

# THE LIMITS OF IMMIGRANT RESILIENCE

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## ABSTRACT

*Economists have identified important adaptations that immigrant workers have made to weather economic crises. During times of economic contraction, immigrant workers have moved across industries or geographical locations, downshifted to part-time work, and accepted lower wages to stay employed. Evidence from the Great Recession (2007–2009) shows the benefits of that economic resilience: immigrant workers were more likely than native-born workers to remain continuously employed, to have shorter periods of unemployment when they lost their jobs, and to regain jobs more quickly in the recovery period. Of course, these adaptations had significant personal costs for immigrant workers and their families, but in times of increased job competition, their resilience enabled them to keep jobs and crucial sources of income and had important, positive spillover effects for native-born workers.*

*Our research, however, shows important limits to that immigrant resilience. In our analysis of Current Population Survey (“CPS”) data during COVID-19, immigrant workers had worse employment outcomes than native-born workers. Looking at the restaurant industry as a case study, we found that immigrant workers were more likely to lose their jobs, keep only low-paying jobs within restaurants, or drop out of the labor market entirely, as compared to native-born workers. The sharply contrasting experiences of immigrant workers during these two crises can be explained by the nearly simultaneous and complete shutdowns that states imposed across the country during the pandemic. These shutdowns undercut any mobility and flexibility advantages that immigrant workers might otherwise have had and threatened immigrants’ already precarious economic positions. As we look to the real possibility of future pandemics, these limits on immigrant resilience counsel for increasing immigrant access to aid programs at both the federal and state levels to benefit both immigrant*

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workers and the larger economy that relies heavily on immigrant productivity.

## INTRODUCTION

Everyone reading this Article will have their own unique memories of the COVID-19 pandemic, but all of us will remember it as a singularly unprecedented event. The toll of the coronavirus on health, economic, and social outcomes was devastating. From 2020 through 2021, the COVID-19 virus caused an estimated 14.9 million deaths worldwide.<sup>1</sup> At the height of lockdowns in 2020, at least 1.5 billion students around the world were out of classrooms due to school closures,<sup>2</sup> and the global economy was plunged into its deepest recession since World War II.<sup>3</sup> The United States, despite its affluence and access to the world's best healthcare, also experienced catastrophic consequences. In 2020, the first year of the pandemic, 6,658,111 Americans were hospitalized, and 1,167,441 Americans died from the virus.<sup>4</sup> The economic consequences in the United States were also devastating, as entire industries shut down in the immediate aftermath and other industries transitioned, haltingly, to remote or virtual operations.<sup>5</sup> Before vaccines became widely available, 9.6 million Americans lost their jobs in 2020.<sup>6</sup> Even after vaccines became available in early 2021, problems with vaccine distribution, vaccine skepticism, and particularly virulent strains of COVID-19 continued to challenge the United States as infections and deaths continued to rise.<sup>7</sup>

Virologists, epidemiologists, and vaccine researchers rushed to study the origins and spread of the virus, as well as the implications for public health in future pandemics. The scientific consensus is that the virus originated in Wuhan, China, but there is substantial disagreement about whether the virus was man-made or naturally-occurring.<sup>8</sup> An expert panel's report published in the Proceedings of the National Academy of Sciences ("PNAS") supports

<sup>1</sup> *Global Excess Deaths Associated with COVID-19, January 2020 - December 2021*, WHO (May 2022), <https://www.who.int/data/stories/global-excess-deaths-associated-with-covid-19-january-2020-december-2021> [https://perma.cc/5K7A-SBQW].

<sup>2</sup> Paul Blake & Divyanshi Wadhwa, *2020 Year in Review: The Impact of COVID-19 in 12 Charts*, WBG BLOGS (Dec. 14, 2020), <https://blogs.worldbank.org/voices/2020-year-review-impact-covid-19-12-charts> [https://perma.cc/AVH2-D3KB].

<sup>3</sup> Press Release, WBG, COVID-19 to Plunge Global Economy into Worst Recession since World War II, (June 8, 2020), <https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recession-since-world-war-ii> [https://perma.cc/2C3E-C6ZX].

<sup>4</sup> *Previous U.S. COVID-19 Case Data*, CDC ARCHIVE, <https://archive.cdc.gov/#/details?url=https://www.cdc.gov/coronavirus/2019-ncov/covid-data/previouscases.html> [https://perma.cc/P8LG-RDZ7] (Last visited Feb. 26, 2024).

<sup>5</sup> Blake Morgan, *10 Examples of How COVID-19 Forced Business Transformation*, FORBES (May 1, 2020), <https://www.forbes.com/sites/blakemorgan/2020/05/01/10-examples-of-how-covid-19-forced-business-transformation/?sh=2e9d4d5b1be3> [https://perma.cc/FY6V-W3RL].

<sup>6</sup> Jesse Bennett, *Fewer Jobs Have Been Lost in the EU than in the U.S. During the COVID-19 Downturn*, PEW RSCH. CTR. (Apr. 15, 2021), <https://www.pewresearch.org/short-reads/2021/04/15/fewer-jobs-have-been-lost-in-the-eu-than-in-the-u-s-during-the-covid-19-downturn/> [https://perma.cc/WPK4-FSEY].

<sup>7</sup> Hemi Tewarson, Katie Greene, & Michael R. Fraser, *State Strategies for Addressing Barriers During the Early US COVID-19 Vaccination Campaign*, 111(6) AM. J. OF PUB. HEALTH 1073 (2021); Bill Chappell, *Republicans' Excess Death Rate Spiked After COVID-19 Vaccines Arrived, a Study Says*, NPR (July 25, 2023), <https://www.npr.org/2023/07/25/1189939229/covid-deaths-democrats-republicans-gap-study> [https://perma.cc/CMH3-PP6B].

<sup>8</sup> Shermaine Yee Ching Siang Tan, Abdullah Khan, Kah Seng Lee, Bey Hing Goh & Long Chiau Ming, *SARS-COV-2 as an Artificial Creation: Scientific Arguments and Counterarguments*, 14 J. MED. LIFE 118, 118-19 (2021).

the zoonotic theory of COVID-19 origins, suggesting that the SARS-CoV-2 virus likely spread naturally from animals to humans without the involvement of a lab.<sup>9</sup> However, that report itself was marred by controversy, emerging from a panel that was originally part of the Lancet COVID-19 Commission. The Lancet Commission was disbanded after its chair, Columbia economist Jeffrey Sachs, alleged that the Commission's experts did not give sufficient credence to the lab-leak theory due to their conflicts of interest.<sup>10</sup> Many researchers argue that the evidence strongly favors the natural origin hypothesis over the lab-leak theory but concede that the question of how COVID-19 originated has not yet been answered conclusively.<sup>11</sup>

Social scientists, meanwhile, are studying the continued impact of the virus on the economy, education, and health, especially on vulnerable groups within American society. In the United States, immigrants are a particularly vulnerable group, many of whom work low-wage jobs and lack lawful immigration status.<sup>12</sup> An estimated 29% of foreign-born workers are undocumented, and approximately half of all immigrant workers earn less than 200% of the minimum wage.<sup>13</sup> The existing research on the experiences of immigrants during the COVID-19 pandemic primarily focused on health issues. Those issues included the spread of infections in densely populated immigrant communities where members were employed in jobs that could not or did not transition to remote operations,<sup>14</sup> the specific challenges that immigrants faced in accessing vaccines and other health care due to language barriers,<sup>15</sup> and recommendations to prohibit immigration law enforcement around health care facilities.<sup>16</sup>

At this intersection of immigration and COVID-19 research, the economic experiences of immigrants as workers remain largely underexplored. Based on an analysis of the United States Census Current Population Survey ("CPS"), we find that foreign-born workers suffered worse economic consequences during the COVID-19 pandemic than their native-born counterparts.<sup>17</sup> Using the restaurant industry as a case study, we find that during the pandemic and the immediate recovery, immigrant workers in the restaurant industry were more likely than their United States counterparts to lose their jobs or to drop out of the labor market altogether.<sup>18</sup> This analysis shows that those native-born workers were more likely to be

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<sup>9</sup> Jon Cohen, *Evidence Suggests Pandemic Came From Nature, Not a Lab, Panel Says*, SCIENCE (Oct. 10, 2022, 3:00 PM), <https://www.science.org/content/article/evidence-suggests-pandemic-came-nature-not-lab-panel-says> [https://perma.cc/8JVE-8H9H].

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Julia Gelatt, Valerie Lacarte & Joshua Rodriguez, *A Profile of Low-Income Immigrants in the United States*, MIGRATION POL'Y INST. 1 (Nov. 2022).

<sup>13</sup> *Id.*

<sup>14</sup> See George J. Borjas & Hugh Cassidy, *The Adverse Effect of the COVID-19 Labor Market Shock on Immigrant Employment 5* (IZA Inst. Lab. Econ., Discussion Paper No. 13277, 2020); Vasil Yassenov, *Who Can Work from Home? 1–3* (IZA Inst. Lab. Econ., Discussion Paper No. 13197, 2020).

<sup>15</sup> See Kathleen R. Page & Alejandra Flores-Miller, *Lessons We've Learned — COVID-19 and the Undocumented Latinx Community*, 384 NEW ENG. J. MED. 5, 5 (Jan. 7, 2021).

<sup>16</sup> See Wendy E. Parmet, *Reversing Immigration Law's Adverse Impact on Health, in COVID-19 POLICY PLAYBOOK: LEGAL RECOMMENDATIONS FOR A SAFER, MORE EQUITABLE FUTURE 210, 213–14* (S. Burris et al. eds., 2021).

<sup>17</sup> See *infra* Part III.

<sup>18</sup> *Id.*

hired (or rehired) within the restaurant industry or to move on to better-paying jobs in other industries than immigrant workers.

The restaurant industry gives a particularly good window into the economic well-being of immigrants during the pandemic. Although immigrants make up only 13.5% of the United States population, they represent 22% of restaurant industry workers,<sup>19</sup> and in major cities like New York or Chicago, that proportion can be as high as 70%.<sup>20</sup> Additionally, an estimated 37% of small restaurant owners are immigrants,<sup>21</sup> and overall, the industry employs around 2.3 million foreign-born workers.<sup>22</sup> The restaurant industry has long served as a welcoming refuge and first step for many foreign-born workers with limited education, language skills, and vulnerable legal status. In turn, immigrants have come to play an undeniably significant role in the successful operation of the industry.

These findings of immigrant labor hardship during the COVID-19 pandemic may not be surprising, considering the hardships that immigrants generally face in the American labor market.<sup>23</sup> With limited English proficiency and lower educational levels, immigrant workers often work in more dangerous conditions for lower pay and experience workplace violations at higher rates than their native-born counterparts.<sup>24</sup> But historically, one bright spot for immigrant workers has been their labor resilience, especially during periods of economic crisis. During the most recent financial crisis in the United States—the Great Recession in 2007 to 2008—foreign-born workers had better economic outcomes, along employment metrics, than their native-born counterparts across industries.<sup>25</sup> In particular, foreign-born workers were more likely to remain continuously employed than native-born workers.<sup>26</sup> Looking specifically at the restaurant industry during the Great Recession, that finding of continued employment also held true.<sup>27</sup>

How can the strikingly different economic experiences of foreign-born workers during these two economic crises be explained? Generally, immigrant workers are more vulnerable during economic downturns because they disproportionately hold low-skill jobs in sectors that are more sensitive

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<sup>19</sup> *Restaurant Sector: Immigrants are Indispensable to U.S. Workforce*, NAT'L IMMIGR. F. (May 21, 2019), <https://immigrationforum.org/article/restaurant-sector-immigrants-are-indispensable-to-u-s-workforce/> [<https://perma.cc/U33X-Y6BK>].

<sup>20</sup> Victoria Cabales, *What Are Working Conditions like for Immigrants in the Restaurant Industry?*, IMMIGRANT CONNECT, <https://immigrantconnect.medill.northwestern.edu/blog/2017/06/26/cabales-within-the-next-ten-years-how-likely-are-working-conditions-to-improve-for-immigrants-in-the-restaurant-industry/> [<https://perma.cc/YHC3-KAUF>].

<sup>21</sup> Mary Avant, *The Immeasurable Value of Immigrants*, QSR (May 30, 2019), <https://www.qsrmagazine.com/operations/customer-experience/immeasurable-value-immigrants/> [<https://perma.cc/F6P6-UG4A>].

<sup>22</sup> *Id.*

<sup>23</sup> See Julia Gelatt, Valerie Lacarte & Joshua Rodriguez, *A Profile of Low-Income Immigrants in the United States*, MIGRATION POL'Y INST. 1 (Nov. 2022).

<sup>24</sup> Rebecca Smith, Amy Sugimori, & Luna Yasui, *Low Pay, High Risk: State Models for Advancing Immigrant Workers' Rights*, 28 N.Y.U. REV. L. & SOC. CHANGE 597, 600, 602 (2004).

<sup>25</sup> Blake Sisk & Katharine M. Donato, *Weathering the Storm? The Great Recession and the Employment Status Transitions of Low-Skill Male Immigrant Workers in the United States*, 52 INT'L MIGRATION REV. 90, 91 (2018).

<sup>26</sup> *Id.*

<sup>27</sup> See Section III.B, Figure 1.

to business cycles,<sup>28</sup> which means that they are often fired first<sup>29</sup> compared to native-born workers. Yet historically, immigrant workers have often been more resilient than their native-born counterparts.<sup>30</sup> Because foreign-born workers prioritize remaining employed over other labor conditions, they are more likely to move to areas with job opportunities to stay employed. The uneven nature of job loss during the Great Recession—with the western and southern states experiencing the most job losses—facilitated and rewarded that geographical mobility.<sup>31</sup> At considerable personal cost, immigrant workers during the Great Recession were more likely to accept lower wages, involuntary part-time work, poorer working conditions, and work outside of their sector.<sup>32</sup> During the Great Recession, immigrant workers employed these strategies such that foreign-born labor force participation increased while the labor force participation of native-born workers decreased.<sup>33</sup>

This study of COVID-19, however, suggests important limits to immigrants' labor resilience. During the COVID-19 pandemic, the United States experienced a near-national shutdown, particularly during the early months of the pandemic. The advantages that immigrant workers had during the Great Recession—geographical mobility and the willingness to shift to part-time work—were simply not helpful during the pandemic. In the restaurant industry in particular, 17% of restaurants (nearly one-hundred thousand businesses) shut down either permanently or for the long term during the first year of the pandemic, meaning there were fewer alternative restaurant jobs and fewer part-time opportunities within the restaurant industry as a whole.<sup>34</sup> Moreover, the shutdown of the restaurant industry was fairly uniform across the country, especially during the initial months of the pandemic, so the willingness to move to a different geographical location would not be an advantage if workers were looking for work in the restaurant industry. Other industries that typically employ large numbers of low-wage immigrant workers, including manufacturing and other service jobs, also experienced extensive shutdowns.<sup>35</sup> So, in other words, there was little opportunity for immigrant workers to escape from the negative economic consequences of the pandemic. That immigrant labor resilience—to take advantage of options that native-born workers have historically rejected—simply could not exist during the COVID-19 pandemic.

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<sup>28</sup> PIA M. ORRENIUS & MADELINE ZAVODNY, MIGRATION POL'Y INST., TIED TO THE BUSINESS CYCLE: HOW IMMIGRANTS FARE IN GOOD AND BAD ECONOMIC TIMES 21 (2009).

<sup>29</sup> Huanan Xu, *First fired, first hired? Business cycles and immigrant labor market transitions*, 8 IZA J. DEV. & MIGRATION 19, 21 (2018).

<sup>30</sup> *Id.* at 27.

<sup>31</sup> *The Great Recession's regional effects*, FED. RSRV. BANK ST. LOUIS: FRED BLOG (July 20, 2017), <https://fredblog.stlouisfed.org/2017/07/the-great-recessions-regional-effects/> [<https://perma.cc/PA7F-VR2G>].

<sup>32</sup> Sisk & Donato, *supra* note 25, at 115; see also Martin Kahanec & Martin Guzi, *How Immigrants Helped EU Labor Markets to Adjust during the Great Recession 22–23* (Glob. Lab. Org., Discussion Paper No. 33, 2016).

<sup>33</sup> RAKESH KOCHHAR, C. SOLEDAD ESPINOZA & REBECCA HINZE-PIFER, PEW HISPANIC CTR., AFTER THE GREAT RECESSION: FOREIGN BORN GAIN JOBS; NATIVE BORN LOSE JOBS 2 (2010).

<sup>34</sup> Press Release, Nat'l Rest. Ass'n, (Sept. 14, 2020), 100,000 Restaurants Closed Six Months into Pandemic, <https://restaurant.org/research-and-media/media/press-releases/100,000-restaurants-closed-six-months-into-pandemic> [<https://perma.cc/6TDN-5BA6>].

<sup>35</sup> *U.S. Manufacturing Output, Hours Worked, and Productivity Recover From COVID-19*, U.S. BUREAU OF LAB. STAT. (Oct. 07, 2022), <https://www.bls.gov/opub/ted/2022/u-s-manufacturing-output-hours-worked-and-productivity-recover-from-covid-19.htm#:~:text=After%20the%20COVID%2D19%20pandemic,declines%20since%20World%20War%20II> [<https://perma.cc/AQ4L-775H>].

These findings are important for several reasons. First, the human welfare implications are severe. Without access to employment, the fate of immigrant workers and their families was even worse than the hardships that immigrants already experience, which should concern us all. Second, policymakers should reconsider the benefits of laws and policies that exclude immigrants, especially during times of crisis. The danger of extremely contagious illnesses—many of which are airborne—is growing and continues to threaten the operation of our economy and society.<sup>36</sup> Given this continuing threat and the harsh implications for immigrants, lawmakers need to reconsider laws that exclude immigrants from health care and economic assistance.<sup>37</sup>

Finally, as many economists have concluded, the well-being of immigrant workers is inextricably linked with the well-being of native-born workers. There is compelling evidence that immigrant workers, because of economic complementarities, create jobs and increase wages for native-born workers.<sup>38</sup> That complementarity seems to depend, in part, on the economic resilience of immigrant workers. During the COVID-19 pandemic, the negative employment outcomes for immigrant workers may also have important implications for native-born workers and the larger economy, questions that the authors explore in future work.

This Article proceeds in three parts. Part I considers the important roles that immigrants play in the United States economy. Then, the Article examines economic experiences of immigrants during the Great Recession (the United States' most recent economic crisis before COVID-19) and explore the resilience of immigrant workers during that crisis, as compared with native-born workers. Part II traces the spread of COVID-19 in the United States and the resulting shutdowns' effect on the United States economy. This Article pays particular attention to the restaurant industry as one of the first and one of the most severely impacted industries to be negatively affected by the pandemic. Part III uses the restaurant industry as a case study to analyze the economic experiences of immigrant workers during the COVID-19 pandemic, drawing upon an analysis of CPS data. This Part underscores the contrasting experiences of immigrants during the COVID pandemic and the Great Recession. Part IV assesses some implications of these findings, for the academic literature and policy.

## I. THE CENTRAL ROLE OF IMMIGRANT WORKERS IN THE UNITED STATES

The United States, as President Kennedy wrote, is a nation of immigrants. With over fifty million immigrants, the United States has more immigrants than any other country in the world.<sup>39</sup> The main reason that

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<sup>36</sup> Michael Penn, *Statistics Say Large Pandemics Are More Likely Than We Thought*, DUKE: GLOB. HEALTH INST. (Aug. 24, 2021), <https://globalhealth.duke.edu/news/statistics-say-large-pandemics-are-more-likely-we-thought> [https://perma.cc/N6CF-ZP3M].

<sup>37</sup> See Parmet, *supra* note 16, at 211.

<sup>38</sup> See, e.g., Giovanni Peri, *Immigrants' Complementarities and Native Wages: Evidence from California* 12 (Nat'l Bureau of Econ. Rsch., Working Paper No. 12956, 2007); Gaetano Basso & Giovanni Peri, *The Association Between Immigration and Labor Market Outcomes in the United States* 15 (IZA Inst. Lab. Econ., Discussion Paper No. 9436, 2015); Jimmy Sanders, *Complement or Competition: Latino Employment in a Nontraditional Settlement Area*, 41 SOC. SCI. RSCH. 48, 58 (2012).

<sup>39</sup> Steven A. Camarota & Karen Zeigler, *The Foreign-Born Share and Number at Record Highs in February 2024*, CTR. IMMIGR. STUD. (Mar. 28, 2024), <https://cis.org/Report/ForeignBorn-Share-and->

people choose to come to the United States is to work,<sup>40</sup> and from its earliest days, the United States has relied on immigrant workers to build railroads<sup>41</sup> and to work on farms,<sup>42</sup> factories,<sup>43</sup> and fisheries.<sup>44</sup> Many of these early immigrant workers came to the United States to flee harsh conditions in their native countries, such as crop failure, job shortages, and religious or political persecution.<sup>45</sup>

Between 1815 and 1865, the United States saw a major influx of immigrants that came predominantly from northern and western Europe.<sup>46</sup> Ireland contributed around one-third of these newcomers as a result of the devastating famine the country experienced in the mid-nineteenth century.<sup>47</sup> In the 1840s, in particular, about half of America's immigrants came from Ireland alone.<sup>48</sup> These Irish immigrants, who typically arrived impoverished, settled along the East Coast in cities near their ports of arrival.<sup>49</sup> The United States also welcomed around five million German immigrants during the nineteenth century.<sup>50</sup> These immigrants from Germany tended to settle in the Midwest, either in cities or on farms that they purchased.<sup>51</sup> Starting during the mid-1800s, Asian immigrants also started migrating to the United States, drawn initially by the economic opportunity created by the California gold rush of 1849 but then settling into jobs building railroads and working in farms and fisheries.<sup>52</sup>

The largest wave of immigration to the United States came at the turn of the century (approximately 1880–1920).<sup>53</sup> During this period of rapid industrialization and urbanization, over twenty million people immigrated to

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Number-Record-Highs-February-2024#:~:text=In%20February%202024%2C%20the%20foreign,40%20percent%20just%20since%202000 [https://perma.cc/BUJ8-XVLZ]; Abby Budiman, *Key Findings About U.S. Immigrants*, PEW RSCH. CTR. (Aug. 20, 2020), <https://www.pewresearch.org/short-reads/2020/08/20/key-findings-about-u-s-immigrants> [https://perma.cc/9TYJ-LMAW].

<sup>40</sup> Ali Golchin, *The Most Common Reasons Why People Migrate to US*, SAN DIEGO IMMIGR. L. CTR. (May 9, 2015), <https://sandiegoinmigrationlawcenter.com/the-most-common-reasons-why-people-immigrate-to-us> [https://perma.cc/ZRG7-K4WV].

<sup>41</sup> Annie Brice, *They Built the Railroad. But They Were Left Out of the American Story*, BERKELEY NEWS (Nov. 13, 2023), <https://news.berkeley.edu/2023/11/13/american-railroad#:~:text=At%20its%20peak%2C%20about%2090,the%20railroad%20workforce%20was%20Chinese.&text=Immigrant%20workers%20were%20aggressively%20recruited,at%20ports%20or%20boarding%20houses> [https://perma.cc/2AW2-EJWK].

<sup>42</sup> Jessie Kratz, *The Bracero Program: Prelude to Cesar Chavez and the Farm Worker Movement*, NAT'L ARCHIVES (Sep. 27, 2023), <https://prologue.blogs.archives.gov/2023/09/27/the-bracero-program-prelude-to-cesar-chavez-and-the-farm-worker-movement/> [https://perma.cc/VN87-AZY2].

<sup>43</sup> *America at Work, America at Leisure: Motion Pictures from 1894 to 1915*, LIBR. OF CONG., <https://www.loc.gov/collections/america-at-work-and-leisure-1894-to-1915/articles-and-essays/america-at->

<work#:~:text=Immigrants%20would%20generally%20arrive%20in,in%20factories%20were%20often%20harsh> [https://perma.cc/VSC4-W4GP] (last visited May 15, 2024).

<sup>44</sup> Jessica George, *The Immigrants Who Supplied the Smithsonian's Fish Collection*, EDGE EFFECTS (Oct. 12, 2019), <https://edgeeffects.net/fish-collection/> [https://perma.cc/FXL9-2EY2].

<sup>45</sup> *Immigration to the United States, 1851-1900*, LIB. CONG., <https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/rise-of-industrial-america-1876-1900/immigration-to-united-states-1851-1900> [https://perma.cc/9D3D-NGE4].

<sup>46</sup> *U.S. Immigration Before 1965*, HISTORY (Sept. 10, 2021), <https://www.history.com/topics/immigration/u-s-immigration-before-1965> [https://perma.cc/Z7QH-C27Q].

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

the United States. This new wave of immigrants originated largely from central, eastern, and southern Europe.<sup>54</sup> A large proportion of the immigrants came from Italy, with four million Italian immigrants arriving during the forty-year period.<sup>55</sup> Eastern European Jews also arrived in large numbers as they fled religious persecution in their home countries, with more than two million entering the United States during this time period.<sup>56</sup> In 1907, the United States saw its largest wave of immigration in a single year, with approximately 1.3 million people entering the country.<sup>57</sup> These turn of the century immigrants mostly lived in urban areas and worked in industrial manufacturing jobs.<sup>58</sup> Immigrants were the anchor of the American industrial workforce during this time period, providing foundational labor for the country's industrial revolution.<sup>59</sup> Indeed, by 1920 more than two-thirds of all United States manufacturing jobs were held by immigrants and their children or grandchildren.<sup>60</sup>

Since the mid-1900s, the primary makeup of immigrants to the United States has changed from predominantly low-skilled older Europeans to working-age immigrants of Latin American and Asian descent with a range of skill levels.<sup>61</sup> With more working-age immigrants, the percentage of immigrants in the United States civilian workforce has also risen to 17.4%, as of 2019.<sup>62</sup> Compared with native-born workers, today's immigrant workers are more likely to work in certain industries including services, natural resources, construction, maintenance, production, transportation, and material moving industries.<sup>63</sup> Low-skilled immigrants, in particular, tend to work in more physically demanding jobs, such as the construction industry, that do not require high levels of English proficiency.<sup>64</sup> Because the skill levels of immigrants tend to track with their country of origin, there are trends in the occupational choices of immigrant workers based on nationality. For example, more Eastern European, Chinese, South Asian, and Middle Eastern immigrants tend to enter the computer and engineering fields as they, on average, have higher skill levels, compared with Latin American immigrants who tend to work in the service industry.<sup>65</sup>

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<sup>54</sup> Asian immigration during this time period was largely restricted. *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Charles Hirschman & Elizabeth Mogford, *Immigration and the American Industrial Revolution From 1880 to 1920*, 38(4) SOC. SCI. RSCH., 897, 901–02 (2009).

<sup>61</sup> Gordon Hanson, Chen Liu & Craig McIntosh, *The Rise and Fall of US Low-Skilled Immigration* 19 (Nat'l Bureau of Econ. Rsch., Working Paper No. 23753, 2017), <http://www.nber.org/papers/w23753> [<https://perma.cc/FEF7-QNUB>].

<sup>62</sup> U.S. BUREAU LAB. STAT., FOREIGN-BORN WORKERS: LABOR FORCE CHARACTERISTICS — 2021, 2 (2022).

<sup>63</sup> *Id.*

<sup>64</sup> Peri, *supra* note 38, at 18.

<sup>65</sup> Barry R. Chiswick, & Sarinda Taengnoi, *Occupational Choice of High Skilled Immigrants in the United States, International Migration*, 3–34 (IZA Discussion Paper No. 2969, 2007), <https://ssrn.com/abstract=1010630> [<https://perma.cc/FVY9-VBQ7>].



#### A. THE VULNERABILITY OF LOW-WAGE IMMIGRANT WORKERS IN THE UNITED STATES

This Article focuses on immigrants working in low-wage jobs for several reasons. First, large numbers of immigrants work low-wage jobs.<sup>66</sup> Approximately half of all immigrant workers in the United States earn less than 200% of the minimum wage;<sup>67</sup> while immigrants represent around 11% of the United States population, they make up a disproportionate 20% of the low-wage workforce.<sup>68</sup> Thus, to understand the well-being of immigrant workers, we must examine what is happening in the low-wage sector. Moreover, immigrant workers in low-wage jobs are particularly vulnerable to wage theft, dangerous working conditions, and other adverse factors that have important human welfare implications.<sup>69</sup> Finally, low-wage industries are important components of the American economy; as the nation collectively experienced during COVID-19, many of these industries are indeed “essential” to the smooth functioning of our economy and society—e.g., childcare, transportation, and critical retail-like grocery stores.<sup>70</sup>

This Article starts with more demographic information about low-wage immigrant workers. Some of this information pertains specifically to low-income immigrant workers, and the Authors acknowledge that the two groups (low-income individuals and immigrants) are not entirely synonymous. Whether someone is low-income is usually determined at the household level. A household is commonly defined as low-income when the total household income is below 200% of the federal poverty level.<sup>71</sup> The individuals in that household may or may not work in low-wage jobs, particularly if they are children or elderly. Nonetheless, there is overlap between low-income and low-wage immigrants, which means demographic information about low-income immigrant workers can also inform an understanding of low-wage immigrant workers.

In contrast to the pattern displayed by natives, labor force participation among low-wage immigrants is much higher for men than women, and this gender disparity is particularly pronounced among undocumented workers.<sup>72</sup> Low-wage immigrant workers make up an especially large share of the workforce in private household services and farming—around 44% in each sector.<sup>73</sup> Immigrant men and women tend to follow gendered patterns in employment with 23.1% of employed immigrant men working in construction, maintenance, and natural resource occupations, and 30% of employed immigrant women working in service occupations.<sup>74</sup> Immigrant

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<sup>66</sup> Randolph Capps, Michael Fix, Jeffrey S. Passel, Jason Ost, Dan Perez-Lopez, *A Profile of the Low-Wage Immigrant Workforce*, 4 URB. INST. IMMIGR. FAM. & WORKERS: FACTS & PERSP. BRIEF 1 (2003).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Smith et al., *supra* note 24, at 598–600.

<sup>70</sup> *COVID-19: Essential Workers in the States*, NAT'L CONF. STATE LEGISLATURES, <https://www.ncsl.org/labor-and-employment/covid-19-essential-workers-in-the-states> [<https://perma.cc/AM2T-ZVZK>].

<sup>71</sup> Julia Gelatt, Valerie Lacarte & Joshua Rodriguez, *A Profile of Low-Income Immigrants in the United States*, MIGRATION POL'Y INST. 1 (Nov. 2022).

<sup>72</sup> Randolph Capps, Michael Fix, Jeffrey S. Passel, Jason Ost, Dan Perez-Lopez, *A Profile of the Low-Wage Immigrant Workforce*, 4 URB. INST. IMMIGR. FAM. & WORKERS: FACTS & PERSP. BRIEF 1 (2003).

<sup>73</sup> *Id.* at 7.

<sup>74</sup> U.S. BUREAU LAB. STAT., *supra* note 62, at 4.

workers play a significant role in agriculture and food production, and in recent years, about 70% of crop farm workers were immigrants.<sup>75</sup>

Immigrant workers, particularly low-wage immigrant workers, face a unique set of challenges in the United States labor market. This Section explores the vulnerabilities related to their status as foreign-born workers and, for some, as undocumented immigrants. One major challenge is a lack of proficiency in English. Census data from 2000 shows that almost half (47%) of low-wage immigrants had very limited to no English proficiency.<sup>76</sup> Of these low-wage workers with limited English proficiency, the vast majority (73%) speak Spanish.<sup>77</sup> The next most common languages are Chinese, Vietnamese, and Korean, which represent much smaller shares.<sup>78</sup> Although proficiency in English can improve with time spent in the United States, 29% of workers who have lived in the United States for twenty years or more still have limited proficiency.<sup>79</sup> Their lack of English skills makes it difficult for immigrant workers to find good jobs, creating a strong correlation between low-wage work and low English proficiency.<sup>80</sup> Limited English proficiency is also correlated with low educational attainment: about 45% of low-wage immigrants have less than a high school education and over 25% have not completed the ninth grade.<sup>81</sup> This combination of low educational levels and low English proficiency creates a severe disadvantage in the labor marketplace.

With these disadvantages, immigrant workers tend to work jobs that are more dangerous, pay lower wages, offer few or no benefits like health insurance, and are more vulnerable to exploitations such as wage theft.<sup>82</sup> Due to a lack of options, immigrant workers are overrepresented in more dangerous industries, such as cleaning, agriculture, construction, and food preparation.<sup>83</sup> The poultry and meatpacking industries, in particular, are often characterized as having the most dangerous factory jobs in America, and over half of frontline meatpacking workers are immigrants.<sup>84</sup> Not surprisingly then, immigrant workers suffer 61,720 more injuries annually than native-born workers, and on the grim metric of workplace deaths, immigrant workers on average experience 1.79 more deaths per 100,000 workers than natives each year.<sup>85</sup>

Immigrant workers also earn less than their native-born coworkers. Immigrant workers, and undocumented immigrants in particular, are more likely to work in low-paying jobs, such as domestic work, food service, construction, agriculture, and day-labor.<sup>86</sup> In the United States, immigrant

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<sup>75</sup> *Farm Labor*, U.S. DEP'T AGRIC., <https://www.ers.usda.gov/topics/farm-economy/farm-labor> [<https://perma.cc/R85L-6CWU>].

<sup>76</sup> Capps et al., *supra* note 72, at 3.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Capps et al., *supra* note 72, at 3.

<sup>81</sup> *Id.*

<sup>82</sup> Smith et al., *supra* note 24, at 598–600.

<sup>83</sup> Pia M. Orrenius & Madeline Zavodny, *Do Immigrants Work In Riskier Jobs?*, 46 DEMOGRAPHY 535, 535 (2009).

<sup>84</sup> See Shawn Fremstad, Hye Jin Rho & Hayley Brown, *Meatpacking Workers are a Diverse Group Who Need Better Protections*, CTR. ECON. & POL'Y RSCH. (Apr. 29, 2020), <https://cepr.net/meatpacking-workers-are-a-diverse-group-who-need-better-protections> [<https://perma.cc/S24T-QA9B>].

<sup>85</sup> Orrenius & Zavodny, *supra* note 83, at 15–16.

<sup>86</sup> Josselyn Andrea Garcia Quijano, *Workplace Discrimination and Undocumented First-Generation Latinx Immigrants*, U. CHI.: CROWN FAM. SCH. SOC. WORK, POL'Y, & PRAC.,

workers on average earn 15.3% less than native-born workers.<sup>87</sup> These low-paying jobs are less likely to offer health insurance or other benefits.<sup>88</sup> Because employers are the main source of health insurance in the United States, this means that one in four authorized immigrants and almost half of all undocumented immigrants are uninsured.<sup>89</sup>

Compared with native-born workers, immigrant workers are also more likely to experience workplace exploitation.<sup>90</sup> Immigrant workers are more likely to be concentrated in industries where labor violations are common.<sup>91</sup> The Immigration Reform and Control Act (“IRCA”) expressly prohibits employers from hiring workers who lack work authorization and imposes procedural obligations on employers to verify the work authorization of potential employees. The IRCA does not require employers to verify the work authorization—through Form I-9 verification—of independent contractors but does penalize employers who hire independent contractors “knowing” that they lack work authorization.<sup>92</sup> Inconsistent enforcement of I-9 verification coupled with this independent contractor ambiguity puts immigrant workers in vulnerable employment situations.<sup>93</sup> A survey by the National Employment Law Project found that 37% of undocumented immigrant workers reported being paid less than minimum wage.<sup>94</sup> The Economic Policy Institute found that 2.4 million workers in the ten largest states lost \$8 billion to minimum wage violations in 2017.<sup>95</sup> There is additional wage theft associated with overtime violations.<sup>96</sup> Workers are often hesitant to report violations for fear of losing the employment opportunity or fear of retaliation from their employers based on immigration status.<sup>97</sup>

For workers who lack work authorization, these workplace vulnerabilities are particularly heightened. Estimates indicate that 12.7 million of the 17.9 million foreign-born workers in the United States have some form of legal status (split fairly evenly between naturalized citizens and other authorized statuses, such as legal permanent resident or refugee status), but an estimated 29% are undocumented.<sup>98</sup> Historically, within the low-wage immigrant labor force specifically, there has been a higher

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<https://crownschool.uchicago.edu/student-life/advocates-forum/workplace-discrimination-and-undocumented-first-generation-latinx> [https://perma.cc/R6UN-7TBA].

<sup>87</sup> *Migrant Pay Gap Widens in Many High-income Countries*, ILO (Dec. 14, 2020), [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_763763](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_763763) [https://perma.cc/57U2-GS6Q].

<sup>88</sup> *Health Coverage and Care of Immigrants*, KFF (Sept. 17, 2023), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/key-facts-on-health-coverage-of-immigrants/> [https://perma.cc/FB5C-DREJ].

<sup>89</sup> *Id.*

<sup>90</sup> Garcia Quijano, *supra* note 86.

<sup>91</sup> *Id.*

<sup>92</sup> 8 U.S.C. § 1324a(a)(3).

<sup>93</sup> Garcia Quijano, *supra* note 86.

<sup>94</sup> Michael Felsen & M. Patricia Smith, *Wage Theft Is a Real National Emergency*, NAT’L EMP. L. PROJECT (Mar. 5, 2019), <https://www.nelp.org/commentary/wage-theft-real-national-emergency> [https://perma.cc/QMR9-LF98].

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Support of the Enforcement of Labor and Employment Laws*, U.S. DEP’T HOMELAND SEC., <https://www.dhs.gov/enforcement-labor-and-employment-laws> [https://perma.cc/7V2F-N3WA].

<sup>98</sup> Capps, *supra* note 72, at 5.

concentration of undocumented immigrants (typically 40%) and a lower concentration of naturalized citizens (less than 25%).<sup>99</sup>

Under federal law, employers are only permitted to hire workers with work authorization.<sup>100</sup> There are small categories of lawful residents who do not have work authorization or have limited work authorization—namely, students who are in the United States on F-1 student visas are only allowed to work on campus and for a limited number of hours<sup>101</sup>—but many foreign-born persons with lawful status also have permission to work lawfully in the United States.<sup>102</sup> Under the IRCA, employers who hire workers without lawful work authorization face fines and, for repeated and egregious violations, criminal penalties as well.<sup>103</sup> Furthermore, the IRCA also requires that employers verify, through checking certain identification documents, that their employees are eligible to work in the United States (e.g., checking a passport or state driver's license and a Social Security card). Some states and cities threaten to revoke the business license of an employer found to have hired undocumented workers.<sup>104</sup>

Though the enforcement of federal laws is reportedly lax,<sup>105</sup> the prohibition against hiring undocumented workers leads many of these workers to work “under the table” for cash wages<sup>106</sup> or to use someone else's identification to circumvent the IRCA's documentation requirements.<sup>107</sup> In addition to the legal risks, these paths also tend to channel undocumented workers toward dangerous, low-paying jobs without health insurance or other benefits, where workplace exploitation is more common. These are, of course, challenges that authorized immigrant workers also face, but the vulnerabilities of undocumented immigrants are heightened by two factors. First, an undocumented immigrant's ability to complain about or report workplace exploitation is constrained by concerns about their undocumented status.<sup>108</sup> While federal workplace laws nominally protect all workers,

<sup>99</sup> *Id.*

<sup>100</sup> 8 U.S.C. § 1324a(a)(3).

<sup>101</sup> *Employment*, U.S. IMMIGR. & CUSTOMS ENF'T, <https://www.ice.gov/sevis/employment> [<https://perma.cc/2692-P5AC>].

<sup>102</sup> *See Visa Classifications That Allow You To Work In The United States*, SSA, <https://www.ssa.gov/people/immigrants/visa.html> [<https://perma.cc/3JQT-MWR7>] (last visited May 17, 2024) (listing visa categories of noncitizens who are eligible to work in the U.S.).

<sup>103</sup> 8 U.S.C. § 1324a(a)(3).

<sup>104</sup> Robert Barnes, *Supreme Court Upholds Ariz. Law Punishing Companies that Hire Illegal Immigrants*, WASH. POST (May 26, 2011), [https://www.washingtonpost.com/politics/supreme-court-upholds-ariz-law-punishing-companies-that-hire-illegal-immigrants/2011/05/26/AGhHG2BH\\_story.html](https://www.washingtonpost.com/politics/supreme-court-upholds-ariz-law-punishing-companies-that-hire-illegal-immigrants/2011/05/26/AGhHG2BH_story.html) [<https://perma.cc/5SL5-23NW>].

<sup>105</sup> *See* Eduardo Porter, *U.S. Illegal Labor Toils in a Parallel Universe*, N.Y. TIMES (June 19, 2006), <https://www.nytimes.com/2006/06/19/business/worldbusiness/19iht-workers.2001145.html> [<https://perma.cc/5KWP-VJZ8>].

<sup>106</sup> *See* Travis Putnam Hill, *In Texas, Undocumented Immigrants Have No Shortage Of Work*, TEX. TRIBUNE (Dec. 16, 2016), <https://www.texastribune.org/2016/12/16/undocumented-workers-finding-jobs-underground-econ/#:~:text=Many%20undocumented%20immigrants%20also%20find,pretend%20they%20were%20never%20hired> [<https://perma.cc/MT55-28Q3>].

<sup>107</sup> *See* Kristian Hernandez, *E-Verify Creates Loophole for Undocumented Workers*, EMPLOYERS, GOVERNING (March 18, 2021), <https://www.governing.com/work/e-verify-creates-loophole-for-undocumented-workers-employers.html> [<https://perma.cc/9SSY-BKAM>].

<sup>108</sup> Josselyn Andrea Garcia Quijano, *Workplace Discrimination and Undocumented First-Generation Latinx Immigrants*, U. CHI.: CROWN FAM. SCH. SOC. WORK, POL'Y, & PRAC., <https://crownschool.uchicago.edu/student-life/advocates-forum/workplace-discrimination-and-undocumented-first-generation-latinx> [<https://perma.cc/R6UN-7TBA>].

regardless of immigration status,<sup>109</sup> undocumented workers who want to report workplace violations face the possibility that their employer may retaliate by reporting them to Immigration and Customs Enforcement (“ICE”), resulting in their possible deportation from the United States.<sup>110</sup>

Second, undocumented immigrants lack access to safety net benefits that might make leaving an exploitative job more economically feasible.<sup>111</sup> Workers who lack lawful immigration status are categorically ineligible for most need-based benefits like the Supplemental Nutrition Assistance Program (“SNAP”), Supplemental Security Income (“SSI”), or Temporary Assistance for Needy Families (“TANF”).<sup>112</sup> They are also categorically ineligible for public health insurance programs like Medicare, Medicaid, the Children’s Health Insurance Program (“CHIP”), and the Affordable Care Act (“ACA”) Marketplace.<sup>113</sup> A handful of states have created need-based programs that provide cash assistance or medical care without requiring proof of lawful immigration status, but the scope and size of those programs pale in comparison to the federal programs.<sup>114</sup>

## B. IMMIGRANT WORKERS DURING THE GREAT RECESSION

To better understand the experiences of immigrant workers during the COVID-19 pandemic, it is instructive to compare those experiences with the experiences of immigrant workers during the Great Recession, the most recent economic crisis in the United States prior to COVID-19. That comparison is necessarily complex and nuanced, as the two crises had differing structural causes and differing impacts. This Section considers both the substance of the differing effects and their explanations.

The two crises share important commonalities that make a comparison useful. In both crises, immigrant workers experienced great economic stress through lost jobs at higher rates than native-born workers.<sup>115</sup> Moreover, immigrant workers in both crises navigated job loss with the additional challenges described earlier—limited English proficiency, restricted access to social welfare programs, and precarious immigration status—that do not usually affect native-born workers. Given these similarities, we might expect immigrant workers to have similar economic outcomes. Yet, as noted earlier, immigrant workers had notably worse outcomes during the pandemic, as measured by employment metrics.

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<sup>109</sup> See, e.g., Civil Rights Act of 1964 § 703, 42 U.S.C. § 2000(e)(2); Civil Rights Act of 1866 § 1, 42 U.S.C. § 1981.

<sup>110</sup> Garcia Quijano, *supra* note 86.

<sup>111</sup> Since 1996, even some categories of legal permanent residents are ineligible to receive the major federal benefits. Tanya Broder & Gabrielle Lessard, *Overview of Immigrant Eligibility for Federal Programs*, NAT’L IMMIG. L. CTR. (Oct. 2023), <https://www.nilc.org/issues/economic-support/overview-immeligfedprograms> [<https://perma.cc/34NL-EBWF>].

<sup>112</sup> *Id.*

<sup>113</sup> *Fact Sheet: Immigrants and Public Benefits*, NAT’L IMMIG. F. (Aug. 21, 2018), <https://immigrationforum.org/article/fact-sheet-immigrants-and-public-benefits> [<https://perma.cc/6JKJ-K4NJ>].

<sup>114</sup> *Providing Unemployment Insurance to Immigrants and Other Excluded Workers*, IMMIG. RSCH. INITIATIVE & CENTURY FOUND. (Sept. 7 2022), <https://immresearch.org/publications/providing-unemployment-insurance-to-immigrants-and-other-excluded-workers-a-state-roadmap-for-inclusive-benefits/> [<https://perma.cc/XL9P-HF4V>].

<sup>115</sup> KOCHHAR ET AL., *supra* note 33, at 2; U.S. BUREAU LAB. STAT., *supra* note 62 at 4.

The Great Recession was the longest recession in the United States since World War II.<sup>116</sup> Most economists trace the causes of the Great Recession to the convergence of several factors: (1) an overheated housing market fueled by historically low mortgage rates and the increased availability of housing credit; (2) the pushing of subprime mortgages with onerous terms to customers who—because of poor credit histories or limited incomes—would not ordinarily be able to qualify for mortgages, which further increased housing prices; and (3) the repackaging of these subprime mortgages into mortgage-backed securities that were widely bought by banks.<sup>117</sup>

When the housing market cooled and home prices dropped, many homeowners were “underwater,” holding mortgages at amounts that exceeded the market value of their homes.<sup>118</sup> As homeowners defaulted on their mortgages, banks holding the mortgage-backed securities faced huge losses, and the Federal Reserve had to step in, extending credit to investment banks like Bear Stearns and offering other financial assistance to try to prevent further instability in the financial markets.<sup>119</sup> Despite these federal interventions, the stock market crashed, wiping out more than \$8 trillion in value between 2007 and 2009.<sup>120</sup> The broader economy also contracted as the United States fell into recession. From the peak of economic activity to the lowest point, the country’s gross domestic product fell by 4.3%, and its unemployment rate more than doubled, from less than 5% to 10%.<sup>121</sup>

Though the Great Recession imposed financial hardships on both native-born and foreign-born workers, the hardships impacted the groups differently. Economists studying the experiences of immigrant workers during the Great Recession found that they fared better than their native-born counterparts along two important metrics: continued employment and job gains in the recovery period. Examining 2007 to 2012 CPS data, Professors Fahad Gill and Abdihafit Shaeye found that immigrant workers were unemployed for shorter periods of time than native-born workers.<sup>122</sup> During the height of the recession, immigrant workers without a high school degree had an eight-week shorter unemployment period compared with similarly situated native-born workers.<sup>123</sup> During the pre- and post-recession periods, immigrant workers had a three-week shorter unemployment spell.<sup>124</sup>

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<sup>116</sup> The National Bureau of Economic Research (“NBER”) defines a recession as “the period between a peak [of economic activity and its subsequent] trough [or lowest point].” NBER looks for “a significant decline in economic activity that is spread across the economy and lasts more than a few months.” *Business Cycle Dating Procedure: Frequently Asked Questions*, NAT’L BUREAU ECON. RSCH., <https://www.nber.org/research/business-cycle-dating/business-cycle-dating-procedure-frequently-asked-questions> [<https://perma.cc/575W-S8CY>].

<sup>117</sup> John Weinberg, *The Great Recession and Its Aftermath*, FED. RSRV. HIST. (Nov. 22, 2013), <https://www.federalreservehistory.org/essays/great-recession-and-its-aftermath> [<https://perma.cc/32VN-X96J>].

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Renae Merle, *A Guide to the Financial Crisis — 10 Years Later*, WASH. POST (Sept. 10, 2018), [https://www.washingtonpost.com/business/economy/a-guide-to-the-financial-crisis--10-years-later/2018/09/10/114b76ba-af10-11e8-a20b-5f4f84429666\\_story.html](https://www.washingtonpost.com/business/economy/a-guide-to-the-financial-crisis--10-years-later/2018/09/10/114b76ba-af10-11e8-a20b-5f4f84429666_story.html) [<https://perma.cc/W5SM-SQ68>].

<sup>121</sup> John Weinberg, *The Great Recession and Its Aftermath*, FED. RSRV. HIST. (Nov. 22, 2013), <https://www.federalreservehistory.org/essays/great-recession-and-its-aftermath> [<https://perma.cc/32VN-X96J>].

<sup>122</sup> Fahad Gill & Abdihafit Shaeye, *Relative Wages of Immigrant Men and the Great Recession*, 5 J. ECON., RACE & POL. 1 (2022).

<sup>123</sup> *Id.* at 5.

<sup>124</sup> *Id.* at 11.

During the recovery period between 2009 and 2010, immigrant workers similarly fared better on employment metrics. Rakesh Kochhar, Soledad Espinoza, and Rebecca Hinze-Pifer compared labor market outcomes of foreign-born and native-born workers during two different time periods: the peak of the Great Recession and the first year of recovery.<sup>125</sup> They found that immigrants had a net gain of more than six hundred thousand jobs in 2009, while native-born workers lost over a million jobs during the same period.<sup>126</sup> This pattern continued in the recovery: in 2010, the unemployment rate of immigrants decreased by 0.6% to 8.7% (a loss of 656,000 jobs), as the unemployment rate among native-born workers grew 0.5% to 9.7% (a loss of 1.2 million jobs).<sup>127</sup> During this period of overall increased unemployment, immigrant workers were more likely than native-born workers to continue to look for work, even if they had previously been out of the labor force.<sup>128</sup> Looking specifically at Mexican immigrants with less than a high school degree, Blake Sisk and Professor Katharine Donato found that this group had the highest probability of remaining continuously employed after the recession, compared to native-born white, Black, and Latino workers.<sup>129</sup>

How did immigrant workers keep and recover jobs more quickly? In sum, they did so by accepting lower wages and fewer hours, switching industries, and even moving to where jobs were more readily available. Comparing the wages of immigrant workers and native-born workers during the periods before, during, and after the Great Recession, Gill and Shaeye found that native-born workers had higher wages in all periods.<sup>130</sup> The wage gap between native-born and immigrant workers was the largest between native-born workers with a high school degree or some college education and immigrant workers without a high school degree.<sup>131</sup> After controlling for education, the wage disadvantage for immigrant workers increased during the recession.<sup>132</sup> Compared with native-born workers, immigrant workers had higher unemployment rates but, as noted earlier, shorter unemployment periods, suggesting that they accepted lower-paying jobs after losing their initial jobs.<sup>133</sup>

Concurrent with lower wages, immigrant workers also adapted during the Great Recession by accepting part-time work. Sisk and Donato found that Mexican immigrant workers without high school degrees stayed employed by transitioning from full-time to part-time employment.<sup>134</sup> The transition was involuntary, in the sense that the workers wanted to work full-time but were unable to find full-time employment. In the pre-recession period, around four percent of Mexican immigrant workers transitioned into

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<sup>125</sup> KOCHHAR ET AL., *supra* note 33, at 7.

<sup>126</sup> *Id.* at 1.

<sup>127</sup> *Id.* at 1.

<sup>128</sup> See Xu, *supra* note 29 (finding that immigrants during the Great Recession were more likely to move from nonparticipation into the labor force (looking for work) than they were to leave the labor force and enter nonparticipation during downturns).

<sup>129</sup> Sisk & Donato, *supra* note 25, at 107.

<sup>130</sup> Gill & Shaeye, *supra* note 124.

<sup>131</sup> *Id.* at 7–11.

<sup>132</sup> *Id.* at 7–8.

<sup>133</sup> *Id.* at 8–11.

<sup>134</sup> Sisk & Donato, *supra* note 25, at 90–91, 97–98.

involuntary part-time work, but this increased to eleven percent during the recession period.<sup>135</sup>

Immigrant workers also adapted to the adverse economic pressures of the Great Recession by moving to different industries, and even moving to different areas within the United States, where jobs were more plentiful. Economists have observed this heightened mobility among immigrant workers, as compared with native-born workers, and this was evident during the Great Recession as well.<sup>136</sup> Looking specifically at Mexican immigrant workers with a high school degree or less, Brian Cadena and Brian Kovac found that these workers were more likely to move to different parts of the country that had better job opportunities, as compared with native-born workers.<sup>137</sup> They also found that native-born workers living in metropolitan areas with a substantial proportion of Mexican immigrant workers were more likely to keep their jobs during the Great Recession because these immigrants left the area to find work elsewhere, decreasing job competition.<sup>138</sup>

The responses of immigrant workers to this economic crisis are consistent with the literature on immigrant resilience. Foreign-born workers prioritize remaining employed and earning wages over other labor considerations, so they are willing to accept involuntary part-time work, lower wages, poorer working conditions, and work outside of their sector in order to remain employed.<sup>139</sup> As noted earlier, most immigrant workers lack access to social welfare programs like unemployment benefits or need-based assistance that native-born workers can access. Without a safety net and typically earning lower wages, immigrant workers have fewer resources when an economic crisis hits. Immigrant workers may also be supporting family in their home countries through remittances, which imposes additional financial pressure to continue working, even under adverse conditions.<sup>140</sup>

These adaptations made by immigrant workers during the Great Recession came with great personal hardships, of course. The most obvious hardship stems from reduced wages and less consistent sources of income, resulting from accepting lower wages or part-time work.<sup>141</sup> For immigrant workers who already live on the financial fringes, lower and less predictable

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<sup>135</sup> *Id.* at 107–08.

<sup>136</sup> See generally George J. Borjas, *Does Immigration Grease the Wheels of the Labor Market*, BROOKINGS PAPERS ON ECON. ACTIVITY 69 (2001).

<sup>137</sup> Brian C. Cadena & Brian K. Kovak, *Immigrants Equilibrate Local Labor Markets: Evidence from the Great Recession*, 8 AM. ECON. J.: APPL. ECON. 257, 258 (Jan. 2016).

<sup>138</sup> *Id.* at 259.

<sup>139</sup> Sisk & Donato, *supra* note 25, at 115.

<sup>140</sup> See Dilip Ratha, *Remittances: Funds for the Folks Back Home*, IMF, <https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Remittances> [<https://perma.cc/TF95-JBXN>] (last visited Apr 30, 2023). The significance of remittances for receiving countries and for receiving families is considerable. In Mexico for 2021, remittances totaled \$51.6 billion, making up 4% of Mexico's GDP, with over 5% of Mexican households receiving funds from abroad. *Money Mexican Migrants Send Home up 13.4% in 2022*, AP (Feb. 1, 2023, 8:08 AM), <https://apnews.com/article/caribbean-mexico-city-business-050ef97bc5255b4339d31fed39ed14a0> [<https://perma.cc/P8PF-ZT63>]. Other lower-income Central American countries rely even more heavily on remittances. In El Salvador and Honduras, remittances represent over one fifth of the countries' GDP. Yorbol Yakshilikov, *The Unexpected Rise in Remittances to Central America and Mexico During the Pandemic*, IMF (Sept. 21, 2022), <https://www.imf.org/en/News/Articles/2022/09/19/cf-the-unexpected-rise-in-remittances> [<https://perma.cc/7QZN-3XNV>].

<sup>141</sup> Sisk & Donato, *supra* note 25, at 115.



income streams are particularly onerous.<sup>142</sup> Looking at American Community Survey data from the one hundred largest metropolitan areas, the Brookings Institute found that the poverty rate for immigrants rose from an already high 14.6% in 2007 to 16.7% in 2009.<sup>143</sup> Also, they found that 34 of the 100 metropolitan areas experienced an increase in the size of their poor immigrant populations.<sup>144</sup> Along with these economic pressures, immigrant workers who moved to new geographical areas to find work faced the additional burden of finding new housing and adjusting to new environments. Yet the ability to remain employed—and to continue supporting themselves and their families—remained a bright spot for immigrant workers during the Great Recession.

## II. IMMIGRANT WORKERS IN THE COVID-19 PANDEMIC

Here, we move forward in time to analyze the experiences of immigrant workers during the COVID-19 pandemic, the most recent economic crisis to hit the United States. To understand those experiences, we start with a brief, broad overview of the virus's impact on the United States and on its economy. Then we zoom in to study the impact of COVID-19 on the restaurant industry, exploring the outsized importance of the industry as a source of immigrant employment. This information lays the foundation for our empirical findings in Part III.

### A. COVID-19 AND SHUTDOWNS IN THE UNITED STATES

The roughly one-year time period between the arrival of COVID-19 in the United States and the approval of vaccination was characterized by immense uncertainty. Although its exact origins are still contested, what came to be known as the SARS-CoV-2 virus was first identified in the city of Wuhan in the Hubei province in China in December of 2019.<sup>145</sup> On January 11, 2020, Chinese state media reported the first official death from that virus, a 61-year-old man who frequented the market in Wuhan, where the virus is believed to have originated.<sup>146</sup> In an effort to contain the virus, Chinese officials closed off the city of Wuhan, canceling flights and trains leaving the city as well as buses, subways, and ferries that moved within the city.<sup>147</sup> Despite these containment efforts, the virus spread.<sup>148</sup> In the United States, on January 21, 2020, the Center for Disease Control (“CDC”) announced the first laboratory-confirmed case of the virus, an infection linked to travel in China.<sup>149</sup> On January 30, 2020, the CDC confirmed the first person-to-person infection in the United States of an individual with no

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<sup>142</sup> See Cadena & Kovak, *supra* note 137 at 284–88.

<sup>143</sup> AUDREY SINGER & JILL H. WILSON, BROOKINGS: METRO. POL'Y PROGRAM, THE IMPACT OF THE GREAT RECESSION ON METROPOLITAN IMMIGRATION TRENDS 2 (Dec. 2010).

<sup>144</sup> *Id.*

<sup>145</sup> Erin Schumaker, *Timeline: How Coronavirus got started*, ABC NEWS (Sept. 12, 2020), <https://abcnews.go.com/Health/timeline-coronavirus-started/story?id=69435165> [<https://perma.cc/8SV8-3EVJ>].

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

history of travel.<sup>150</sup> This marked an official shift in the understanding of the virus, as the World Health Organization declared the outbreak a public health emergency.<sup>151</sup>

Things moved very quickly from this point. As other countries like Italy and Israel initiated lockdowns in response to rising infection rates, the CDC's director of the National Center for Immunization and Respiratory Diseases, Nancy Messonnier, warned Americans about possible school closings, workplace shutdowns, and cancellations of large gatherings and public events.<sup>152</sup> "We expect we will see community spread in this country," she said, and continued, "It's not so much a question of if this will happen anymore, but rather more a question of when this will happen and how many people in this country will have a severe illness."<sup>153</sup> With rising infection rates and transmission occurring across borders, the World Health Organization officially labeled COVID-19 a pandemic on March 11, 2020.<sup>154</sup> Two days later, the Trump administration declared a national emergency, which had the effect of releasing fifty billion dollars in federal aid from the Federal Emergency Management Agency ("FEMA") for state and local governments to address the pandemic<sup>155</sup> and granting emergency authority to the Secretary of Health and Human Services.<sup>156</sup> President Trump said that his declaration of a national emergency would "unleash the full power of the federal government," and warned the country that, "It could get worse. The next eight weeks will be critical."<sup>157</sup>

Starting in mid-March 2020, states began to implement shutdowns.<sup>158</sup> The CDC recommended that there be no gatherings of more than fifty people for eight weeks, and President Trump advised that citizens avoid gatherings of more than ten people.<sup>159</sup> The New York City public school system, the largest in the United States with 1.1 million students, shut down on March 15, 2020.<sup>160</sup> States followed, closing public school buildings and ceasing in-person instruction, and by March 25, 2020 all United States public school buildings were closed.<sup>161</sup> Although these closures were originally thought to be temporary, many states announced that schools would remain closed

<sup>150</sup> Press Release, CDC, CDC Confirms Person-to-Person Spread of New Coronavirus in the United States (Jan. 30, 2020 8:55 AM), <https://archive.cdc.gov/#/details?url=https://www.cdc.gov/media/releases/2020/p0130-coronavirus-spread> [<https://perma.cc/653F-2FLG>].

<sup>151</sup> Schumaker, *supra* note 145.

<sup>152</sup> Elliott C. McLaughlin & Steve Almasy, *CDC Official Warns Americans It's Not a Question of If Coronavirus Will Spread, But When*, CNN (Feb. 26, 2020, 4:47 AM), <https://www.cnn.com/2020/02/25/health/coronavirus-us-american-cases/index> [<https://perma.cc/2SSD-PVH9>].

<sup>153</sup> *Id.*

<sup>154</sup> *The Coronavirus Spring: The Historic Closing of U.S. Schools (A Timeline)*, EDUC. WEEK (July 1, 2020), <https://www.edweek.org/leadership/the-coronavirus-spring-the-historic-closing-of-u-s-schools-a-timeline/2020/07> [<https://perma.cc/E3W6-VFKF>].

<sup>155</sup> Steve Holland, Jeff Mason & Makini Brice, *Trump Declares Coronavirus National Emergency, Says He Will Most Likely Be Tested*, REUTERS (Mar. 13, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-emergency-idUSKBN2102G3> [<https://perma.cc/N5VY-LZYK>].

<sup>156</sup> Proclamation No. 9994, 85 Fed. Reg. 15337 (Mar. 13, 2020).

<sup>157</sup> Holland et al., *supra* note 155.

<sup>158</sup> *Id.*

<sup>159</sup> Steve Holland, Jeff Mason & Makini Brice, *Trump Declares Coronavirus National Emergency, Says He Will Likely Be Tested*, REUTERS (Mar. 13, 2020 11:36 PM), <https://www.reuters.com/article/idUSKBN2102H8> [<https://perma.cc/8T88-TNQS>].

<sup>160</sup> Eliza Shapiro, *New York City Public Schools to Close to Slow Spread of Coronavirus*, N.Y. TIMES (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/nyregion/nyc-schools-closed.html> [<https://perma.cc/95RY-8SVX>].

<sup>161</sup> EDUC. WEEK, *supra* note 154.

through the end of the academic year.<sup>162</sup> By May 6, 2020, all but two states (Wyoming and Montana) had announced that public schools would remain closed.<sup>163</sup> Similarly, universities across the country began to announce temporary closures as students left for spring break.<sup>164</sup> By March 26, 2020, over one thousand schools had announced closures and moved classes online.<sup>165</sup>

Businesses that were able to go remote quickly did so. Prior to the pandemic, about 6% of workers reported working primarily from home, and 75% of the workforce had never worked from home before.<sup>166</sup> However, in May 2020, 35% of the employed workforce reported having worked from home in the prior four weeks because of COVID-19.<sup>167</sup> Those most likely to work remotely were professional occupations and office-based businesses, and approximately 75% of these workforces worked remotely at the beginning of the pandemic.<sup>168</sup> By December 2020, some employees had returned to in-person work, but 24% of the employed workforce remained remote.<sup>169</sup> Many more transitioned to a hybrid work model, with both remote and in-person work, a model that has continued beyond the pandemic.<sup>170</sup>

There were many businesses that were considered essential and therefore remained open in-person in spite of national shutdowns.<sup>171</sup> Some states created their own definition of essential industries while other states followed federal guidelines, but in general, these sectors included healthcare, energy, childcare, transportation, water and sanitation, critical retail (such as grocery stores and pharmacies), and critical trades (such as electricians and plumbers).<sup>172</sup> These essential workers faced a significantly higher risk of contracting the virus and dying from it than the general public, especially early in the pandemic before vaccines were available. As a group, they were 55% more likely to test positive for COVID-19 than the general public,<sup>173</sup> and an estimated 3,607 United States healthcare workers died after contracting COVID-19 at work in 2020.<sup>174</sup>

Still, other industries beyond those classified as essential were unable to easily transition to remote work. These sectors experienced reduced demand, layoffs, and closures, all at astoundingly quick rates. By the second week of March 2020, ten million Americans were out of work as a result of the

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Abigail Johnson Hess, *How Coronavirus Dramatically Changed College for Over 14 Million Students*, CNBC (Mar. 26, 2020, 2:07 PM), <https://www.cnbc.com/2020/03/26/how-coronavirus-changed-college-for-over-14-million-students.html> [<https://perma.cc/EVB7-PX7C>].

<sup>166</sup> Patrick Coate, *Remote Work Before, During, and After the Pandemic*, NAT'L COUNCIL COMP. INS. (Jan. 25, 2021), [https://www.ncci.com/SecureDocuments/QEB/QEB\\_Q4\\_2020\\_RemoteWork.html](https://www.ncci.com/SecureDocuments/QEB/QEB_Q4_2020_RemoteWork.html) [<https://perma.cc/C7F6-DTWR>].

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Joe McKendrick, *Hybrid Work Is Now The Norm For The Year Ahead - And Beyond*, FORBES (Dec. 28, 2022, 3:52 PM), <https://www.forbes.com/sites/joemckendrick/2022/12/28/hybrid-work-is-now-the-norm-for-the-year-aheadand-beyond> [<https://perma.cc/XJM2-9AJG>].

<sup>171</sup> NAT'L CONF. STATE LEGISLATURES, *supra* note 70.

<sup>172</sup> *Id.*

<sup>173</sup> Steve Maas, *Measuring the Virus Risk of Essential Workers and Dependents*, NAT'L BUREAU ECON. RSCH. DIG. 1, 1 (Mar. 2021).

<sup>174</sup> *Lost on the Frontline: Explore the Database*, KFF: HEALTH NEWS & GUARDIAN (Apr. 7, 2021), <https://kffhealthnews.org/news/lost-on-the-frontline-explore-the-database> [<https://perma.cc/7Y8L-YJGA>].

pandemic.<sup>175</sup> The last week of March 2020 saw an unprecedented 6.6 million people apply for unemployment benefits.<sup>176</sup> Prior to this, the greatest number of claims in a week was 695,000 people in 1982.<sup>177</sup> Layoffs were initially concentrated in the hospitality and tourism sectors along with related industries.<sup>178</sup> Travel came to a halt, plunging the airline industry into crisis, and stay-at-home orders kept people from eating out.<sup>179</sup> Even after the strictest shutdowns lapsed, many state governments recommended social distancing and wearing face masks in social interactions, so consumers remained cautious about engaging in pre-pandemic social patterns.<sup>180</sup> Layoffs soon spread to manufacturing, education, and even healthcare industries as white-collar workers lost their jobs.<sup>181</sup>

Even with these mandated shutdowns, infections and resulting deaths continued to rise in the United States at alarming rates. In May 2020, four months after the first recorded case in the United States, COVID-19 deaths surpassed 100,000.<sup>182</sup> The virus surged over the summer of 2020, despite hopes that the warm weather would slow the spread.<sup>183</sup> By the end of 2020, an estimated 385,676 individuals in the United States had died from COVID-19.<sup>184</sup>

With these alarmingly high infection and death rates, both in the United States and around the world, the development and approval of different COVID-19 vaccines were eagerly anticipated. On December 2, 2020, the United Kingdom approved Pfizer's vaccine, allowing it to be administered to the general public on December 8, 2020.<sup>185</sup> In the United States, the Food and Drug Administration approved the same Pfizer vaccine on December 11, 2020, and Moderna's vaccine on December 18, 2020.<sup>186</sup> These vaccines were heralded as game changers, raising hopes that the devastating impact of COVID-19 could soon be contained.<sup>187</sup> But in the United States and other countries with access to these early vaccines, the roll-outs were marred by supply shortages,<sup>188</sup> storage issues (as the vaccines required storage at

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<sup>175</sup> Ben Casselman & Patricia Cohen, *A Widening Toll on Jobs: 'This Thing Is Going to Come for Us All'*, N.Y. TIMES (Apr. 2, 2020), <https://www.nytimes.com/2020/04/02/business/economy/coronavirus-unemployment-claims.html> [https://perma.cc/H6FG-UMX3].

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> See Coate, *supra* note 166.

<sup>180</sup> See Patrick Van Kessel, Chris Baronavski, Alissa Scheller, & Aaron Smith, *In Their Own Words, Americans Describe the Struggles and Silver Linings of the COVID-19 Pandemic*, PEW RSCH. CTR. (Mar. 05, 2021), <https://www.pewresearch.org/data-labs/2021/03/05/in-their-own-words-americans-describe-the-struggles-and-silver-linings-of-the-covid-19-pandemic/> [https://perma.cc/R83D-27WS].

<sup>181</sup> *See id.*

<sup>182</sup> Schumaker, *supra* note 145.

<sup>183</sup> Michael Brice-Saddler, *Despite hopes that it would, summer weather has not stopped virus's spread in the U.S.*, WASH. POST (July 10, 2020), <https://www.washingtonpost.com/weather/2020/07/10/summer-weather-not-stopping-coronavirus/> [https://perma.cc/566G-L8VR].

<sup>184</sup> *COVID-19 Mortality Overview: Provisional Death Counts for COVID-19*, CDC (Sept. 12, 2023), <https://www.cdc.gov/nchs/covid19/mortality-overview.htm> [https://perma.cc/J6YY-9LS7].

<sup>185</sup> Nick Trigg, *Covid-19 Vaccine: First Person Receives Pfizer Jab in UK*, BBC NEWS (Dec. 8, 2020), <https://www.bbc.com/news/uk-55227325> [https://perma.cc/HU9M-QBFC].

<sup>186</sup> Andra Fortner & David Schumacher, *First COVID-19 Vaccines Receiving the US FDA and EMA Emergency Use Authorization*, 9 DISCOVERIES, Jan.–Mar. 2021, at 1, 2.

<sup>187</sup> *See Trigg, supra* note 185.

<sup>188</sup> Sheryl Gay Stolberg & Sharon LaFraniere, *Warning of Shortages, Researchers Look to Stretch Vaccine Supply*, N.Y. TIMES (Jan. 5, 2021), <https://www.nytimes.com/2021/01/05/us/politics/coronavirus-vaccine-supply.html> [https://perma.cc/E6WG-AV98].

freezing temperatures),<sup>189</sup> and logistical problems associated with the multi-shot regiment required for full immunity.<sup>190</sup> Even when these problems were largely ironed out, many Americans still refused to get vaccines, raising concerns about the vaccines' safety and efficacy.<sup>191</sup> This vaccine skepticism—often based on unfounded conspiracy theories—undermined the “herd immunity” that public health officials said was needed to protect the larger public and complicated efforts to recover from the pandemic.<sup>192</sup>

#### B. IMMIGRANT WORKERS IN THE RESTAURANT INDUSTRY DURING THE COVID-19 PANDEMIC

This Article primarily focuses on the economic experiences of immigrant workers during the COVID-19 pandemic. Like others who lived through the pandemic, we read news about the massive layoffs as well as the federal stimulus payments and unemployment benefits that followed in the wake of the layoffs. Informed by our respective fields of immigration law, demography, labor economics, and statistics, we wondered about the fate of immigrant workers, who were largely excluded from these benefits.

Immigrant workers suffered greatly during the COVID-19 pandemic due to a multitude of factors. They were more likely to catch the virus, become seriously ill, and die than their native-born counterparts across countries for which data are available.<sup>193</sup> Their vulnerability to COVID-19 was due to many factors, including increased overcrowding in housing, reliance on public transportation, concentration in cities, overrepresentation in frontline jobs, fewer opportunities to work remotely, obstacles to accessing healthcare, including language and information barriers, and lack of health insurance.<sup>194</sup>

Beyond the suffering caused by COVID-19 itself, immigrant workers also suffered in the wake of the economic fallout that it precipitated. Food banks in Texas struggled to meet demand and had to turn away some seeking help, which had a particularly negative impact on immigrant communities in the state.<sup>195</sup> Even with federal foreclosure and eviction moratoriums, some undocumented immigrants found themselves without housing when they were unable to make rent.<sup>196</sup> Many feared that reporting their landlords for violating federal bans would draw attention to their undocumented status and

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<sup>189</sup> Kyle Blankenship, *Pfizer, Moderna's Coronavirus Shot Rollouts Could Freeze Up, Experts Say, Citing Cold-Storage Needs*, FIERCE PHARMA (Aug. 28, 2020, 8:33 AM), <https://www.fiercepharma.com/manufacturing/pfizer-moderna-s-covid-19-shot-rollouts-could-be-ice-as-analysts-question-cold> [<https://perma.cc/7QS5-PHB9>].

<sup>190</sup> Rima Shretta, Nathaniel Hubert, Patrick Osewe & Lisa J. White, *Vaccinating the World Against COVID-19: Getting the Delivery Right is the Greatest Challenge*, 6 *BMJ GLOB. HEALTH* 1, 2 (Mar. 2021).

<sup>191</sup> Tiffany Hsu, *As COVID-19 Continues to Spread, So Does Misinformation About It*, N.Y. TIMES (Dec. 28, 2022), <https://www.nytimes.com/2022/12/28/technology/covid-misinformation-online.html> [<https://perma.cc/5ENC-8VDS>].

<sup>192</sup> *Id.*

<sup>193</sup> Those countries include Canada, Denmark, France, Germany, Italy, the Netherlands, Norway, Portugal, Sweden, the United Kingdom, and the United States. OECD, *WHAT HAS BEEN THE IMPACT OF THE COVID-19 PANDEMIC ON IMMIGRANTS? AN UPDATE ON RECENT EVIDENCE 2* (Aug. 30, 2022).

<sup>194</sup> *Id.*

<sup>195</sup> Jason Wilson, *Food Banks Struggle to Keep Pace with Immigrant Communities Hit Hard by Pandemic Coronavirus*, GUARDIAN (May 4, 2020, 6:00 AM), <https://www.theguardian.com/world/2020/may/04/food-banks-problems-immigrants-coronavirus-texas> [<https://perma.cc/5YZQ-CDPL>].

<sup>196</sup> See Caitlin Dickerson, *Sleeping Outside in a Pandemic: Vulnerable Renters Face Evictions*, N.Y. TIMES (July 4, 2020), <https://www.nytimes.com/2020/07/04/us/coronavirus-evictions-renters-immigrants.html> [<https://perma.cc/E2YY-5CBG>].

lead to deportation.<sup>197</sup> Between the direct negative health effects of the virus and the harsh economic conditions it indirectly created, immigrants were uniquely impacted by COVID-19.

The restaurant industry was chosen for this case study for two reasons. First, immigrant workers are disproportionately represented in the restaurant industry, particularly when we look at the composition of back-of-house (“BOH”) jobs like food preparation and dishwashing.<sup>198</sup> Second, the restaurant industry was one of the first industries to be hurt—and one of the most severely hurt—by the COVID-19 shutdowns.<sup>199</sup> Thus, the convergence of these two factors makes the restaurant industry an ideal case study to gain insights into the fate of immigrant workers during the COVID-19 pandemic.

As noted earlier, immigrant workers make up a sizeable portion (22%) of its labor force.<sup>200</sup> But the importance of immigrant workers to the restaurant industry cannot be fully understood without understanding the division of labor in restaurants between front-of-house (“FOH”) and BOH jobs, and the implications of this division. FOH jobs require direct interaction with customers and thus, English fluency; examples of FOH jobs include waitstaff, hosts and hostesses, and bartenders. These jobs are more highly compensated, earning both minimum wage and tips.<sup>201</sup> Restaurants hiring for FOH positions often favor white, more highly educated workers, because these workers are perceived as being friendlier and having better soft skills.<sup>202</sup> By contrast, BOH jobs like cooks, dishwashers, and cleaners work primarily in the kitchen and have little interaction with customers or the public. Workers in BOH jobs generally earn less, usually an hourly wage that is often the minimum wage.<sup>203</sup> For these “brown-collar” jobs, restaurants tend to favor hiring immigrants and racial minorities, who are seen as more pliable workers with fewer alternative employment options.<sup>204</sup> In these BOH positions, immigrant workers are disproportionately represented. According to the CPS data, immigrants comprised almost 30% of the workforce in BOH positions, such as cooks and dishwashers.<sup>205</sup> Digging deeper still, undocumented immigrants alone make up nearly 20% of restaurant cooks and 30% of restaurant dishwashers.<sup>206</sup>

These BOH positions are often hired through informal networks (with managers asking current workers to refer family or friends), rather than through the formal job postings and interviews typically required for FOH positions.<sup>207</sup> The informal networks help immigrants, who may have limited English skills, land these entry-level jobs. Training in the jobs is also informal, largely based on shadowing incumbents and advancing when

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<sup>197</sup> *Id.*

<sup>198</sup> See Cabales, *supra* note 20.

<sup>199</sup> REST. OPPORTUNITIES CTRS. UNITED, THE IMPACT OF COVID-19 ON RESTAURANT WORKERS ACROSS AMERICA 1 (Jan. 2022).

<sup>200</sup> Budiman, *supra* note 39.

<sup>201</sup> ELI REVELLE YANO WILSON, FRONT OF THE HOUSE, BACK OF THE HOUSE: RACE AND INEQUALITY IN THE LIVES OF RESTAURANT WORKERS 4, 24 (2020).

<sup>202</sup> See *id.* at 20; see also Carolyn Sachs, Patricia Allen, Rachel A. Terman, Jennifer Hayden & Christina Hatcher, *Front and Back of the House: Socio-Spatial Inequalities in Food Work*, 31 AGRIC. & HUM. VALUES 3, 15 (2014).

<sup>203</sup> YANO WILSON, *supra* note 201, at 24.

<sup>204</sup> See Sachs et al., *supra* note 202.

<sup>205</sup> U.S. BUREAU LAB. STATS., *supra* note 205.

<sup>206</sup> Budiman, *supra* note 38.

<sup>207</sup> See Eli R. Wilson, *Bridging the Service Divide: Dual Labor Niches and Embedded Opportunities in Restaurant Work*, 4 RUSSELL SAGE FOUND. J. SOC. SCI. 115, 119 (Jan. 2018).

workers show the skills necessary for kitchen-based promotions.<sup>208</sup> But the informality of both the hiring and promotion mechanism also hinders immigrants who seek better-paying jobs for two reasons. First, immigrants who rely on these informal networks for employment opportunities are disadvantaged when they look for better jobs that may not typically be held by others in their social networks.<sup>209</sup> Second, even when they are able to find better job opportunities, they are disadvantaged by their inexperience with more formal hiring and promotion mechanisms.<sup>210</sup>

The restaurant industry was one of the first industries to be impacted by the COVID-19 pandemic.<sup>211</sup> In total, 159,000 food services and drinking places closed during 2020.<sup>212</sup> In the second quarter alone (April to June 2020), 72,500 locations closed.<sup>213</sup> To provide context, the 72,500 closings during these three months of the second quarter (when almost every state had implemented shutdowns) almost equal the typical closings (81,000 food and drink locations) in an average year.<sup>214</sup> These restaurant closings led to a loss of approximately 2.5 million restaurant jobs in 2020 alone.<sup>215</sup>

The reasons for these restaurant closures are fairly self-evident. In the first months of the pandemic, nearly every state-imposed measure restricted the capacity of restaurant operations or required them to close altogether. Even when some measures were lifted, the American public continued to express reluctance about eating in restaurants, an activity that would necessarily require the removal of face coverings and raise the risk of COVID infection.<sup>216</sup> Because eating out is not an essential service or activity, many Americans were able to cut restaurant outings from their lives without much disruption.<sup>217</sup> Faced with this dwindling demand for their services, many restaurants pivoted, implementing measures to lure customers back.<sup>218</sup> These measures included providing outdoor seating; providing delivery, drive-through, and curbside pickup services; changing menus to provide more takeout-friendly options; and providing social distancing seating and contactless ways to order food or pay for that food.<sup>219</sup> Even with these

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<sup>208</sup> *Id.* at 118.

<sup>209</sup> *Id.* at 120.

<sup>210</sup> *Id.* at 118.

<sup>211</sup> Miles Chandler, Gregg Cole, Gary Kunkle, & Howard Wial, *How the Coronavirus Recession and Recovery Have Affected Businesses and Jobs in the 100 Largest Metropolitan Areas*, INITIATIVE FOR A COMPETITIVE INNER CITY (Nov. 2021), <https://home.treasury.gov/system/files/271/Q2.21-ICIC-Recession-Recovery-Tracker-Report-Draft-Formatted-with-Cover-11.3.21.pdf> [<https://perma.cc/APG9-ZNYY>].

<sup>212</sup> Tim Carman, *How Many Restaurants Closed from the Pandemic? Here's Our Best Estimate*, WASH. POST (June 21, 2022, 8:00 AM), <https://www.washingtonpost.com/food/2022/06/21/covid-restaurant-closures/> [<https://perma.cc/SQA7-5BNJ>].

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> Kate Rogers, *Restaurants Staged Nimble Responses to Covid's Blows in 2020, But 6 Years of Growth Were Wiped Away*, CNBC (Jan. 26, 2021, 8:00 AM), <https://www.cnbc.com/2021/01/26/restaurant-industry.html> [<https://perma.cc/3M5L-27S6>].

<sup>216</sup> Joanna Fantozzi, *More Than One in Four Americans are Actively Avoiding Eating Out in Restaurants as Coronavirus Crisis Worsens*, NATION'S REST. NEWS (Mar. 17, 2020), <https://www.nrn.com/consumer-trends/more-one-four-americans-are-actively-avoiding-eating-out-restaurants-coronavirus> [<https://perma.cc/3JYJ-BQFQ>].

<sup>217</sup> *Most Americans Say Coronavirus Outbreak Has Impacted Their Lives*, PEW RSCH. CTR. (Mar. 30, 2020), <https://www.pewresearch.org/social-trends/2020/03/30/most-americans-say-coronavirus-outbreak-has-impacted-their-lives/> [<https://perma.cc/KR7Y-HXWR>].

<sup>218</sup> Cortney L. Norris, Scott Taylor Jr. & D. Christopher Taylor, *Pivot! How the Restaurant Industry Adapted During COVID-19 Restrictions*, 35 INT. HOSP. REV. 132, 137 (2021).

<sup>219</sup> *Id.*

structural changes, many restaurants struggled to survive financially; combined with the additional challenges of securing increasingly expensive supplies and hiring increasingly expensive workers, many restaurants closed.<sup>220</sup>

### III. EMPIRICAL RESULTS

Moving from the theoretical and historical, we turn here to the empirical results. In sum, this study found that immigrant workers in the restaurant industry during the COVID-19 pandemic fared worse than similarly situated native-born workers along important employment metrics. Immigrant workers were more likely to lose their jobs or to drop out of the labor force altogether. In results unique to the restaurant industry, foreign-born workers who kept their restaurant industry jobs during the pandemic were more likely to move to worse BOH jobs or to stay in those BOH jobs, while native-born workers were able to advance to better jobs outside of the restaurant industry. The first two unemployment results stand in stark contrast to the employment experiences of immigrant workers during the Great Recession, and all the employment results underscore the unique, and especially severe, nature of the COVID-19 pandemic for immigrant workers.

#### A. CPS DATA

This analysis used 2007–2022 CPS data, monthly survey data collected by the Bureau of Census for the Bureau of Labor Statistics (“BLS”).<sup>221</sup> The data are collected using a specific methodology that prioritizes continuity and representative sampling.<sup>222</sup> Each month, BLS interviews a probability-selected sample of approximately sixty thousand households to collect labor statistics and other supplementary information.<sup>223</sup> Each selected household is interviewed once a month for four consecutive months, and then is not interviewed again for eight months. After the eight months have elapsed, the household is interviewed again for four consecutive months and then is dropped from the sample permanently.<sup>224</sup> This “4-8-4” scheme is conducted on a rolling basis, and the sample of households is replenished monthly to include new observations.<sup>225</sup> The collected data are categorized according to national criteria and weighted to accurately represent the true population.<sup>226</sup>

The primary focus of the monthly CPS household survey is to collect information on labor outcomes, such as each individual’s employment status, hours worked, and occupation.<sup>227</sup> The BLS uses very specific definitions of

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<sup>220</sup> See Nathaniel Meyersohn, *Looking for a Late-night Meal? America’s Closed*, CNN (Apr. 6, 2024), <https://www.cnn.com/2024/04/06/business/covid-crushed-24-hour-diners-theyre-slowly-coming-back/index.html> [<https://perma.cc/VFC7-9PUP>]; *Food Supply Chain Overview*, TEX. COMPTROLLER (2021), <https://comptroller.texas.gov/economy/economic-data/supply-chain/2021/food.php> [<https://perma.cc/6NMT-N3HH>].

<sup>221</sup> U.S. BUREAU LAB. STATS., *supra* note 205.

<sup>222</sup> *Methodology*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/cps/technical-documentation/methodology.html> [<https://perma.cc/YP4U-UPCA>] (last updated Nov. 19, 2021).

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Weighting*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/cps/technical-documentation/methodology/weighting.html> [<https://perma.cc/2WND-LH8B>].

<sup>227</sup> U.S. CENSUS BUREAU, *ITEMS BOOKLET: LABOR FORCE ITEMS*, <https://www2.census.gov/programs-surveys/cps/techdocs/questionnaires/Labor%20Force.pdf> [<https://perma.cc/ZG75-EJ5K>].



employment status when classifying individuals, based on their responses for the referenced week (the week before the survey):

- (1) To be classified as “employed,” the individual must have worked at least one hour as a paid employee or in their own business, worked at least fifteen hours without pay in a family-owned farm or business, or have been absent from work only for temporary reasons during that week.<sup>228</sup>
- (2) To be classified as “unemployed,” an individual must not be employed (based on the previous definition) and importantly, must also be available for work and have made at least one specific active effort to find a job in the previous four weeks.<sup>229</sup>
- (3) Those who are not employed but have not actively looked for work in the previous month are categorized as “not in the labor force.” This last group includes individuals who do not want a job, as well as those who want a job and have actively looked for work in the last year but not in the last month (discouraged workers).<sup>230</sup>

In addition to labor statistics, the CPS also collects a significant amount of demographic data, such as age, race, marital status, and education level.<sup>231</sup> The household survey also includes questions that identify respondents as foreign-born or native-born but does not ask about the immigration status of foreign-born respondents.<sup>232</sup> Other researchers using CPS data have estimated the percentages of undocumented immigrants in the United States;<sup>233</sup> for our purposes, it was not necessary to know the specific immigration status of CPS respondents, as the research questions focused on the larger group of foreign-born workers.

Within the CPS data, we looked at the employment status of restaurant workers at two points in time: (1) January 2020, before COVID-19 had spread widely, and (2) January 2021, when infections were high<sup>234</sup> and the restaurant industry was experiencing high levels of closures, downsizing, and other upheavals.<sup>235</sup> These time periods were chosen to see how two different groups of restaurant workers—immigrant workers and native-born workers—fared in employment outcomes as the pandemic worsened. In sum,

<sup>228</sup> U.S. BUREAU LAB. STATS., *supra* note 205.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Basic CPS Items Booklet: Demographic Items*, U.S. BUREAU LAB. STATS., <https://www2.census.gov/programs-surveys/cps/techdocs/questionnaires/Demographics.pdf> [<https://perma.cc/3PA5-55PZ>].

<sup>232</sup> *Employment Situation Frequently Asked Questions*, U.S. BUREAU LAB. STATS., <https://www.bls.gov/news.release/empsit.faq.htm> [<https://perma.cc/J9S5-XDRL>] (last updated Jan. 5, 2024).

<sup>233</sup> See, e.g., George J. Borjas, *The Labor Supply of Undocumented Immigrants*, 46 *LABOUR ECON.* 3 (2017); George J. Borjas & Hugh Cassidy, *The Wage Penalty to Undocumented Immigration*, 61 *LABOUR ECON.* 101757 (2019), <https://linkinghub.elsevier.com/retrieve/pii/S0927537119300831> [<https://perma.cc/V4T9-X9PB>]; Jeffrey S. Passel & D’Vera Cohn, *Unauthorized Immigrant Totals Rise in 7 States, Fall in 14*, *PEW RSCH. CTR.* (Nov. 18 2014), <https://www.pewresearch.org/hispanic/2014/11/18/unauthorized-immigrant-totals-rise-in-7-states-fall-in-14/> [<https://perma.cc/XQH2-PDWA>]; Robert Warren, *Democratizing Data About Unauthorized Residents in the United States: Estimates and Public-Use Data, 2010 to 2013*, 2 *J. MIGRATION & HUM. SEC.* 305, 312 (2014)

<sup>234</sup> *Coronavirus Resource Center*, *JOHNS HOPKINS UNIV. & MED.*, <https://coronavirus.jhu.edu/region/united-states> [<https://perma.cc/99D5-MKS7>] (last visited May 16, 2024).

<sup>235</sup> Chandler et al., *supra* note 211.

the study found that foreign-born workers had worse employment outcomes than their native-born counterparts, and those worse employment outcomes were true across FOH and BOH jobs. The results are detailed in Section III.B.

This analysis utilized monthly longitudinal data from the 2020–2021 CPS.<sup>236</sup> Table 1 provides the sample size for the occupational transition of individuals who responded to the CPS in January 2020 and January 2021. This information is provided for both foreign-born and native-born workers. We characterize the occupation variable in five categories: (1) FOH, (2) BOH, (3) other occupations, (4) unemployed, and (5) not in the labor force. Table 1.1 (“All Individuals”) shows that of the 272 individuals who were working FOH jobs in January 2020, 96 stayed in similar FOH jobs, 22 moved to BOH jobs, 62 left for other occupations, 33 were unemployed, and 59 were not in the labor force as of January 2021. Similarly, table 1.2 (“Native-Born Individuals”) shows that of the 232 who were working FOH jobs in January 2020, 86 stayed in similar FOH positions, while 16 moved to BOH jobs, 54 moved to other occupations, 25 were unemployed, and 51 dropped out of the labor force by January 2021. Looking at the same data for foreign-born workers (table 1.3), among the 40 who were working in front-of-house positions in 2020, 10 stayed in similar front-of-house positions, 6 moved to back-of-house positions, 8 moved to other occupations, 8 were unemployed, and 8 dropped out of the labor force.

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<sup>236</sup> U.S. BUREAU LAB. STATS., *supra* note 205.

**Table 1.1: Sample Size for All Individuals<sup>237</sup>**

All Individuals						
Occupation in January 2020	Occupation in January 2021					
	Front of House	Back of House	Other Occupations	Unemployed	Not in Labor Force	Total
Front of House	96 35% 48.73%	22 8% 5.79%	62 23% 0.33%	33 12% 3.12%	59 22% 0.26%	272 100% 0.63%
Back of House	9 2.03% 4.57%	197 44.47% 51.84%	112 25.28% 0.60%	37 8.35% 3.50%	88 19.86% 0.38%	443 100% 1.03%
Other Occupations	43 0.22% 21.83%	89 0.45% 23.42%	17,152 86.50% 92.08%	646 3.26% 61.06%	1,898 9.57% 8.29%	19,828 100% 45.93%
Unemployed	6 0.81% 3.05%	11 1.49% 2.89%	316 42.88% 1.70%	150 20.35% 14.18%	254 34.46% 1.11%	737 100% 1.71%
Not in Labor Force	43 0.20% 21.83%	61 0.28% 16.05%	985 4.50% 5.29%	192 0.88% 18.15%	20,605 94.15% 89.96%	21,886 100% 50.70%
Total	197 0.46% 100%	380 0.88% 100%	18,627 43.15% 100%	1,058 2.45% 100%	22,904 53.06% 100%	43,166 100% 100%

<sup>237</sup> 2020–2021 Monthly Current Population Survey (January). This table includes individuals who appear in CPS in January 2020 (waves one, two, three, and four) and in January 2021 (waves five, six, seven, and eight). *Id.*

**Table 1.2: Sample Size for Native-Born Individuals<sup>238</sup>**

Occupation in January 2020	Occupation in January 2021					Total
	Front of House	Back of House	Other Occupations	Unemployed	Not in Labor Force	
Front of House	86 37% 48.31%	16 7% 5.67%	54 23% 0.33%	25 11% 2.84%	51 22% 0.25%	232 100% 0.61%
Back of House	9 2.80% 5.06%	132 40.99% 46.81%	93 28.88% 0.58%	22 6.83% 2.50%	66 20.50% 0.32%	322 100% 0.84%
Other Occupations	37 0.22% 20.79%	69 0.40% 24.47%	14,880 86.72% 92.06%	539 3.14% 61.32%	1,633 9.52% 7.85%	17,158 100% 44.80%
Unemployed	5 0.79% 2.81%	11 1.74% 3.90%	272 43.04% 1.68%	128 20.25% 14.56%	216 34.18% 1.04%	632 100% 1.65%
Not in Labor Force	41 0.21% 23.03%	54 0.27% 19.15%	864 4.33% 5.35%	165 0.83% 18.77%	18,829 94.37% 90.55%	19,953 100% 52.10%
Total	178 0.46% 100%	282 0.74% 100%	16,163 42.20% 100%	879 2.30% 100%	20,795 54.30% 100%	38,297 100% 100%

<sup>238</sup> 2020–2021 Monthly Current Population Survey (January). This table includes individuals who appear in CPS in January 2020 (waves one, two, three, and four) and in January 2021 (waves five, six, seven, and eight). *Id.*

**Table 1.3: Sample Size for Foreign-Born Individuals<sup>239</sup>**

Foreign-Born Individuals						
Occupation in January 2020	Occupation in January 2021					
	Front of House	Back of House	Other Occupations	Unemployed	Not in Labor Force	Total
Front of House	10	6	8	8	8	40
	25%	15%	20%	20%	20%	100%
	52.63%	6.12%	0.32%	4.47%	0.40%	0.84%
Back of House	0	65	19	15	22	121
	0.00%	53.72%	15.70%	12.40%	18.18%	100%
	0.00%	66.33%	0.77%	8.38%	1.10%	2.54%
Other Occupations	6	20	2,272	107	265	2,670
	0.22%	0.75%	85.09%	4.01%	9.93%	100%
	31.58%	20.41%	92.21%	59.78%	13.19%	55.99%
Unemployed	1	0	44	22	38	105
	0.95%	0.00%	41.90%	20.95%	36.19%	100%
	5.26%	0.00%	1.79%	12.29%	1.89%	2.20%
Not in Labor Force	2	7	121	27	1,676	1,833
	0.11%	0.38%	6.60%	1.47%	91.43%	100%
	10.53%	7.14%	4.91%	15.08%	83.42%	38.44%
Total	19	98	2,464	179	2,009	4,769
	0.40%	2.05%	51.67%	3.75%	42.13%	100%
	100%	100%	100%	100%	100%	100%

## B. RESULTS

The different experiences of immigrant workers during the Great Recession and the COVID-19 pandemic are starkly illustrated in figure 1, which shows the predicted probabilities from multinomial logistic regression models for associations between restaurant occupations in January in the previous year (independent variable) and occupations in January of the current year (dependent variable) by nativity and for each pair of years between 2007 and 2022.

<sup>239</sup> 2020–2021 Monthly Current Population Survey (January). This table includes individuals who appear in CPS in January 2020 (waves one, two, three, and four) and in January 2021 (waves five, six, seven, and eight). *Id.*

During the Great Recession (2007–2009), foreign-born workers in both FOH and BOH jobs (illustrated by the dotted lines) were less likely than their native-born counterparts (illustrated by the solid lines) to become unemployed. Our empirical results are consistent with the literature on immigrant resilience during economic crises like the Great Recession, showing that immigrant workers employed strategies like accepting lower wages or part-time work to remain employed. However, for the COVID-19 pandemic years (2020–2021), foreign-born workers were *more likely* to become unemployed at rates significantly higher than their native-born FOH/BOH counterparts.

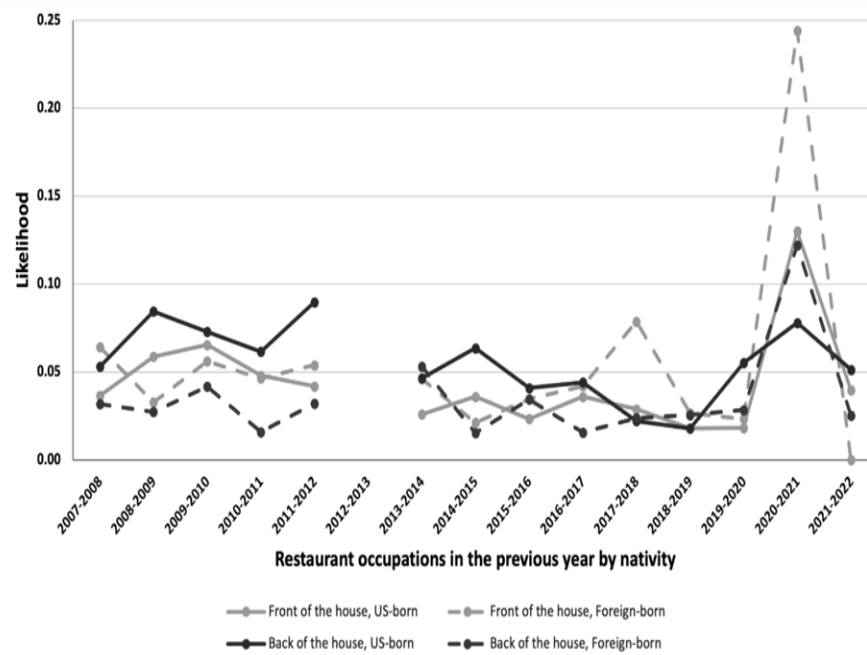


Figure 1: Likelihood of someone who was in the restaurant industry in the previous year being unemployed in the current year (2007–2022)<sup>240</sup>

For January 2019 to January 2020, the numbers for foreign-born and native-born workers were similar, with foreign-born numbers below or at the same level as native-born workers. For native-born workers, 6% BOH and 2% FOH moved to unemployment. Among foreign-born workers, 3% BOH and 2% FOH moved to unemployment.

But for January 2020 to January 2021, the numbers for foreign-born and native-born workers moving to unemployment diverge, with foreign-born numbers significantly exceeding native-born numbers. For the native-born workers, 8% BOH and 13% FOH moved to unemployment. For the foreign-born workers, 12% BOH and 24% FOH moved to unemployment.

<sup>240</sup> 2000–2022 Monthly Current Population Survey (January). Solid and darker lines are for US-born workers. Dashed and lighter lines are for foreign-born workers. For each pair of years (from January to January), we estimated a multinomial regression model. Models did not converge for 2012–2013.

For January 2021–January 2022, as restaurants reopened and the nation recovered from the pandemic, the numbers for foreign-born and native-born workers reconverge and become more similar, matching pre-COVID patterns. For the native-born workers, 5% BOH and 4% FOH moved to unemployment. For the foreign-born workers, 3% BOH and 0% FOH moved to unemployment.

Figure 1 summarizes all multinomial logistic regressions for pairs of years between 2007 and 2021 to understand the overall trends of individuals moving out of restaurant industry occupations to unemployment by nativity. Tables 2 and 3 below focus on the model that estimates the likelihood of someone continuing in a specific restaurant occupation or moving to another occupation category between January 2020 and January 2021, based on survey responses. These tables use the same information presented for the years 2020–2021 in figure 1, but we present coefficients to indicate the statistical significance and magnitude of continuing or changing occupations.

While figure 1 gives a broad overview of trends over time, tables 2 and 3 drill down, showing the likelihood that specific individuals will continue in their restaurant occupations or move to other employment outcomes (unemployed, not in the labor force, or other occupations), broken down by nativity and FOH/BOH distinctions. Results are shown with relative risk ratios, which are the exponential coefficients in multinomial logistic regressions. These ratios provide detailed information on which groups are more or less likely to transition to different employment outcomes. The tables indicate if the results are statistically significant at the ninety, ninety-five, or ninety-nine percent confidence level.

In tables 2 and 3, the different rows illustrate whether individuals were FOH or BOH in January 2020 by nativity. The columns illustrate the chances of individuals continuing or moving to different groups of occupations in 2021 (FOH, BOH, unemployed, not in the labor force). We select different reference categories for the dependent and independent variables in the following models to facilitate the interpretation of the main findings. For the dependent variable (occupation in January 2021), we select other occupations as the reference category. For the independent variables (occupation in January 2020), table 2 presents these results by comparing the transitions to native-born workers who were FOH in 2020. Table 3 makes this comparison to native-born workers who were BOH in 2020.

In sum, we found that foreign-born workers had worse employment outcomes than their native-born counterparts, and those worse employment outcomes were true across front-of-house and back-of-house jobs. Our more detailed results are below.

First, the results indicate that foreign-born restaurant workers were more likely to be unemployed. Specifically, FOH foreign-born restaurant workers who were surveyed in January 2020 were 2.4 times more likely to be unemployed than to be in other occupations by January 2021, compared to their native-born counterparts. Similarly, BOH foreign-born restaurant workers who were surveyed in January 2020 were 3.8 times more likely to be unemployed than to be in other occupations by January 2021, compared to BOH native-born workers (*see* table 3 results highlighted in yellow). In other words, as the pandemic spread and restaurants closed or contracted,

foreign-born restaurant workers were more likely to be unemployed than to move to the better-paying jobs that native-born restaurant workers found.

Second, foreign-born restaurant workers were more likely to drop out of the labor force entirely. BOH foreign-born workers (January 2020) were 2.2 times more likely to drop out of the labor force than to be in other occupations (January 2021), compared to BOH native-born workers. In other words, foreign-born workers who started in back-of-house jobs before the pandemic and lost those jobs were more likely to quit looking for work, compared to native-born workers who found presumably better-paying jobs in other industries.

Third, in results specific to the restaurant industry, the results in table 2 show that foreign-born restaurant workers were more likely to move to worse occupations within restaurants. Specifically, FOH foreign-born workers (January 2020) were 2.4 times more likely to move to lower-paying BOH jobs than to be in other occupations (January 2021). In other words, foreign-born workers who had worked in better-paying FOH jobs before the pandemic were more likely to move to lower-paying BOH jobs within restaurants than to move to the presumably better-paying jobs that native-born workers found in other industries.

Fourth, foreign-born restaurant workers were more likely to continue in back-of-house occupations than other occupations. Specifically, BOH foreign-born workers (January 2020) were 3.9 times more likely to continue in BOH occupations than to be in other, higher-paying occupations (January 2021). In other words, foreign-born workers who started in lower-paying, BOH jobs before the pandemic had fewer opportunities to move to presumably better-paying jobs that native-born workers found in other industries.

In summary, as the pandemic spread more aggressively and the restaurant industry experienced its highest levels of closures (between January 2020 and January 2021), foreign-born workers in the restaurant industry were more likely to either lose their jobs or keep only low-paying, BOH jobs, compared to native-born workers.



Table 2: Likelihood of someone in the restaurant industry in January 2020 continuing in the restaurant industry or being unemployed in January 2021, relative to native-born workers in front of house<sup>241</sup>

Occupation in the Restaurant Industry in January 2020 (Front of House, native-born as reference)	Occupation in January 2021 (dependent variable) (Other occupations as reference)			
	Front of House	Back of House	Unemployed	Not in Labor Force
Front of House, Foreign-Born	0.817 (0.452)	2.417* (1.551)	2.425* (1.358)	1.272 (0.698)
Back of House, Native-Born	0.034*** (0.016)	2.933*** (0.912)	0.384*** (0.125)	0.559** (0.141)
Back of House, Foreign-Born	0.000 (0.000)	11.324*** (4.277)	1.467 (0.593)	1.234 (0.441)
Constant	1.636*** (0.298)	0.362*** (0.101)	0.623** (0.144)	1.153 (0.226)
Observations	790	790	790	790

<sup>241</sup> 2020–2021 Monthly Current Population Survey. Exponential of coefficients from multinomial logistic regression for associations between type of occupation in January 2021 (dependent variable: Other occupations as reference) and occupation in the restaurant industry in January 2020 by nativity (independent variables: Front of the house, US-born as reference). Exponential of standard errors between parentheses. One-tailed t-test: \*\* Significant at  $p < 0.01$ , \* Significant at  $p < 0.05$ , \* Significant at  $p < 0.1$ .

Table 3: Likelihood of someone in the restaurant industry in January 2020 continuing in the restaurant industry or being unemployed in January 2021, relative to BOH native-born workers<sup>242</sup>

Occupation in the Restaurant Industry in January 2020 (Back of House, Native-Born as Reference)	Occupation in January 2021 (Dependent Variable) (Other Occupations as Reference)			
	Front of House	Back of House	Unemployed	Not in Labor Force
Front of House, Native-Born	29.305*** (13.821)	0.341*** (0.106)	2.602*** (0.845)	1.789** (0.452)
Front of House, Foreign-Born	23.932*** (16.278)	0.824 (0.490)	6.311*** (3.523)	2.276* (1.222)
Back of House, Foreign-Born	0.000 (0.002)	3.861*** (1.125)	3.817*** (1.536)	2.209*** (0.749)
Constant	0.056*** (0.024)	1.062 (0.148)	0.239*** (0.054)	0.644*** (0.103)
Observations	790	790	790	790

#### IV. CONCLUDING THOUGHTS

Thus far, this Article contrasted our findings of immigrant labor outcomes during the COVID-19 pandemic with evidence of immigrant resilience during the Great Recession, the most recent economic crisis in the United States. The literature is replete with other examples of immigrant resilience and their ability and willingness to adapt to harsh labor market conditions. Studying foreign-born workers in the European Union during the Great Recession, Martin Kahanec and Martin Guzi found that immigrant workers responded more fluidly than natives to labor shortages by moving across regions, occupations, and sectors.<sup>243</sup> Kerry Preibisch analyzed the labor patterns of immigrant agricultural workers in Canada and observed that they boosted the Canadian economy with their willingness to work seasonally in accordance with agricultural cycles.<sup>244</sup> In the face of scarce economic opportunity, Professors Yemisi Freda Awotoye and Robert Singh found that United States immigrants are more likely than natives to become entrepreneurs and create jobs, not only for themselves, but also for others.<sup>245</sup> Adaptability in the face of challenging labor market conditions is a hallmark of immigrant workers.

<sup>242</sup> 2020–2021 Monthly Current Population Survey. Exponential of coefficients from multinomial logistic regression for associations between type of occupation in January 2021 (dependent variable: Other occupations as reference) and occupation in the restaurant industry in January 2020 by nativity (independent variables: Back of the house, U.S.-born as reference). Exponential standard errors between parentheses. One-tailed t-test: \*\* Significant at  $p < 0.01$ , \*\*\* Significant at  $p < 0.05$ , \* Significant at  $p < 0.1$ .

<sup>243</sup> Kahanec & Guzi, *supra* note 32, at 22–23.

<sup>244</sup> Kerry Preibisch, *Pick-Your-Own Labor: Migrant Workers and Flexibility in Canadian Agriculture*, 44 INT'L MIGRATION REV. 404, 409–11 (2010).

<sup>245</sup> Yemisi Freda Awotoye & Robert P. Singh, *Immigrant Entrepreneurs in the USA: A Conceptual Discussion of the Demands of Immigration and Entrepreneurial Intentions*, 21 NEW ENG. J. ENTREPRENEURSHIP 123, 128 (Nov. 2018).

These findings suggest important limits to that resilience: when employment options (even bad employment options) are severely limited, immigrant workers fare poorly, particularly in comparison with native-born workers. These findings may feel limited to the unique circumstances of the COVID-19 pandemic, but there are other scenarios where labor options could be similarly and severely restricted for immigrant workers. Of note, with the continued rise of restrictive sub-federal immigration laws across the United States,<sup>246</sup> the ability of immigrant workers to move within the country for jobs may be severely hampered.<sup>247</sup> States, cities, and counties have enacted laws that deputize local law enforcement officials to enforce federal immigration laws and that limit immigrant access to employment, housing, and benefits.<sup>248</sup> These laws create very negative sub-federal immigration climates that may restrict the movement of immigrants to those jurisdictions.<sup>249</sup> It is also possible that a more geographically uniform economic recession that could severely restrict job opportunities for immigrants in ways that implicate their resilience.<sup>250</sup> Finally, as the threat of airborne diseases continues to grow,<sup>251</sup> lawmakers must consider the implications for vulnerable immigrant populations in future pandemics and health crises.

Limits on immigrant resilience raise important policy concerns. First, immigrant workers and their families may be more vulnerable during times of economic crisis than previously thought. Insightful research has been done about the challenges that immigrants face in the United States,<sup>252</sup> but the underlying assumption for much of that research is that immigrants have access to work, albeit often under harsh and dangerous conditions. Without access to work and its income streams, immigrants and their families may be in more dire straits than previously considered, and the human welfare consequences of this are significant.

Flowing from this, governments should seriously consider expanding public benefits to immigrants, especially during economic crises. In March 2020, in response to COVID-19, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).<sup>253</sup> The \$2.2 trillion Act offered generous aid to many, including expanded unemployment benefits

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<sup>246</sup> See generally Huyen Pham & Pham Hoang Van, *The Subfederal in Immigration Polarization*, MINN. J. L. & INEQ. (forthcoming 2024) (describing the polarization in subfederal immigration climates).

<sup>247</sup> See Jamie Roberman, Pham Hoang Van, Huyen Pham, and Ernesto Amaral, *Uneven Enforcement of Immigration Laws and Its Effects on Intra-State Migration* (in progress).

<sup>248</sup> See generally Pham & Hoang Van, *supra* note 246.

<sup>249</sup> See Roberman et al., *supra* note 247.

<sup>250</sup> See Safiya Riddle, *U.S. Leading Indicators Point to Recession Starting Soon*, REUTERS (July 20, 2023, 3:13 PM) <https://www.reuters.com/markets/us/us-leading-indicators-point-recession-starting-soon-2023-07-20> [<https://perma.cc/N5HY-6ZYQ>] (predicting an economic recession in the U.S. in 2023-2024).

<sup>251</sup> Penn, *supra* note 36.

<sup>252</sup> See *supra* Part I.B.

<sup>253</sup> Kellie Moss, Adam Wexler, Lindsey Dawson, Michelle Long, Jennifer Kates, Juliette Cubanski, MaryBeth Musumeci, Meredith Freed, Amrutha Ramaswamy, Usha Ranji & Karen Pollitz, *The Coronavirus Aid, Relief, and Economic Security Act: Summary of Key Health Provisions*, KFF (Apr. 9, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-coronavirus-aid-relief-and-economic-security-act-summary-of-key-health-provisions/> [<https://perma.cc/SJ5R-GDK4>].

for workers,<sup>254</sup> direct stimulus payments to individuals,<sup>255</sup> forgivable loans to businesses,<sup>256</sup> a moratorium on eviction and foreclosures,<sup>257</sup> funding for the healthcare industry,<sup>258</sup> and funding for state and local governments.<sup>259</sup> Subsequent laws extended and expanded these benefits.<sup>260</sup>

One group that was largely left out of these crucial aid distributions were foreign-born individuals living in the United States who do not have citizenship. Some of the aid exclusions targeted undocumented immigrants by requiring proof of lawful immigration status as a prerequisite for receiving aid—for example, the federal supplemental unemployment benefits.<sup>261</sup> Other aid exclusions targeted undocumented immigrants but also swept up immigrants with lawful immigration status.<sup>262</sup> For example, the direct stimulus payments were not granted to any taxpayers who filed with individual tax identification numbers (“ITINs”), instead of Social Security Numbers (“SSNs”).<sup>263</sup> Though undocumented immigrants are eligible to obtain ITINs, other immigrants with lawful immigration status also use ITINs, including foreign nationals who are students, professors, or researchers living in the United States but do not qualify for SSNs, or dependents and spouses of citizens or lawful permanent residents who similarly do not qualify for SSNs.<sup>264</sup> Significantly, the stimulus payment exclusion also applied to family members who filed jointly with an ITIN taxpayer, even if those family members had SSNs.<sup>265</sup> The Migration Policy Institute estimates that about 14.4 million people were excluded from stimulus payments on these grounds.<sup>266</sup>

Similarly, provisions in the CARES Act that expanded Medicaid benefits to the uninsured to cover the testing and treatment of COVID-19 excluded undocumented individuals *and* many foreign-born individuals with lawful status, including those with green cards who had not met five-year eligibility requirements, Deferred Action for Childhood Arrivals (“DACA”) beneficiaries, and individuals with Temporary Protected Status.<sup>267</sup> When

<sup>254</sup> Unemployment benefits were extended from 26 weeks to 39 weeks, an additional \$600 of federal money was added to regular weekly unemployment payments, and eligibility was expanded to include self-employed and part-time workers, as well as others who would not have qualified under traditional unemployment compensation rules; Coronavirus Aid, Relief, and Economic Security Act §§ 2102, 2104, 15 U.S.C §§ 9021, 9023.

<sup>255</sup> Payments totaled \$1,200 per adult plus \$500 per dependent child to households earning up to \$75,000.

<sup>256</sup> 24 U.S.C. § 6428.

<sup>257</sup> Money was extended to businesses both big and small, with the goal of keeping them afloat and incentivizing them to keep employees on their payrolls. *See* 15 U.S.C. § 636.

<sup>258</sup> *Id.* § 9056.

<sup>259</sup> 42 U.S.C. § 254(b)(r).

<sup>260</sup> *Id.* § 801.

<sup>261</sup> Consolidated Appropriations Act of 2023, Pub. L. No. 117-328 (2022) (amending the American Rescue Plan, Pub. L. No. 117-2 (2021)).

<sup>262</sup> BEN HARRINGTON, CONG. RSCH. SERV., RL R46510, PRWORA’S RESTRICTIONS ON NONCITIZEN ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS: LEGAL ISSUES (2020).

<sup>263</sup> *Mixed-Status Families Ineligible for CARES Act Federal Pandemic Stimulus Checks*, MIGRATION POL’Y INST. (May 2020), <https://www.migrationpolicy.org/content/mixed-status-families-ineligible-pandemic-stimulus-checks> [<https://perma.cc/74XP-HZ92>].

<sup>264</sup> *Id.*

<sup>265</sup> AM. IMMIGR. COUNCIL, THE FACTS ABOUT THE INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER (ITIN) 1 (Mar. 2022).

<sup>266</sup> MIGRATION POL’Y INST., *supra* note 262.

<sup>267</sup> *Id.*

<sup>267</sup> *Millions of Immigrants are Being Left Out of Coronavirus Relief*, AM. FRIENDS SERV. COMM. (July 21, 2020), <https://afsc.org/news/millions-immigrants-are-being-left-out-coronavirus-relief> [<https://perma.cc/Q85W-C882>].

COVID-19 vaccines first became available, there were even debates about whether proof of lawful immigration status should be required to receive the vaccine.<sup>268</sup> When asked if undocumented workers at a local meatpacking facility would be vaccinated as part of the state's vaccination efforts, Governor Pete Ricketts of Nebraska responded, "You're supposed to be a legal resident of the country to be able to be working in those plants, so I do not expect that illegal immigrants will be part of the vaccine with that program."<sup>269</sup> After outcry ensued, Ricketts's communications director clarified that undocumented immigrants would receive vaccines, but that the state would prioritize citizens and legal residents.<sup>270</sup>

The policy reasons offered for these COVID-era restrictions are familiar in debates about immigrant access to public benefits generally. Some policymakers wanted to prioritize scarce resources for American citizens or those with lawful, more long-term connections to the United States.<sup>271</sup> Other policymakers took a more negative approach, not wanting to "reward" those who violated United States immigration laws with public benefits or to be a "pull factor" to encourage immigration violations by others.<sup>272</sup> But our results show that immigrants experienced an extraordinarily harsh labor market during COVID-19, harsh even as compared with past economic crises. Thus, governments at the federal and sub-federal levels would be well-advised to extend benefits, without regard for immigration status, when economic conditions mimic those experienced during the pandemic.

To overcome the expected political opposition, the benefits can be temporary in nature or focused on medical care, which may be more politically viable.<sup>273</sup> Indeed, some sub-federal governments did just that during COVID-19. For example, New York created a COVID unemployment compensation fund for workers not eligible for regular unemployment benefits and specifically included undocumented immigrants.<sup>274</sup> During the COVID-recovery period, Los Angeles County provided all its residents with a twelve-month grace period to repay their rent, regardless of immigration status.<sup>275</sup> And the mayor of Chicago signed

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<sup>268</sup> Akilah Johnson, *For Immigrants, IDs Prove to be a Barrier to a Dose of Protection*, WASH. POST (Apr. 10, 2021), <https://www.washingtonpost.com/health/2021/04/10/covid-vaccine-immigrants-id/> [<https://perma.cc/84XQ-J3FZ>].

<sup>269</sup> Teo Armus, *Nebraska Governor Says Citizens, Legal Residents Will Get Vaccine Priority over Undocumented Immigrants*, WASH. POST (Jan. 6, 2021, 7:03 AM), <https://www.washingtonpost.com/nation/2021/01/06/nebraska-covid-vaccine-immigrants-meatpacking/> [<https://perma.cc/US9X-MTU5>]; Maryam Jameel & Caroline Chen, *How Inequity Gets Built Into America's Vaccination System*, MINNESOTA REFORMER (Mar. 05, 2021), <https://minnesotareformer.com/2021/03/05/how-inequity-gets-built-into-americas-vaccination-system/> [<https://perma.cc/3SA8-6SDH>].

<sup>270</sup> Armus, *supra* note 269.

<sup>271</sup> *Id.*

<sup>272</sup> Lawrence O. Gostin, *Is Affording Undocumented Immigrants Health Coverage a Radical Proposal?*, 322 JAMA FORUM 1438, 1438 (2019).

<sup>273</sup> In a Pew Research Center survey, two-thirds (68%) of U.S. adults believed that the federal government has a responsibility to provide medical care to undocumented immigrants with COVID-related illnesses, but only 37% said that the federal government should offer economic help to undocumented immigrants who lost their jobs because of COVID. Jens Manuel Krogstad & Mark Hugo Lopez, *Americans Favor Medical Care but not Economic Aid for Undocumented Immigrants Affected by COVID-19*, PEW RSCH. CTR. (May 20, 2020), <https://www.pewresearch.org/short-reads/2020/05/20/americans-favor-medical-care-but-not-economic-aid-for-undocumented-immigrants-affected-by-covid-19/> [<https://perma.cc/3E9L-S99B>].

<sup>274</sup> N.Y. COMP. CODES R. & REGS. tit. 12, § 704 (2021).

<sup>275</sup> L.A. COUNTY, CAL., CODE OF ORDINANCES ch. 8.52 (2019).

an executive order to ensure that all residents, including immigrants and refugees, received the city's COVID benefits.<sup>276</sup>

Finally, limits on immigrant resilience have important implications for the larger economy as well. As many economists have concluded, the well-being of immigrant workers is inextricably linked with the well-being of native-born workers.<sup>277</sup> There is compelling evidence that immigrant workers, because of economic complementarities, create jobs and increase wages for native-born workers.<sup>278</sup> There are several occupations that are central to many industries, are expected to grow significantly, and employ a high proportion of immigrant workers. These include motor vehicle operators, food preparation workers, material moving workers, and building cleaning and pest control workers.<sup>279</sup> These immigrant-heavy occupations require minimal formal education but are vital to a number of industries. There is also pairwise complementarity between immigrant and native workers. For example, there is a strong complementary relationship between office/administrative support workers and financial specialists, or between cooks/food preparation workers and food and beverage serving workers<sup>280</sup>. Immigrant workers also play a crucial role in supporting the healthcare system, where they make up 25% of home health and personal care workers.<sup>281</sup>

When immigrant workers are able to thrive in these occupations, native workers benefit. However, if the labor resilience of immigrants is threatened, the complementarities that create labor market benefits for native-born workers may also be vulnerable. During the COVID-19 pandemic, the negative employment outcomes for immigrant workers may also have important implications for native-born workers and the larger economy

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<sup>276</sup> Mayor Lori E. Lightfoot, Exec. Order No. 2020-2 (Apr. 8, 2020).

<sup>277</sup> Peri, *supra* note 38, at 18; Basso & Peri, *supra* note 38; Sanders, *supra* note 38.

<sup>278</sup> *Id.*

<sup>279</sup> See Dany Bahar, Carlos Daboin Contreras & Greg Wright, *The Immigrant Workforce Supports Millions of US Jobs*, BROOKINGS (Oct. 17, 2022), <https://www.brookings.edu/articles/the-immigrant-workforce-supports-millions-of-u-s-jobs/> [<https://perma.cc/FNN8-2SF4>].

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*