Caring for Those Who Care for Us: A Call for Greater Legislative Protections for Foreign-Educated Nurses

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Odelius, Rebecca (2023) "Caring for Those Who Care for Us: A Call for Greater Legislative Protections for Foreign-Educated Nurses," University of Baltimore Law Review. Vol. 52: Iss. 3, Article 5. Available at: https://scholarworks.law.ubalt.edu/ublr/vol52/iss3/5
CARING FOR THOSE WHO CARE FOR US: A CALL FOR GREATER LEGISLATIVE PROTECTIONS FOR FOREIGN-EDUCATED NURSES

Rebecca Odelius*

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I. INTRODUCTION

Eden Selispara’s journey to the United States began in the Philippines in 2013, when she first signed a contract with Management Health Systems, a nationally-known health staffing agency better known as MedPro. Selispara, a foreign-educated nurse (FEN), arrived in South Florida on January 7, 2017, eager to begin work. Instead, she found herself unemployed, forced to live in a three-bedroom apartment with eight other workers, and waiting for two months for the job she was contractually promised.

According to Selispara, “[W]hen she confronted MedPro staff about her concerns regarding her lack of employment, MedPro employees threatened to report her to United States immigration officials for fraud and threatened ‘financial consequences’ if she didn’t continue to wait for an assignment, without being paid wages.” In March of 2017, when Selispara informed MedPro she was moving from Florida to Texas to look for other employment, MedPro filed suit in Broward County Circuit Court, claiming more than $150,000 for damages and breach of contract. Selispara eventually filed a countersuit under state and federal law that resulted in a settlement agreement on August 9, 2018.

While neither side ultimately admitted any misconduct, the settlement agreement did require MedPro to pay its contractually agreed upon wage to all

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4. Id.

5. See Hurtibise, supra note 2; Employment Practices, supra note 1.

recruited FENs, even while they waited for employment. MedPro “also agreed to limit to $40,000 the amount of money it will seek from recruits for breaching employment contracts.” Finally, MedPro promised to “modify its hiring practices so that nurses and other health care professionals better understand the terms of any contracts they are presented with, that nurses are paid for time spent in mandatory training and orientation, and that lawsuits or reporting to immigration are not used as threats.”

Selispara is just one of thousands of FENs recruited to the United States each year to provide relief for the growing shortage of nurses occurring across the nation. Taking into account the COVID-19 crisis, as well as an aging population, FENs are needed in the United States now more than ever. Unfortunately, like Selispara, many FENs are still left vulnerable to egregious labor trafficking and stringent contract terms, like exorbitant breach fees. FENs enjoy limited protections from the personal and legal perils of labor trafficking and contractual breach fee litigation. However, despite

7. Id.
8. Id.
13. Id. at 430.
14. See Trafficking Victims Protection Reauthorization Act (TVRA), 22 U.S.C. § 7102 (11)(B) (defining “labor trafficking” as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery”). See generally Heather McAdams, Comment, Liquidated Damages or Human Trafficking? How a Recent Eastern District of New York Decision Could Impact the Nationwide Nursing Shortage, 169 U. PA. L. REV. ONLINE 1, 1 (2020) (discussing the possibility of contract provisions rising to the level of labor trafficking).
16. See discussion infra Section II.B.
the few favorable court decisions and recent legislative provisions, much more needs to be done.

This comment lays out the already existing protections for FENs, the shortcomings of those protections, and what needs to be done for FENs to enjoy the same occupational protections as nurses born and educated in the United States. Part II gives a brief history of the recruitment of FENs to the United States and discusses the legislative and current case law protections provided for FENs. Part III articulates why FENs are needed in the United States, analyzes the shortcomings of the current protections provided for FENs, and argues why greater protections are still needed. Lastly, Part IV suggests proposed legislative solutions to the ongoing issues and reiterates the importance of more ethical recruitment practices of FENs.

II. BACKGROUND

A. History of Recruitment of FENs to the United States

For more than fifty years, the United States has heavily relied on FENs to fill in the gaps caused by a national nurse shortage. Most FENs recruited to the United States originate from the Philippines, the United Kingdom, India, Nigeria, and Ireland. However, roughly seventy-three percent of FENs in the United States are from the Philippines, making up nearly four percent of the entire nursing population. See id. at 582. See also Julian Glover, ‘None of Us Signed Up to Die’: Filipino American Nurses Disproportionately Impacted by COVID-19, ABC 7 CHIC. (May 10, 2021), https://abc7chicago.com/filipino-americans-nurses-covid-deaths-nurse-sacrifices-registered-dead-from/10557478/ [https://perma.cc/939F-373M] (exploring historical “harmful colonial relationships economically, socially, and politically” between the United States and the Philippines); Paulina Cachero, How Filipino Nurses Propped Up America’s Medical System, TIME (May 30, 2021), https://time.com/6051754/history-filipino-nurses-us/ [https://perma.cc/RZ8X-LTPM] (“[H]ow migrant Filipino health care workers came to play such an integral role in the U.S. medical system is a complicated story”).

17. See discussion infra Section II.B.
18. See discussion infra Section II.B.
19. See discussion infra Section III.C.
20. See discussion infra Part IV.
21. See discussion infra Part II.
22. See discussion infra Part III.
23. See discussion infra Part IV.
24. Stokes & Iskander, supra note 11, at 429.
25. Nichols et al., supra note 10, at 582.
Traditionally, healthcare organizations utilize three common models to recruit FENs to the United States: (1) the direct model, (2) the placement model, and (3) the staffing model (also called the lease model). The direct model is used by healthcare organizations that recruit FENs without the use of third-party agencies. The FENs contract directly with the organizations or hospitals. The average cost to bring one FEN to the United States using the direct model is roughly $5,000 to $12,000.

In the placement model, healthcare organizations use vendors to recruit FENs. Vendors and healthcare organizations negotiate fees that range from $15,000 to $20,000 for each FEN. The placement model is the most commonly utilized model in recruitment and is preferred by most FENs and health care organizations. FENs “feel as though they are treated more like American nurses in this model, and the CNOs [chief nursing officers] can invest in training and integration from the outset.”

The third, and by far most lucrative, recruitment model is the staffing model—sometimes referred to as the lease model. In these instances, a staffing agency (such as MedPro) undertakes the responsibilities of recruiting nursing personnel, navigates the immigration process, and charges the health care organizations an hourly rate anywhere from $60 to $80 per FEN. In other words, the
FENs contract with the staffing agencies and are then leased out to health care organizations. The FENs are paid an hourly wage between $25 and $35, but the staffing agencies ultimately profit an estimated amount between $50,000 and $55,000 per FEN. Because of its high profit margin, the staffing model is quickly becoming the preferred mode for agencies that recruit FENs to the United States. Regardless of the business model used to recruit them, each FEN must navigate a rigorous certification process to work in the United States. FENs first must have graduated from a comparable nursing program in their country of origin. FENs must then successfully complete a nursing exam and an English proficiency exam. FENs are required to fill out a self-disclosure indicating nursing licensure in their countries of origin and all misdemeanors, felonies, and plea agreements. Finally, FENs undergo credential and fraud prevention evaluations to ensure their paperwork is accurate and truthful. These uniform licensure requirements are used “in order to assure that all nurses, whether educated domestically or abroad, are safe and qualified to practice.”

B. Current Protections Afforded FENs Through Legislation and Case Law

1. Labor Trafficking Protections under the Trafficking Victims Protection Act of 2000 (TVPA)

In 2000, the United States Congress passed the first piece of legislation that directly addressed protections for victims of human trafficking. The TVPA included not only crimes of sex trafficking

38. See generally NAT’L COUNS. OF STATE BDS. OF NURSING, INC., supra note 28, at 29. See also Pittman et al., supra note 28, at 43.
39. See NAT’L COUNS. OF STATE BDS. OF NURSING, INC., supra note 28, at 29; Pittman et al., supra note 28, at 43.
40. See NAT’L COUNS. OF STATE BDS. OF NURSING, INC., supra note 28, at 30; Pittman et al., supra note 28, at 43.
41. See generally NAT’L COUNS. OF STATE BDS. OF NURSING, INC., supra note 28, at 13.
42. See id. at 3.
43. See id. at 8, 10.
44. See id. at 9, 13.
45. See id. at 17.
46. Id. at 1.
but labor trafficking, as well.\textsuperscript{48} The purposes of the TVPA were to “combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”\textsuperscript{49} Prior to 2000, “human trafficking was not treated as a distinct form of crime,”\textsuperscript{50} but after a global effort to directly address the international crisis of human trafficking, Congress enacted the TVPA.\textsuperscript{51}

Several reauthorizations broadened the TVPA’s scope since its inception more than two decades ago.\textsuperscript{52} In 2003, Congress “[e]stablished a federal and civil authority for victims to sue traffickers, labeled human trafficking as a crime under the Racketeering Influenced and Corrupt Organizations (RICO) statute, and protected victims and their families from deportation.”\textsuperscript{53} In 2005, Congress “expanded efforts to combat trafficking internationally including a pilot program abroad, and strengthened regulation over government contracts.”\textsuperscript{54} The additional protections initiated in 2008, “[r]equired the U.S. Government to provide information about workers’ rights for those applying for work and education visas, installed new systems to gather human trafficking data, [and] expanded protections from the T visa . . . .”\textsuperscript{55} Other provisions passed in 2013 centered on eliminating child exploitation and increasing communication between local and state law enforcement to hold traffickers accountable in courts of law.\textsuperscript{56} The most recent reauthorization of the TVPA increased funds for services provided to victims of human trafficking, raised standards of training for front-


\textsuperscript{49} Id. § 7101(a).

\textsuperscript{50} Jun, supra note 47.

\textsuperscript{51} Id.

\textsuperscript{52} Id.; see also Trafficking Victims Reauthorization Act (TVRA), 22 U.S.C. §§ 7101–14 (codifying protections for trafficking victims).


\textsuperscript{56} Jun, supra note 47. Trafficking Victims Protection Reauthorization Act of 2013, 22 U.S.C. §§ 7101 (Promoting Effective State Enforcement), 7103(d)(7)(P)–(R), 7103a(d), 7104(j), 7112(a)(3).
line workers in industries where trafficking is more pervasive, and created requirements for victim-centered protocols for the U.S. Department of Homeland Security and the U.S. Department of Justice.57

2. Labor Trafficking and Contract Breach Fee Protections under Paguirigan v. Prompt Nursing Employment Agency LLC

In 2017, a Filipino FEN filed a landmark action in the U.S. District Court in the Eastern District of New York against several recruiting agencies and employers for (1) breach of contract and (2) violations of the TVPA.58 In 2019, Judge Nina Gershon granted summary judgment for the plaintiffs, finding certain defendants in violation of the TVPA and liable for breach of contract.59

Plaintiff Rose Ann Paguirigan brought the suit “on behalf of herself and those similarly situated for violations of the Trafficking Victims Protection Act (‘TVPA’), 18 U.S.C. §§ 1589 et seq.,”60 claiming that defendant agencies and employers used coercion to induce forced labor and threats of financial harm through $25,000 in contract breach fees and $250,000 in tort fees.61 Paguirigan also brought suit for breach of contract for defendants’ failure to pay the prevailing wage outlined in her contract.62

In the detailed opinion granting summary judgment to Paguirigan and all class members, Judge Gershon (1) granted summary judgment on the breach of contract claims stating that the defendants failed to pay the prevailing wage set out in the employment contracts,63 (2) found the $25,000 contract breach fees claimed by defendant as liquidated damages to be an unenforceable penalty because the defendant failed to show actual damages,64 and (3) determined that certain defendants violated multiple provisions of the TVPA because they knowingly coerced plaintiffs to work with the threat of contract

60. Paguirigan, 286 F. Supp. 3d at 434.
61. Id. at 435–36, 438–39.
62. Id. at 440.
64. See id. at *7–12.
breach fees, threatened legal action causing serious harm to plaintiffs, and conspired to violate provisions of the TVPA.\textsuperscript{65}

In a later opinion, Judge Gershon awarded plaintiffs $1,559,099.79 in compensatory damages,\textsuperscript{66} though she clarified that “[c]lass members may recover compensatory damages for breach of contract or violations of the TVPA, but not both.”\textsuperscript{67} Plaintiffs also sought punitive damages in the amount of $1,559,099.79.\textsuperscript{68} However, Judge Gershon refused to grant punitive damages on summary judgment because the defendants were entitled to a jury trial.\textsuperscript{69}

III. LEGAL ANALYSIS

A. Why We Need FENs in the United States

Due to the COVID-19 pandemic,\textsuperscript{70} the aging American population,\textsuperscript{71} and the ongoing shortage of nurses in the United States,\textsuperscript{72} FENs are needed now more than ever. Having FENs as part of the American workforce also “respects the autonomy of nurses, increases cultural diversity, and leads to improved patient satisfaction and health outcomes,”\textsuperscript{73} as well as helps meet regulatory requirements for nurse staffing across the states.\textsuperscript{74}

1. COVID-19

The onset of COVID-19 increased the need for FENs in the United States.\textsuperscript{75} During the height of the pandemic, “immigrant nurses [played] a critical role during the COVID-19 pandemic in hospitals

\textsuperscript{65} See id. at *15–20.
\textsuperscript{67} Id.
\textsuperscript{68} Id.
\textsuperscript{69} Id.
\textsuperscript{70} See Stokes & Iskander, supra note 11, at 430; Jude Laoagan Tayaben & Ahtisham Younas, Call to Action for Advocacy of Immigrant Nurses During COVID-19 Pandemic, 76 J. ADV. NURSING 2220, 2220 (2020); Alessandro Stievano et al., Editorial, Ethical Challenges and Nursing Recruitment During COVID-19, 28 NURSING ETHICS 6, 6 (2021).
\textsuperscript{71} See Stokes & Iskander, supra note 11, at 429.
\textsuperscript{72} Franklin Shaffer & Mukul Bakhshi, Advocating to Protect Our Nurses: Addressing Unethical Recruitment of Foreign-Educated Nurses, 42 NURSING ADMIN. Q. 107, 109 (2018).
\textsuperscript{73} Stokes & Iskander, supra note 11, at 429.
\textsuperscript{74} Id. at 430.
\textsuperscript{75} See Tayaben & Younas, supra note 70, at 1.
and home care settings and mitigate[ed] the global shortage of nurses in countries with a higher burden of COVID-19,”76 including the United States.77 COVID-19 has had harmful effects across the globe,78 and advanced countries, like the United States, “will . . . continue relying, in significant measure, on international inflow of nurses as they did pre-COVID-19.”79 Currently, “U.S. hospitals are struggling with a shortage of nurses that worsened as pandemic burnout led many to retire or leave their jobs.”80 An August 2021 study showed a shortage of 40,000 nurses in the state of California alone.81 Since the onset of COVID-19, “the demand for international nurses has risen between 300 percent and 400 percent.”82 This could be in part because the “surge in the omicron variant in the United States . . . made the strained staffing situation even more apparent in hospitals as health care workers, like so many others, [were] sickened by the highly contagious virus and sidelined from work at a time when more patients [were] coming in.”83 Overall, “immigrant nurses . . . are an essential part of the workforce and play a crucial role in easing the work burden of the healthcare force in high-income countries.”84

2. Aging Population

The inevitability of a global aging population also increases the need for FENs.85 In the United States specifically, “[i]t is estimated that there will be 73 percent more individuals . . . over the age of 65 by 2029, which will increase the need for healthcare professionals providing health services.”86 Not only is the general American population aging, but the shortage of qualified nurses has itself been “exacerbated by a wave of nurses who are aging out of the profession.”87 FENs can fill those gaps by both replacing retiring nurses and taking care of the quickly growing elderly population.

76. See id.
77. See Stokes & Iskander, supra note 11, at 430.
78. See id.
79. Stievano et al., supra note 70, at 6.
81. Id.
82. Id.
83. Id.
84. Tayaben & Younas, supra note 70, at 2.
85. See Stokes & Iskander, supra note 11, at 429.
86. Id. at 430.
87. Id.
Therefore, “[f]oreign recruitment is considered an immediate strategy to . . . satisfy the needs of an aging population.”

3. Ongoing Shortage of Nurses

Even before the existence of COVID-19 and the increase in a global aging population, health organizations have historically depended on FENs to supplement the chronic shortage of nurses across the United States. Current, the United States is ill-equipped to properly educate the number of nurses needed to fully staff healthcare facilities across the nation. However, even if the United States were to expand its educational access to try and meet the demands of the healthcare profession, it is doubtful that the expanse would cover the growing needs of the nursing profession. In fact, “[a]ggressive national and global campaigns have addressed the nursing shortage, but it is projected that by 2025, the United States alone will require half a million more nurses, and by 2030, there will be a shortage of 7.6 million more nurses globally to supply the healthcare demand.” Therefore, “[g]iven the global nursing shortage and increase in healthcare demands, [FEN] migration is expected to be inevitable . . . .”

4. Other Benefits of FENs in the United States

Recruiting FENs provides other benefits, as well. Without the migration of FENs to the United States, there would be severe staffing burdens, which could lead to lower patient satisfaction and less favorable health outcomes. The addition of FENs in the

88. Id.
89. See id. (“This global and chronic shortage has led to active recruitment of nurses from low- and middle-income countries to fill the shortage in higher income countries.”).
90. See id. at 429 (“[O]ver 80,000 qualified applicants to nursing programmes were turned away in 2019 due to an insufficient number of faculty, clinical sites, and classroom space.”).
91. See id.
92. See id. at 430.
93. See id.
94. See id. at 431.
95. See id. at 429. But see Hayley D. Germack et al., U.S. Hospital Employment of Foreign-Educated Nurses and Patient Experience: A Cross-Sectional Study, 8 J. NURSING REGUL. 26, 26–35 (2017) (finding that hospitals employing high number of FENs directly correlated with more negative patient-reported care experience).
workforce “promotes cultural diversity”96 and “provid[es] culturally
sensitive care.”97 It can also be argued that recruiting FENs
can be immensely valuable to all stakeholders. The
individual FEN benefits by practicing his or her profession
at a higher wage. The employer and the patient benefit by
having sufficient, well-trained staff. The sending country’s
economy may benefit from remittances the FEN sends to
family members back home. A staffing agency can make a
profit and support the transition of other nurses to the
United States.98

Lastly, “[f]oreign recruitment is considered an immediate strategy
to meet the regulatory requirements for patient staffing” both
nationally and within individual states.99 Sixteen states “currently
address nurse staffing in hospitals through either law or
regulations.”100 Existing federal regulations only apply to Medicaid-
certified hospitals,101 but if pending federal legislation passes,102 the
need for nurses will only increase to meet more stringent nurse
staffing requirements.

Because of the numerous reasons FENs are necessary to the
success of the healthcare profession in the United States,103 more
legislative protections are needed to care for the FENs that care for so
many Americans.

96. Stokes & Iskander, supra note 11, at 433.
97. Tayaben & Younas, supra note 70, at 2220.
98. Shaffer & Bakhshi, supra note 72, at 109.
99. Stokes & Iskander, supra note 11, at 430. See also Am. Nurses Ass’n, Nurse Staffing:
Nurse Staffing Advocacy, NURSING WORLD, https://www.nursingworld.org/practice-
policy/nurse-staffing/nurse-staffing-advocacy/ [https://perma.cc/9TV5-7624] (last
visited Apr. 27, 2023).
100. Am. Nurses Ass’n, supra note 99 (State staffing laws tend to fall into one of three
general approaches which include (1) a requirement for hospitals to have nurse driven
“staffing committees,” (2) legislators to “mandate[] [specific] nurse to patient
ratios, . . . in legislation or regulation,” or (3) requiring facilities to
disclose[] . . . staffing levels, to the public and/or to a regulatory bod[y].”).
101. See id.; 42 C.F.R. § 482.23(b) (2011) (requiring Medicare-certified hospitals to “have
adequate numbers of licensed registered nurses, licensed practical (vocational) nurses,
and other personnel to provide nursing care to all patients as needed.”).
102. See Nurse Staffing Standards for Hospital Patient Safety and Quality Care Act of
2021, S.1567, 117th Cong. § 3401 (2021) (including a “minimum direct care
registered nurse staffing requirement” and a “minimum direct care registered nurse-
to-patient ratios” requirement).
103. See discussion supra Section III.A.
B. Issues Faced by FENs

FENs often face many serious issues that nurses educated in the United States do not. These issues include (1) coercion through exorbitant contract breach fees, which often leads to labor trafficking and lawsuits, (2) lower salaries, (3) discrimination, and (4) poor placements.

1. Coercion Through Exorbitant Contract Breach Fees Which Often Lead to Labor Trafficking and Lawsuits

The most severe issues facing FENs in the United States result from unethical recruitment practices by recruitment agencies. "Due to the tremendous benefit destination countries may obtain from migrant nurses, aggressive and often unethical recruitment programmes are common," resulting in an unfair "power imbalance" and "undue influence in hiring." Many contracts created by recruitment agencies have unfair terms, such as high contract breach fees, lack of payment until a FEN actually begins work, the freedom of recruitment agencies to relocate FENs without notice, and prohibitions on FENs bringing lawsuits against recruitment agencies. If a FEN breaches a contract because of a better job opportunity, recruitment agencies will swiftly sue for contract breach fees and damages. With some contract breach fees reaching as high as $50,000, "[m]ost nurses who send a large..."
portion of their salaries home to families in their country of origin are unable to pay the full penalty in a lump sum.”

Oftentimes, recruitment agencies need only to threaten a lawsuit to keep FENs in unhealthy work environments. These situations commonly rise to the level of coercion, which is a clear violation of the TVPA. Many FENs who come to work in the United States “lack sufficient knowledge of the U.S. legal system and access to lawyers to represent them . . . .” Even when FENs are able to access legal assistance, recruitment agencies are often quick to settle to avoid any public admittance of wrongdoing, giving them freedom to continue with their unethical recruitment practices.

2. Lower Salaries

Many FENs are paid lower wages than their domestically educated coworkers. Despite the fact that “[i]n most cases, employers’ responsibilities under federal visa requirements include equal payment of wages to FENs and similarly employed nurses,” the wage disparity between FENs and domestic healthcare workers can be “as much as $10 less per hour.” In other cases, “nurses report that, despite promises of an increase, their pay remains the same for a period after obtaining licensure.” One Filipino nurse in particular

115. Id. In some cases, “nurses reported that their employers were unwilling to pro-rate the fee and their employers demanded the nurses pay the penalty in a lump sum at the time of resignation instead of permitting them to pay in installments.” Id.
116. See PITTMAN ET AL., supra note 114, at 26 (listing other threats such as (1) refusing to give nurses a copy of their contracts; (2) charging fees for recruitment services (even though health care facilities pay agencies to place nurses); (3) selling nurses’ contracts to third parties who force nurses to work in new facilities that may be located in other cities; (4) forcing nurses, who believe they have no choice, to sign new contracts; (5) withholding green cards; and (6) threatening nurses with deportation if they break their contracts).
117. Stokes & Iskander, supra note 11, at 435 (“Coercion involves threatening to make a person worse off than they would be if they do not conform to your preferences . . . . It usually involves an individual agreeing to carry out an action that they do not want to do or prevents an individual from doing something they do want to do.”)
118. See supra Section II.B.1.
120. See supra Part I (describing a settlement agreement); Pittman & Pulver, supra note 15, at 2.
122. Stokes & Iskander, supra note 11, at 434.
123. See PITTMAN ET AL., supra note 114, at 23.
124. Id.
125. Id. at 26.
“had been promoted to supervisor but was still paid less than the U.S. nurses he supervised.” There is even evidence of wage disparity between FENs from different source countries. No matter their country of origin, FENs should be paid the same amount as domestically educated nurses for the same skills and services they provide to patients across the United States.

3. Discrimination

FENs also “face racism and discrimination in healthcare settings[] and experience stigmatization and marginalization from other nurses, patients, and their families.” Once on the job, FENs are more vulnerable to discrimination. In a 2002 survey, many FENs reported the comforts of job satisfaction and security, but more recent data shows that “[f]ifty percent of migrant nurses report a negative experience from recruitment and describe unfair work assignments, schedules, and denial of promotion.” In addition, “[n]urses seeking employment in destination countries report false promises and working conditions that do not match those listed in the recruitment contract.”

FENs report “more restricted health benefits than direct-hire employees and, in some cases, no health benefits for the first year of employment.” Some staffing agencies also fail to provide vacation or sick leave to their recruited FENs. Even if “[m]ost of the blatant discrimination practices described by FENs . . . could be considered illegal under U.S. statutory law (i.e., the Fair Labor Standards Act),” greater legislative protections need to directly address these violations and prevent them from occurring in the first place.

126. Id. at 23.
127. Id. at 26 (“At least one agency bases pay differentials on nationality and paid Koreans more than Filipinos.”).
128. Tayaben & Younas, supra note 70, at 2220.
129. Stokes & Iskander, supra note 11, at 433–34.
130. Nichols et al., supra note 10, at 584 (discussing the Commission on Graduates of Foreign Nursing Schools (CGFNS) International’s 2002 survey of 789 FENs, where a seventy-six-question phone interview showed eighty-one percent of respondents reported “feeling moderately or extremely satisfied with their jobs as registered nurses, with most reporting that their nursing experience in the United States had met their expectations.”).
131. Stokes & Iskander, supra note 11, at 434.
132. Id. at 435.
133. Pittman et al., supra note 114, at 23.
134. Id.
135. Id.
4. Poor Placements

Many FENs who hold master’s degrees are still hired for staff nursing positions, a position for which they are overqualified, or “they are paid minimal wages and often are restricted to work only below or in entry-level jobs.” Some FENs “felt that they received the least desirable assignments because they were foreign-trained and often employed by staffing agencies rather than by the facility itself.” In other cases, “jobs that [FENs] are asked to perform often are not the same jobs they agreed to in contract.”

FENs deserve the same protections and workplace privileges as those domestically educated working in the same field with the same level of knowledge and expertise. Because of the vital role FENs hold in the healthcare system across the United States, “equal opportunities should be granted to nurses from source countries.”

C. Limitations on Current Protections

Despite the protections provided for FENs under the TVPA and its reauthorizations, as well as the landmark Paguirigan case, the lack of full legislative protections still leaves many FENs vulnerable to labor trafficking and stringent contract terms, like exorbitant breach fees.

Although the three main factors of the TVPA are protection, prosecution, and prevention, its greatest weakness lies in its focus on prevention. Recent civil litigation data shows an all-time high for court cases brought under the TVPA. Though this data may imply

136. Nichols et al., supra note 10, at 568.
137. Tayaben & Younas, supra note 70, at 2220.
138. PITTMAN ET AL., supra note 114, at 23.
139. Id. at 26.
140. See discussion supra Section III.A.
141. Stokes & Iskander, supra note 11, at 434.
142. See supra Section II.B.1.
143. See supra Section II.B.2.
144. Pittman & Pulver, supra note 15, at 794. See also discussion supra Section III.B.
that more defendants are being held accountable for TVPA violations, recent court cases have put further limitations on who can sue,\textsuperscript{147} and who can be sued,\textsuperscript{148} under the TVPA. Stronger legislative protections are needed to prevent these violations in the first place, thereby obviating the need for such suits.

Over the past fifteen years, several voluntary codes of ethics have been developed both in the United States and globally to address the unethical recruiting practices of foreign-educated healthcare workers.\textsuperscript{149} Though these ethics codes were developed largely because of “the valid contribution of international recruitment,”\textsuperscript{150} “[a] 2020 study conducted by [the Commission on Graduates of Foreign Nursing Schools (CGFNS)] and the Alliance for Ethical International Recruitment Practices found that progress is indeed being made in preventing predatory recruitment, but that many process concerns remain, including high contract breach fees and inadequate orientation.”\textsuperscript{151} On their website, the Alliance for Ethical International Recruitment provides a list of Certified Ethical Recruiters (CERs) as a resource for employers and foreign-educated health professionals looking to work with reputable recruitment organizations. CERs have established that they are in compliance with the standards set forth in the Code, have agreed to be monitored by the Alliance, and agreed to mediation and remediation processes as necessary.\textsuperscript{152}

While this seems good in theory, one of the recruitment agencies listed as a CER is Health Carousel,\textsuperscript{153} which is a recruitment agency that, along with MedPro, is “responsible for at least 120 lawsuits in

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\textsuperscript{147} See generally N.Y. State Nurses Ass’n v. Albany Med. Ctr., 473 F. Supp. 3d 63, 72 (N.D.N.Y. 2020) (holding that a nurse’s union did not have standing to sue under the TVPA).


\textsuperscript{149} See generally Shaffer & Bakhshi, supra note 72, at 111–13; Stevano et al., supra note 70, at 7; Stokes & Iskander, supra note 11, at 430, 432, 436–37.

\textsuperscript{150} Stevano et al., supra note 70, at 7.

\textsuperscript{151} Id.


\textsuperscript{153} Id.
the past 5 years” in Ohio and Florida, respectively. MedPro is missing from the list of CERs, but if MedPro and Health Carousel are suing FENs for outrageous contract breach fees and not being held accountable, then what difference do these voluntary ethical codes really make when it comes to protecting FENs? The answer is obvious: the difference is not enough. More legislative protections are still clearly needed.

IV. CONCLUSION

Without the presence a vast number of FENs, the United States would inevitably suffer from a national healthcare crisis. Greater prevention legislation is needed to eliminate unethical recruitment practices and thus avoid FENs being forced to file civil lawsuits as their primary means of remedial solutions to the myriad issues they face. In the past, advocates for FENs have called for the elimination of breach fees, reasonable contract terms, guaranteed job placement, and an FEN’s ability to sue the agency. If the goal of United States legislation is really about protecting FENs and other foreign-educated healthcare workers, then the contracts signed by FENs should mirror contracts created for domestic healthcare workers. FENs need to have access to the same rights and privileges afforded domestic educated nurses. The number of FENs in the United States is only expected to increase, and “providing unequal opportunities for nurses prevents nurses from attaining the skills learned by nurses educated in destination countries.” FENs have cared for Americans for more than fifty years. It is time America starts caring for them.

155. See generally View Certified Recruiters, supra note 152.
156. See discussion supra Sections III.B–C.
158. See discussion supra Section II.B.1.
159. PITTMAN ET AL., supra note 114, at 23 (“e.g., freedom of association, freedom from discrimination, the right to a safe work environment, equal pay for work of equal value, easy access to grievance procedures”).
160. Stokes & Iskander, supra note 11, at 430.
161. Id. at 435.
162. Id. at 429.