruction of Justice Threats to Deport as Tampering of

NLRB has certified threats based on immigration  
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tampering obstruction of justice or witness  
tampering  
Threats to deport are examples of chilling effect  
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on employee concerted activity

# ALRB Attorneys as Immigration ALRB Attorneys as Immigration

Investigations of ALRA violations will reveal  
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examples of workplace crimes  
Few attorneys available in rural areas

Equalized work available in rural areas  
Legalized workers have more leverage in the  
workplace  
To the extent immigration-based threats chill  
concerted activity, within ALRB mission  
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Public Defender's model - hire immigration  
attorneys