ISANG BAGSAK! OVERSEAS FILIPINO NURSES DESERVE A SPECIAL PATH TO CITIZENSHIP

Lauren Espina[*]

I. INTRODUCTION 358
II. THE HISTORIC EXPLOITATION OF FILIPINOS 359
A. Nursing in the American Colonial Period 360
B. The Group-Centric Values and Work Ethic of Filipino Nurses 361
C. The Erasure of Filipinos in American History 362
D. Compliance and Exploitation by The Philippines Government 366
E. Modern U.S. Exploitation of Filipino Nurses 367
III. THE HAZARDOUS WORKING CONDITIONS OF FILIPINO NURSES DURING THE COVID-19 ERA 368
A. The Immigration Process 369
B. Human Trafficking and Abusive Contracts 371
IV. A SPECIAL PATH TO CITIZENSHIP FOR FILIPINO NURSES 373
A. Naturalization under 8 U.S.C. §1427(f): Persons Making Extraordinary Contributions to National Security 374
B. COVID-Time Service of Filipino Nurses: A New Path, Parallel to Naturalization Through Military Service 377
V. CONCLUSION 380

[*] Lauren Espina is an advocate, activist, writer, and third-year Juris Doctor Candidate at Southwestern Law School. Born and raised in Los Angeles, she is a first-generation Filipina American and daughter of immigrants. After her first year of law school, she landed a Summer Law Clerk position at the Los Angeles County Public Defender's Office. She continued to clerk with the office for five consecutive terms and found her calling as a Public Defender. With a Post-Bar Clerkship lined up for Fall 2023, she is excited to serve her hometown and the greater Los Angeles community.

I. INTRODUCTION

Filipino nurses hold the American healthcare system together. This is by design. When the U.S. colonized the Philippines in 1898, and through the first half of the 20th century, it trained Filipinos to treat American soldiers and established colonial policies to groom Filipino nurses to work in the U.S.[1] For Filipinos in the Philippines, nursing became a reliable path to financial security and encapsulated the distinct Filipino cultural trait of prioritizing community care over individual needs.[2] But under the U.S. foreign labor certification process, where visas tie employees to their employers, Filipino nurses are often subjected to harsh conditions, iron-clad contracts, and even held hostage under threat of deportation and financial devastation.[3]

During the COVID-19 pandemic, when hate crimes against Asian Americans rose by 149% across the largest U.S. cities,[4] Filipino nurses put their lives on the line to treat and comfort patients when U.S.-born nurses would not.[5] As a result of their dedication to others and the systemic exploitation of overseas workers, Filipino nurses in the U.S. have lost their lives to COVID-19 at startling, disproportionate rates. They account for 4% of registered nurses in the U.S., but 31.5% of nurses who have died of COVID-19.[6] Filipino nurses put their lives at risk in exceptional ways for the American public, doing so under hazardous working conditions as a

1. Catherine Ceniza Choy, *Why Are There So Many Filipino Nurses in California?*, ZÓCALO PUBLIC SQUARE (Sept. 30, 2019), https://www.zocalopublicsquare.org/2019/09/30/why-are-there-so-many-filipino-nurses-in-california/ideas/essay.

2. *Id*.; *see* Luca Powell, *"It's Starting Again": Why Filipino Nurses Dread the Second Wave*, N.Y. TIMES (Jan. 1, 2021), https://www.nytimes.com/2021/01/15/nyregion/filipino-nurses-coronavirus.html.

3. *See* Choy, *supra* note 1; Powell, *supra* note 2.

4. *FACT SHEET: Anti-Asian Prejudice March 2020*, CTR. FOR THE STUDY OF HATE & EXTREMISM CSUSB (Mar. 1, 2021), https://www.csusb.edu/sites/default/files/FACT%20SHEET-%20Anti-Asian%20Hate%202020%203.2.21.pdf.

5. *See* Mark Hicks, *Henry Ford Health System to Add Filipino Nurses to Fill Shortages, CEO Says*, THE DETROIT NEWS (Sept. 21, 2021), https://www.detroitnews.com/story/news/local/wayne-county/2021/09/21/henry-ford-health-system-seeks-overseas-nurses-fill-staff-shortages/5807660001.

6. NAT'L NURSES UNITED, SINS OF OMISSION: HOW GOVERNMENT FAILURES TO TRACK COVID-19 DATA HAVE LED TO MORE THAN 1,700 HEALTH CARE WORKER DEATHS AND JEOPARDIZE PUBLIC HEALTH 5 (2020), https://www.nationalnursesunited.org/sites/default/files/nnu/documents/0920_Covid19_SinsOfOmission_Data_Report.pdf.

result of the U.S. exploiting their community-first work ethic. Therefore, Filipino nurses deserve a special path to citizenship for their service to the U.S. during the COVID-19 pandemic. The U.S. has recognized foreign contributions to the country and granted citizenship to soldiers who risked their lives and fought under the U.S. flag during times of war. Similarly, Filipino nurses supply the U.S. with an exceptional service, under exceptionally poor conditions, during extraordinarily dangerous times, and deserve a special path to U.S. citizenship.

From the historic exploitation of Filipinos, the colonial period[7], and authoritarian regime of Ferdinand Marcos, [8] to the erasure of Filipino Americans from U.S. history and the modern neocolonial era,[9] the U.S. subjugated Filipinos by manipulating their community-first cultural values. Consequently, Filipinos became integral to the U.S. economy both because of their cultural values and work ethic, and because their subordinate status as non-white immigrants makes the exploitation of their labor and the denial of their socioeconomic opportunities easy under American hegemony.[10] The exploitation of Filipino nurses during the COVID-19 pandemic is only the latest incarnation of systemic and institutional exploitation of Filipinos by the U.S.[11] The mutating virus, rigid individualism of American culture, and the slow immigration process create more layers of danger for Filipinos as they provide essential services to the public.[12] An expedited path to citizenship for Filipino nurses through Title 8 of the United States Code[13] would end the fraudulent practices of healthcare recruiters and break the historical cycle of exploitation that Filipinos have endured for centuries.

II. THE HISTORIC EXPLOITATION OF FILIPINOS

The Philippines and the U.S. are tied together by American imperialism and colonialism. The Philippines endured centuries of colonial

7. Usha Lee McFarling, *Nursing Ranks are Filled With Filipino Americans. The Pandemic is Taking an Outsized Toll on Them*, STAT (Apr. 28, 2020), https://www.statnews.com/2022/04/28/coronavirus-taking-outsized-toll-on-filipino-american-nurses/.

8. Choy, *supra* note 1.

9. *See* Elizabeth H. Pisares, *Do You Mis(recognize) Me: Filipina Americans in Popular Music and the Problem of Invisibility*, *in* POSITIVELY NO FILIPINOS ALLOWED: BUILDING COMMUNITIES AND DISCOURSE 172, 191 (Antonio T. Tiongson, Jr. et al. eds., 2006).

10. YEN LE ESPIRITU, HOME BOUND: FILIPINO AMERICAN LIVES ACROSS CULTURES, COMMUNITIES, AND COUNTRIES 46, 47 (1st ed. 2003).

11. *See id.* at 26.

12. Powell, *supra* note 2.

13. *See* 8 U.S.C. §§ 1440(a), 1427(f).

rule by Spain[14] and a Japanese occupation during World War II[15], only to be most recently colonized by the U.S. The Philippines officially became an independent nation in 1946,[16] but with the lingering presence of U.S. military bases, the U.S. never gave the Philippines the full effective control of a sovereign state.[17] From the Mutual Defense Treaty of 1951[18] to the more recent Visiting Forces Agreement,[19] the U.S.'s military and political control of the Philippines is well-documented. The Philippines remains a neo-colony[20] of the U.S.[21] As a result, the U.S.'s cultural and socioeconomic domination of the Philippines endures.[22] The practice of Filipino nurses pursuing careers in the U.S. thrives in this hegemonic environment, as does the parallel U.S. practice of exploiting them.[23]

A. Nursing in the American Colonial Period

When the U.S. claimed the Philippines as a colony in 1898 at the end of the Spanish-American War, President William McKinley issued the Benevolent Assimilation Proclamation, which outlined his mission to control the Philippines under the guise of generosity and stewardship.[24] The U.S. used the idea of "benevolent assimilation" as an excuse to subjugate

14. E. San Juan Jr., *Filipinas Everywhere: Colonialism, Neocolonial Domination, and Imperial Terror*, *in* FILIPINAS EVERYWHERE: ESSAYS IN CRITICISM AND CULTURAL STUDIES FROM A FILIPINO PERSPECTIVE 3 (David Jonathan Y. Bayot ed., 2017).

15. Julie McCarthy, *Philippine Survivor Recounts Her Struggle As a "Comfort Woman" For Wartime Japan*, NAT'L PUB. RADIO: WEEKEND EDITION SUNDAY (Nov. 29, 2020), https://www.npr.org/2020/11/29/939811000/philippine-survivor-recounts-her-struggle-as-a-comfort-woman-for-wartime-japan; Carmen M. Argibay, *Sexual Slavery and the Comfort Women of World War II*, BERKELEY J. OF INT'L L. 375, 378 (Aug. 2003).

16. E. San Juan Jr., *supra* note 14, at 4.

17. *Id*.

18. Kim David Chanbonpin, *Holding the United States Accountable for Environmental Damages Caused by the U.S. Military in the Philippines, A Plan for the Future*, 4 ASIAN-PAC. L. & POL'Y J. 320, 332 (2003).

19. *See generally Visiting Forces Agreement*, Agreement Between the United States. and the Phillipines, U.S.-Phil., Oct. 9, 1998, T.I.A.S. 12931., https://2009-2017.state.gov/documents/organization/107852.pdf.

20. Chanbonpin, *supra* note 18, at 332.

21. E. San Juan Jr., *supra* note 14, at 4.

22. Chanbonpin, *supra* note 18, at 326.

23. *See* Paulina Cachero, *From AIDS to COVID-19, America's Medical System Has a Long History of Relying on Filipino Nurses to Fight on the Frontlines*, TIME (May 30, 2021, 7:00 AM), https://time.com/6051754/history-filipino-nurses-us/; *Scammers Take Advantage of Filipino Nurses Lured by Promise of Employment in the U.S.*, PUB. BROAD. STATION NEWS HOUR (Mar. 27, 2014, 9:09 PM), https://www.pbs.org/newshour/show/scammers-take-advantage-filipino-nurses-lured-promise-employment-u-s.

24. E. San Juan, Jr., *supra* note 14, at 3; Cachero, *supra* note 23.

and force American culture on Filipinos.[25] During this period of colonization, the U.S. Army trained Filipinos to care for American soldiers.[26] The trainings evolved and expanded until the U.S. government implemented a comprehensive American nursing curriculum for all future nurses, with lessons and testing conducted in English.[27] These colonial policies, which still exist today, effectively ensured that Filipino nurses were trained and groomed to fit American healthcare standards.[28] In 1946, after World War II, the U.S. granted the Philippines independence.[29] But the war left the U.S. with a dire nursing shortage, which in turn opened the door for overseas, American-trained Filipinos to migrate to the U.S. and fill the gap.[30]

For Filipinos in the Philippines, nursing became a reliable path to financial stability for themselves and their extended families.[31] Accordingly, a Filipino cultural practice was born. Filipino families pool their resources to send their children to nursing school with the promise that they will become registered nurses, land jobs in the U.S., and be able to support their families in the Philippines.[32] This practice led to the first mass migration of Filipino nurses to the U.S.[33] Subsequently, Filipino nurses brought their distinctive cultural values to the U.S.[34]

B. The Group-Centric Values and Work Ethic of Filipino Nurses

The exploitation of overseas Filipino workers by American institutions is anchored in the U.S. manipulation of perhaps the most distinguishable Filipino cultural trait: an overwhelming sense of community, with the welfare of the group always outweighing the individual.[35] This quality is

25. Cachero, *supra* note 23.

26. McFarling, *supra* note 7.

27. Jhemmylrut Teng, *The History of Filipino Nurses in the United States of America*, MEDIUM (Jan. 6, 2021), https://medium.com/frame-of-reference/the-history-of-filipino-nurses-in-the-united-states-of-america-e29889d910bb.

28. *Id*.; Powell, *supra* note 2.

29. *See generally* Convention for The Philippine Independence Act (Tydings-McDuffie Act), 48 Stat. 456 (1934), https://loveman.sdsu.edu/docs/1934PhilippineIndep.pdf.

30. Fruhlein Chrys Econar, *For Generations, Filipino Nurses Have Been on America's Front Lines*, CABLE NEWS NETWORK (Oct. 8, 2021), https://www.cnn.com/interactive/2021/10/health/filipino-nurses-cnnphotos/.

31. McFarling, *supra* note 7.

32. PUB. BROAD. STATION NEWS HOUR, *supra* note 23.

33. *Id.*

34. Econar, *supra* note 30.

35. *See* Yen Le Espiritu & Diane L. Wolf, *The Paradox of Assimilation: Children of Filipino Immigrants in San Diego*, *in* ETHNICITIES: CHILDREN OF IMMIGRANTS IN AMERICA 169, 176, 179, 180 (Rubén G. Rumbaut & Alejandro Portes eds., 2001).

inherent in the practice of young Filipino nurses uprooting their lives for the financial well-being of their families and treating their U.S. patients as if they were family. It is encapsulated in many Tagalog words and phrases: *kapwa* describes a feeling of interconnectedness to all people; *bayanihan* captures the spirit of community and working towards the shared goals of the group; *utang ng loob* is the belief that people owe a debt to each other and to their ancestors. The most prominent and powerful is *isang bagsak*. Translated to "one down," the phase carries the message: *if one falls, we all fall*. The Filipino nurse's work ethic is marked by this spirit: *isang bagsak*.

C. The Erasure of Filipinos in American History

While most Americans are unfamiliar with the expression *isang bagsak*, the words are woven into American culture, dating back to the 1960s farmworker movement and broader Civil Rights Movement.[36] History remembers César Chávez as the leader of the Delano Grape Strike and subsequent labor movement.[37] But it was a Filipino migrant worker named Larry Itliong who initiated and led the strike, recruited Chávez, and catalyzed the merging of the primarily Filipino farmworkers union Agricultural Workers Organizing Committee (AWOC) with the primarily Latino group the National Farm Workers Association (NFWA) to create the United Farm Workers of America (UFW).[38] The erasure of Itliong from history is closely tied to the American utilization and manipulation of *isang bagsak* values.

Itliong migrated from Pangasinan, Philippines, to California in 1929,[39] and spent the decades leading up to the 1965 Delano Grape Strike fighting for better working conditions for farmworkers.[40] Like the tens of thousands of young Filipino men known as Manongs, [41] or "older brothers," who

36. *See* Katrina Vanden Heauvel, This Crisis Has Created a New and Profound Sense of Solidarity, WASH. POST (Apr. 14, 2020, 8:00 AM), https://www.washingtonpost.com/opinions/2020/04/14/this-crisis-has-created-new-profound-sense-solidarity/.

37. *See* Emil Guillermo, *Eclipsed by Cesar Chavez, Larry Itliong's Story Now Emerges*, NAT'L BROAD. CO. NEWS (Sept. 8, 2015), https://www.nbcnews.com/news/asian-america/eclipsed-cesar-chavez-larry-itliongs-story-now-emerges-n423336.

38. *Id.*

39. MARIEL BARBADILLO, 'A MINORITY WITHIN A MINORITY': FILIPINOS IN THE UNITED FARMWORKERS MOVEMENT 58 (2017).

40. *See* Scott Simon, *Grapes Of Wrath: The Forgotten Filipinos Who Led A Farmworker Revolution*, NAT'L PUB. RADIO: WEEKEND EDITION SATURDAY (Sept. 19, 2015), https://www.npr.org/sections/thesalt/2015/09/16/440861458/grapes-of-wrath-the-forgotten-filipinos-who-led-a-farmworker-revolution.

41. *Id.*

migrated to the U.S. in the 1920s and 1930s, Itliong faced severe racial discrimination and commodification as a cheap laborer.[42] In the face of growing anti-Filipino sentiment and exploitation,[43] he established himself as a charismatic and effective leader in the Filipino farmworker community.[44] By 1965, the year of the Delano Grape Strike, Itliong rose as a leader of the AWOC,[45] and his aggressive advocacy for fair wages sparked a movement during a tumultuous period for agricultural workers.[46]

As California growers threatened to cut the already minuscule pay of their immigrant workforce,[47] Itliong and the AWOC successfully negotiated a 15-cent raise for grape farmers in Coachella Valley.[48] Recognizing Itliong's power for community building, the AWOC asked him to go to Delano, California,[49] and organize with farmworkers in the Central Valley.[50] When the growers refused to meet demands for fair wages equivalent to the federal minimum wage,[51] workers gathered in Delano's Filipino Hall on September 7, 1965, for what should be marked as an essential historical event in labor rights history.[52] Here, Itliong called for a vote to strike for $1.40 an hour, 25 cents per box of grapes, and the right to form a union.[53] The workers met his idea with unanimous support.[54] The next day, on September 8, 1965, over 2,000 Filipino farmworkers and

42. Ruby C. Tapia, *"Just Ten Years Removed from a Bolo and a Breech-cloth": The Sexualization of the Filipino "Menace," in* POSITIVELY NO FILIPINOS ALLOWED: BUILDING COMMUNITIES AND DISCOURSE 61, 63 (Antonio T. Tiongson et al. eds., 2006).

43. *Id.* at 61-65. Anti-Filipino sentiments in California, bolstered by the economic tension of the Great Depression and media hysteria over the "deterioration of the white race," escalated into the Watsonville Riots in January 1930. The Watsonville Riots began on January 19, 1930, when a group of white men protested the socialization of Filipino Manongs with white women. The riots lasted for four days until January 23, 1930, when Filipino Manong Fermin Tobera was shot and killed. In addition to the media framing Filipinos as usurpers of jobs and a threat to white labor, Filipino Manongs were also framed as hypersexual deviants. On this basis, California law makers introduced a bill to the House Committee of Immigration and Naturalization that would restrict Filipino immigration, despite the U.S. still holding the Philippines as a colony.

44. Simon, *supra* note 40.

45. Guillermo, *supra* note 37.

46. Simon, *supra* note 40.

47. *Id.*

48. BARBADILLO, *supra* note 39, at 58.

49. *See* Gayle Romasanta, *Why It Is Important to Know the Story of Filipino-American Larry Itliong*, SMITHSONIAN MAG. (July 14, 2019), https://www.smithsonianmag.com/smithsonian-institution/why-it-is-important-know-story-filipino-american-larry-itliong-180972696/.

50. BARBADILLO, *supra* note 39, at 58-59.

51. *Id.*

52. Romasanta, *supra* note 49.

53. *Id.*

54. Guillermo, *supra* note 37.

members of the AWOC walked off the vineyards and launched the Delano Grape Strike of 1965.[55]

Growers in Central California took this opportunity to sow discord between migrant farmworkers by hiring Mexican Americans to replace the striking Filipinos.[56] Dividing immigrant workers on racial lines was a common and effective tactic that growers used to break picket lines.[57] Understanding that the strike would fail if Latino farmworkers continued to cross the picket line, Itliong recruited Chávez, the leader of the National Farm Workers Association (NFWA), and convinced him to join the strike.[58] The NFWA officially joined the Delano Grape Strike on September 16, 1965, and together, Filipino and Latino farmworkers catapulted their labor movement onto the national stage.[59] Less than a year later, in 1966, Itliong's AWOC and Chávez's NFWA merged into one multi-racial and multi-cultural union known as the United Farm Workers of America (UFW).[60] This strategic move merged the farmworkers' movement with the broader civil rights movement in America.[61]

During the early stages of the Delano Grape Strike, Itliong introduced the phrase *isang bagsak* to Chávez.[62] Leveraging the spirit of the phrase—*if one falls, we all fall*—they created the "unity clap," a rallying tool to bridge cultural divides and language barriers between Filipino and Latino workers.[63] The clap begins with a single person clapping out a slow, measured beat.[64] It gradually picks up speed and volume as more and more people join in.[65] When the clap reaches its quickest and strongest point, someone shouts "Isang Bagsak!," and it crescendoes with one final collective, resounding clap.[66] The unity clap became a ritual at the end of long workdays on the fields, a call to arms at union meetings, and a rallying cry at workers' rights demonstrations across the country.[67]

---

55. *Id.*

56. BARBADILLO, supra note 39, at 59.

57. *See* Andy Imutan, *When Mexicans and Filipinos Joined Together*, UNITED FARM WORKERS (Sept. 2005), https://ufw.org/research/history/mexicans-filipinos-joined-together/.

58. BARBADILLO, *supra* note 39, at 59.

59. *Id.*

60. *Id.*

61. Guillermo, *supra* note 37.

62. Abby Pasion, *From "Isang Bagsak" to #FilipinxForBlackLives, the Filipino Identity Has Always Been Political*, MEDIUM (Nov. 3, 2020), https://medium.com/@apasion96/from-isang-bagsak-to-filipinxforblacklives-the-filipino-identity-has-always-been-political-eddc928658fa.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

Despite Itliong's essential role in the farmworkers' movement, his legacy as a revolutionary has been forgotten.[68] The unity clap and *isang bagsak* are not immortalized in history books, even though they have been utilized by other American social justice movements and multiracial coalitions.[69] These pillars of civil rights have been erased from history. Filipino thought leaders call this a condition of perpetual absence.[70] This idea goes further than the broader "perpetual foreigner" label thrust onto Asian Americans as a whole.[71] Perpetual absence describes the Filipino American experience of chronic misrecognition in the U.S.[72] Filipino Americans are marginalized by white people for being non-white.[73] They are also estranged by other minorities for their lack of categorical identity.[74] That is, Filipino Americans are rejected by other Asian Americans for not being Asian enough, and alienated from other non-Asian minority groups for being Asian.[75]

A devastating example of the latter phenomenon is the erasure of Itliong from the farmworkers' movement. As the movement picked up national and international attention, the media latched onto the growing, non-violent image of Chávez and Itliong was pushed out of the UFW.[76] In a letter he wrote to Reynaldo Pascua, President of the Filipino American Community of Yakima Valley from 2000 to 2019, Itliong addressed the unrecognized role of Filipinos in the American civil rights movement and attributed the erasure to the silencing of the Filipino minority by the Latino majority in the UFW, as well as the "inability among the Pinoy [Filipino] leadership to submerge their personal identity to the broader sphere of leadership."[77] Itliong's story and lack of historical recognition illustrates how the powerful *isang bagsak* spirit of interconnectedness, of valuing the collective over the individual, has been exploited and used against Filipinos to their detriment.

---

68. Guillermo, *supra* note 37.

69. Karen Grisby Bates & Shereen Marisol Meraji, *The Student Strike that Changed Higher Ed Forever*, NAT'L PUB. RADIO: CODE SWITCH (Mar. 21, 2019), https://www.npr.org/sections/codeswitch/2019/03/21/704930088/the-student-strike-that-changed-higher-ed-forever.

70. Pisares, *supra* note 9, at 191.

71. ESPIRITU, *supra* note 10, at 14.

72. Pisares, *supra* note 9, at 191.

73. *Id.*

74. *Id.*

75. *Id.*

76. Guillermo, *supra* note 37.

77. *Id.*

The erasure of Filipino Americans feeds their condition of perpetual absence, making the systemic and institutional exploitation of nurses during the COVID-19 pandemic seem like a stand-alone occurrence rather than the continuation of a cycle of colonial control. As the first wave of Filipino nurses migrated to the U.S. post-World War II, the authoritarian Philippines government capitalized on their reputation by institutionalizing their exportation with the help of the U.S. government.[78]

D. Compliance and Exploitation by The Philippines Government

By the 1970s, the Philippine President and dictator Ferdinand Marcos noticed the high demand for Filipino nurses in the U.S. and pushed the country towards a labor export economy.[79] The government founded what is now known as the Philippines Overseas Employment Administration (POEA) to institutionalize and facilitate the hiring and recruitment of Filipino workers, including nurses, to overseas employers.[80] The emigration of Filipinos rose exponentially after 1972, when Marcos declared martial law.[81] For the next fourteen years, the Marcos regime plagued the Philippines with countless human rights violations, including extra-judicial killings.[82] The military's infamous torture units would capture anyone they suspected of supporting the opposition against Marcos, brutally mutilate them, and then display their bodies on roadsides to instill public fear and obedience.[83] This bolstered the labor export economy as Filipinos began fleeing the country.[84] Filipinos took advantage of the POEA and the U.S.'s recent Immigration and Nationality Act of 1965 to escape the oppressive political landscape of the Philippines.[85]

Covertly, the U.S. was expediting this mass exodus by subsidizing the Marcos regime.[86] The U.S. government provided generous sums of money and military aid to Marcos in exchange for the continued control of military bases in the Philippines, effectively maintaining its stronghold in the Pacific

78. Chanbonpin, *supra* note 18, at 333.

79. Choy, *supra* note 1.

80. Cachero, *supra* note 23.

81. *Id.*

82. Alfred W. McCoy, *Dark Legacy: Human Rights Under the Marcos Regime, in* MEMORY, TRUTH TELLING, AND THE PURSUIT OF JUSTICE: A CONFERENCE ON THE LEGACIES OF THE MARCOS DICTATORSHIP 129, 131 (2001).

83. *Id.*

84. Cachero, *supra* note 23.

85. *Id.*

86. Chanbonpin, *supra* note 18, at 333.

and filling the nursing shortage in the U.S. to the detriment of Filipinos.[87] The U.S. leveraged its influence over Marcos for the entire twenty-two years of his reign, so that two different U.S. administrations, the Johnson administration and Nixon administration, maintained the relationship.[88]

Even after the people of the Philippines exiled President Marcos with the People Power Revolution in 1986,[89] the global exportation of Filipino workers expanded and remains central to the Philippines' economy.[90] The Philippines is now the world's leading exporter of professionally-trained nurses.[91] In 2019, overseas Filipino workers sent a record high of $33.5 billion in personal remittances back to the Philippines.[92] In the U.S., about one-third of all foreign-born nurses are Filipino.[93] Dominating the foreign nurse market, Filipino nurses earned a global reputation for their cultural values and the high quality of their care. Along with this reputation came the predatory practices of countries and recruiters seeking to capitalize on the Filipino nursing practice.

E. Modern U.S. Exploitation of Filipino Nurses

The U.S. developed its own cultural practice of abusing Filipino nurses by taking advantage of their community-first values in times of crisis.[94] In the 1980s, during the HIV/AIDS epidemic in the U.S., many domestic health care workers refused to treat HIV/AIDS patients.[95] Homophobia and propaganda about the virus gripped the American psyche, and hospitals were left understaffed.[96] In response to the crisis, tens of thousands of Filipino nurses migrated to fill the gaps left by domestic nurses.[97] They took jobs providing critical bedside care to patients with HIV/AIDS and

87. *Id.* at 333 n.55.

88. *Id.* at 332-33 nn.55-56.

89. Ayer Productions v. Ignacio Capulong et al., G.R. No. L-82380 (Apr. 29, 1988) (Phil.).

90. McFarling, *supra* note 7.

91. *Id.*

92. Ralf Rivas, *OFW Remittances Hit Record High of $33.5 Billion in 2019*, RAPPLER (Feb. 17, 2020, 7:30 AM), https://www.rappler.com/business/overseas-filipino-workers-remittances-2019.

93. Anne Brice, *Why Are There So Many Filipino Nurses in the U.S.?*, UNIV. CAL. BERKELEY: BERKELEY NEWS (May 28, 2019), https://news.berkeley.edu/2019/05/28/filipino-nurses-in-the-us-podcast/.

94. PUB. BROAD. SERVICE NEWS HOUR, *supra* note 23; Cachero, *supra* note 23; Julian Glover, *"None of us signed up to die": Filipino American nurses disproportionately impacted by Covid-19*, ABC 7 NEWS (May 10, 2021), https://abc7news.com/filipino-americans-nurses-covid-deaths-nurse-sacrifices-registered-dead-from/10557478/.

95. Cachero, *supra* note 23.

96. *Id.*

97. *Id.*

comforted terminally-ill patients in their final hours.[98] Filipino nurses established themselves as essential components of the U.S. healthcare system, but U.S. employers continue to treat them as disposable.

The U.S. exploitation of Filipino nurses is a legacy of American imperialism and colonialism. As Filipinos developed the cultural practice of immigrating to the U.S. for nursing, the U.S. established a practice of manipulating and exploiting the community-centric values of Filipinos. The authoritarian regime of President Marcos encouraged and capitalized on these practices. Today, in the context of the COVID-19 pandemic, Filipino nurses continue to put their lives at risk for the U.S. in extraordinary ways and under dangerous conditions.

III. THE HAZARDOUS WORKING CONDITIONS OF FILIPINO NURSES DURING THE COVID-19 ERA

As the COVID-19 pandemic continues to ravage the U.S. and leave healthcare professionals in a constant state of burn out, Filipino nurses are holding down the front lines of the American healthcare response.[99] Like the healthcare response during the HIV/AIDS epidemic, U.S. nurses are resigning from their posts due to vaccine mandates, demanding hours, and dangerous conditions, leaving gaps in the U.S. healthcare system.[100] Once again, Filipino nurses are filling the cracks that other nurses have left behind.[101] Unlike domestic nurses, Filipino nurses rely on their employers to maintain their immigration status in the U.S. This reliant worker-employee relationship, coupled with the slow and laborious immigration process, allows fraudulent recruiters to abuse Filipino nurses and exploit their cultural values. While all healthcare workers have faced heightened danger in the face of COVID-19, the pandemic has been exceptionally deadly for Filipino nurses.

98. Powell, *supra* note 2.

99. Econar, *supra* note 30.

100. Powell, *supra* note 2; Jaclyn Diaz, *A N.Y. Hospital Will Stop Delivering Babies As Workers Quit Over a Vaccine Mandate*, NAT'L PUB. RADIO (Sept. 13, 2021, 8:06 AM), https://www.npr.org/2021/09/13/1036521499/covid-workers-resign-new-york-hospital-stops-baby-delivery; James T. Mulder, *NY May Recruit Filipinos to Replace Health Care Workers Who Refuse COVID Shots*, SYRACUSE (Sept. 23, 2021, 2:04 PM), https://www.syracuse.com/coronavirus/2021/09/ny-may-recruit-filipinos-to-replace-health-care-workers-who-refuse-covid-shots.html.

101. Hicks, *supra* note 5; Diaz, *supra* note 100; Mulder, *supra* note 100.

National Nurses United (NNU), the largest union of registered nurses in the U.S.,[102] released a report in September 2020 concerning COVID-19 deaths among healthcare workers.[103] The report revealed a dire statistic: while Filipino nurses account for only 4% of the nurses in the U.S., they comprise 31.5% of COVID-19 deaths among registered nurses.[104] This is the price of the historic and modern-day exploitation of Filipino nurses by the U.S.

In COVID-era America, Filipinos nurses are at the front lines of the healthcare system. They fill the healthcare roles that U.S.-born healthcare workers refuse to do.[105] They are overrepresented in the types of healthcare jobs that necessitate close contact with patients.[106] This includes positions in COVID-19 breeding grounds such as emergency rooms and nursing homes, as well as hard-to-fill positions in rural, under-resourced hospitals with hazardous working conditions.[107] At the same time, hate crimes against Asian Americans are at historic highs as racist propaganda about the virus continues to permeate the American psyche.[108] In many ways, this is a typical U.S. story. Immigrants do the dirty work that Americans do not want to do, all while being villainized or labeled as "heroes" with no meaningful recognition.[109] The root of this story lies in an immigration process that opens the door for human trafficking and abusive contracts.

A. The Immigration Process

The slow and rigorous process of U.S. immigration creates a foundation for the exploitation of Filipino nurses. For a Filipino nurse to work as a registered nurse in the U.S., they must obtain an H-1B visa or an EB-2 visa.[110] H-1Bs are temporary visas that allow foreign nationals to

---

102. *About International Nurses United*, NAT'L NURSES UNITED https://www.nationalnursesunited.org/about (last visited Oct. 10, 2022).

103. NAT'L NURSES UNITED, *supra* note 6.

104. *Id.* at 12.

105. *Id*.; Hicks, *supra* note 5; Diaz, *supra* note 100; Mulder, *supra* note 100; Madeline Holcombe, *Facing the Recent Rise in COVID-19 Cases is Like Being Told You Have to Walk Back to War, Nurse Says*, CABLE NEWS NETWORK (Aug. 3, 2021, 3:46 AM), https://www.cnn.com/2021/08/03/us/tennessee-nurse-coronavirus-war/index.html.

106. Powell, *supra* note 2.

107. *Id.*; McFarling, *supra* note 7; Nina Martin & Bernice Yeung, *"Similar to Times of War": The Staggering Toll of COVID-19 on Filipino Health Care Workers,* PROPUBLICA (May 3, 2020, 5:00 AM), https://www.propublica.org/article/similar-to-times-of-war-the-staggering-toll-of-covid-19-on-filipino-health-care-workers.

108. Martin & Yeung, *supra* note 107.

109. Mulder, *supra* note 100.

110. 8 U.S.C. § 1153(b)(2)(A); 20 C.F.R. § 656.2(c)(3); 8 U.S.C. § 1101(a)(15)(H)(i)(b).

work a "specialty occupation" in the U.S.[111] To secure an H-1B, a nurse's U.S. employer must file an I-129 petition with United States Citizenship and Immigration Services (USCIS) and demonstrate that the nursing job is a specialty occupation by showing that: 1) a bachelor's degree or its equivalent is the minimum entry requirement for the position; 2) the degree requirement is common across the industry or the job is so distinctive that it can only be done by someone with a degree; 3) the employer normally requires a degree or its equivalent for the position; or 4) the nature of the job duties is so specialized that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree or higher degree.[112] Critically, an H-1B visa makes a nurse's residence in the country dependent on their employer.[113] This process leaves young overseas Filipino nurses, who often leave their families and uproot their lives, fully reliant on their employers.[114]

To qualify for an EB-2 visa, a foreign nurse must first receive a full-time, permanent job offer from a U.S. employer.[115] The employer must then sponsor the nurse for their green card by completing the labor certification process, also known as PERM.[116] Because nursing positions are classified as "Schedule A" occupations—meaning jobs that the U.S. government has determined cannot be filled by U.S. workers and thus may be filled by overseas workers—the PERM process is abbreviated but still substantial.[117] To file the PERM, the employer must complete the ETA Form 9089 and I-140 petition and submit it to USCIS.[118] Once USCIS approves the petition and the nurse's visa number has become available, the nurse can apply for the U.S. green card by filing an I-485 adjustment of status application with USCIS.[119]

In addition to employment requirements and immigration paperwork, foreign nurses, regardless of whether they are coming to the U.S. with an H-1B visa or with a green card, must prove to USCIS that they are certified

111. 20 C.F.R. § 656.2(c)(3).

112. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1-4).

113. PUB. BROAD. SERVICE NEWS HOUR, *supra* note 23.

114. *Id.*

115. 20 C.F.R. § 656.3.

116. PUB. BROAD. SERV., *supra* note 23; 20 C.F.R. § 656.1; *Chapter 6- Permanent Labor Certification*, U.S. CITIZENSHIP AND IMMIGR. SERV. (Oct. 19, 2022), https://www.google.com/search?client=safari&rls=en&q=chapter+6+permanent+labor+certification&ie=UTF-8&oe=UTF-8.

117. 20 C.F.R. § 656.5.

118. 20 C.F.R. §§ 656.17 (a)(1), 656.30(b).

119. 8 C.F.R § 245.1(a); *I-485, Application to Register for Permanent Residence or Adjust Status*, U.S. CITIZENSHIP AND IMMIGR. SERVICES (Oct. 27, 2022), https://www.uscis.gov/i-485.

by the Commission on Graduates of Foreign Nursing Schools (CGFNS) to work in the medical field in the U.S.[120] To do this, the foreign nurse must: 1) obtain a valid and unrestricted license in the U.S. state in which they will work; 2) pass the NCLEX, the U.S. licensing examination for nurses; 3) graduate from an English-language nursing program that was located in a country designated by the U.S. as acceptable for medical training; and 5) show that the nursing program was in operation on or before November 12, 1999.[121] Between the education requirements and the visa process, which may be delayed by a variety of outside factors such as the backlogging of available visas, the immigration process for foreign nurses takes years of patience and dedication.[122]

B. Human Trafficking and Abusive Contracts

The expensive, years-long immigration process puts nurses in a position where they are vulnerable to fraudulent recruiters, human traffickers, and exploitative healthcare institutions. These enterprises place Filipino nurses in hazardous working conditions knowing that they will endure workplace abuse because their status in the U.S. is contingent on their nursing jobs and because their families back home rely on their U.S. income.[123] Fraudulent recruiters lure Filipino nurses with false promises of sponsorship and high wages, only to entrap them into unsustainable hours and dangerous conditions.[124] Some scammers have gone as far as withholding wages from Filipino nurses and threatening to revoke their visas if they break their contract, effectively holding them hostage under threat of deportation and financial devastation.[125] Several human-trafficking lawsuits have been filed against such agencies.[126]

In *Paguirigan v. Prompt Nursing Employment Agency LLC*, a federal court held that several nursing home and rehabilitation facilities violated anti-human trafficking laws by using threats of financial ruin to coerce two hundred nurses into remaining at their posts for long hours and little pay.[127] Every plaintiff in the class action lawsuit was a Filipino nurse who was recruited to the U.S. through SentosaCare, a New Jersey-based nursing

120. 20 C.F.R §§ 656.5(a)(2)(i), 656.15(c)(2), 656.5(a)(3)(ii).

121. 20 C.F.R § 656.15(c)(2); 8 C.F.R. § 212.15(h)(2)(iii-v).

122. PUB. BROAD. SERV. NEWS HOUR, *supra* note 23.

123. *Id.*

124. Cachero, *supra* note 23.

125. Paguirigan v. Prompt Nursing Emp. Agency, 17-cv-1302, 2019 U.S. Dist. LEXIS 165587, at *4 (E.D.N.Y., Sept. 23, 2019).

126. PUB. BROAD. SERV. NEWS HOUR, *supra* note 23.

127. *Paguirigan*, 2019 U.S. Dist. LEXIS 165587, at *35-36.

home company.[128] SentosaCare, Prompt Nursing Employment Agency, and other defendants failed to pay the nurses the prevailing wage and base salary promised in their contracts and threatened them with tens of thousands of dollars in penalty fees for quitting early.[129] One defendant, Prompt Nursing, threatened a penalty of $25,000 if a nurse quit during their first year of employment.[130]

Human trafficking and worker abuse cases like *Paguirigan* may seem like extreme examples, but they are shockingly common. However, even in cases where recruiters are not human traffickers, many health facilities recruiters bind Filipino nurses to iron-clad contracts with similar coercive measures that wield the same results.

Fraudulent recruiters use employee contracts to tie Filipino nurses to their agencies for up to four years, and will threaten the nurses with penalties of up to $60,000 for breaking the contracts early.[131] A common clause in these contracts prevents Filipino nurses from showing the contract to anyone else and waives their right to seek legal action.[132] These types of provisions are never required of Canadian or European nurses who come to work in the U.S.[133] Because Filipino nurses are known for their nursing abilities and deep community care, and because they need nursing positions in the U.S. to care for their families back home, the institutional and systemic exploitation of nurses is a uniquely Filipino problem.

Every day, healthcare workers across the world risk their lives to battle a mutating virus and the bolstering effect of anti-vaxxers and COVID-denier propaganda. But in the U.S., the risk is greater for Filipino nurses. The slow immigration process and demanding educational requirements create space for fraudulent recruiters and human traffickers to exploit Filipino nurses and their cultural values. Unlike domestic nurses, who have the freedom to leave dangerous work environments without threat of deportation, and other foreign nurses whose contracts are free of oppressive and punitive clauses, Filipino nurses are especially vulnerable to workplace abuse because their status in the U.S. is contingent on their nursing jobs. Moreover, they rely on their U.S. income from those jobs to support their families back home. Without a solution to this systemic and institutional

128. Yancey Roy, *Court: LI Nursing Home Firm Violated Anti-Human Trafficking Laws*, NEWSDAY (Oct. 2, 2019, 7:55 PM), https://www.newsday.com/long-island/suffolk/sentosa-nursing-home-nurses-1.37091421.

129. *Paguirigan*, 2019 U.S. Dist. LEXIS 165587, at *4, 14.

130. Roy, *supra* note 128.

131. Cachero, *supra* note 23.

132. *Id.*

133. *Id.*

exploitation, Filipino nurses will continue to die at disproportionate rates as the COVID-19 pandemic rages on.

IV. A SPECIAL PATH TO CITIZENSHIP FOR FILIPINO NURSES

To combat exploitation and to begin to pay back an immeasurable debt, the U.S. government must grant Filipino nurses a special path to citizenship. The U.S. has recognized and rewarded foreign contributions to the country in the context of military service in times of war. During World War II, over 260,000 Filipino soldiers served under the American flag at the request of President Franklin D. Roosevelt.[134] President Roosevelt promised Filipino soldiers U.S. citizenship and full military benefits in exchange for their service and invaluable hand in recapturing the Pacific.[135]

The U.S. did not honor this promise.[136] Only a year after the end of World War II, President Harry Truman signed the 1946 Rescission Act into law, stripping the vast majority of Filipino army soldiers of their rights and privileges as U.S. veterans.[137] The law declared that soldiers of the Commonwealth Army of the Philippines did not meet the standard of service to warrant such benefits.[138] However, all European allied soldiers who served under the U.S. flag in a similar capacity were granted, and never stripped of, full veteran status and benefits.[139] Again, under the hegemony of white America, the exploitation of Filipino labor and denial of their socioeconomic opportunities was second nature, an exception to the promises made to foreign contributors. The targeted betrayal of the Rescission Act is a bitter example of U.S. exploitation of Filipinos, the effects of which are still felt by many Filipinos today who spent decades and sometimes their entire lifetimes waiting for citizenship or to be reunited with their families.[140] The U.S. understands the value of Filipino labor yet actively disregards the value of Filipino people. The abuse of Filipino nurses during the COVID-19 pandemic is the latest incarnation of systemic

134. *America's Broken Promise to the Philippines*, FILIPINO VETERANS RECOGNITION AND EDUC. PROJECT, https://filvetrep.org (last visited Nov. 9, 2022).

135. *Id.*

136. Michelle Malkin, *FDR's Forgotten Promise to Filipino War Veterans*, THE SEATTLE TIMES (Apr. 22, 1997), https://archive.seattletimes.com/archive/?date=19970422&slug=2535098.

137. *Id.*

138. *Id.*; The Recission Act of 1946, Pub. L. No. 70-301, 60 Stat. 6, 14 (1946).

139. Malkin, *supra* note 136.

140. Christopher Klein, *Filipino Americans Fought with U.S. in WWII, Then Had to Fight for Veteran' Benefits,* HISTORY (Nov. 11, 2019), https://www.history.com/news/filipino-americans-veterans-day.

exploitation, and it is time for the U.S. to rectify its legacy of colonial violence against Filipinos.

Filipino nurses are once again providing the U.S. with services that only they can provide. Like the Filipino soldiers during World War II, Filipino nurses are supplying the U.S. with an exceptional service, under exceptionally poor conditions, during extraordinarily dangerous times, and deserve a special path to U.S. citizenship.

While President Roosevelt was able to offer citizenship and veteran's benefits to foreign soldiers under Title 10 of the Second War Powers Act,[141] President Joe Biden does not have the power to sign an executive order granting citizenship to Filipino nurses who have served in the U.S. during the COVID-19 pandemic.[142] The authority to naturalize foreigners as U.S. citizens belongs solely to the Attorney General.[143]

However, there is room to grant Filipino nurses an expedited route to naturalization under Title 8 of the United States Code, which codifies the Immigration and Nationality Act and governs U.S. immigration and naturalization policy.[144] The strongest claims for offering Filipino nurses an expedited path to naturalization are under Title 8, section 1427, sub-section (f) of the United States Code, which provides for the naturalization of persons making extraordinary contributions to national security,[145] and section 1440, which provides for naturalization as a reward for military service to the U.S.[146]

A. Naturalization under 8 U.S.C. §1427(f): Persons Making Extraordinary Contributions to National Security

Title 8, section 1427, sub-section (f) of the United States Code offers a special path to naturalization for "persons making extraordinary contributions to national security,"[147] and Filipino nurses have made such extraordinary contributions to national security during COVID-19. To qualify for naturalization under sub-section 1427(f), a person must establish

141. *America's Broken Promise to the Philippines*, *supra* note 134; The Second War Powers Act, 50a U.S.C. §§ 633-664 (1942)..

142. U.S. CONST. art. I, § 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States… To establish a uniform rule of naturalization… throughout the United States."); *see* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).

143. 8 U.S.C. § 1421.

144. 8 U.S.C. §§ 1421-1459.

145. 8 U.S.C. § 1427(f).

146. 8 U.S.C. § 1440.

147. 8 U.S.C. § 1427(f).

five years of continuous residence as a lawful permanent resident in the U.S, or three years if he or she is a spouse of a U.S. citizen.[148] Additionally, a person must be physically present in the U.S. for at least half of the time of their lawful permanent residence, and must live at least three months within the state or district that he or she files the naturalization application in.[149] Sub-section 1427(f) offers an expedited process for people who make extraordinary contributions to the U.S's national security.

Under this sub-section, the U.S. Director of Central Intelligence, the Attorney General, and the Commissioner of Immigration may determine that a person who has made an "extraordinary contribution" to the "national security of the United States" or "the conduct of United States intelligence activities" may be naturalized without meeting the standard residence and physical presence requirements.[150] If the deciding powers determine that a person has made extraordinary contributions to national security, and the candidate is otherwise eligible for naturalization per sub-sections 1427(a)-(e), he or she may be naturalized after only one year of continuous residence in the U.S.[151] Filipino nurses working during COVID-19 should fall under the category of persons making extraordinary contributions to national security.

The Federal Government's response to COVID-19 demonstrates how national security extends to national public health. The United Nations describes national security as "the ability of a state to cater for the protection and defense (sic) of its citizenry."[152] Since the White House declared a state of emergency over COVID-19 on March 13, 2020,[153] the

148. CONG. RSCH. SERV., U.S. NATURALIZATION POLICY 4 (2021), https://crsreports.congress.gov/product/pdf/R/R43366.

149. *Id.*

150. 8 U.S.C. § 1427(f)(1): "Whenever the Director of Central Intelligence, the Attorney General and the Commissioner of Immigration determine that an applicant otherwise eligible for naturalization has made an extraordinary contribution to the national security of the United States or to the conduct of United States intelligence activities, the applicant may be naturalized without regard to the residence and physical presence requirements of this section, or to the prohibitions of section 1424 of this title, and no residence within a particular State or district of the Service in the United States shall be required: Provided, That the applicant has continuously resided in the United States for at least one year prior to naturalization: Provided further, That the provisions of this subsection shall not apply to any alien described in clauses (i) through (v) of section 1158(b)(2)(A) of this title."

151. 8 U.S.C. § 1427(a)-(f).

152. *National Security Versus Global Security*, UNITED NATIONS: UN CHRON., https://www.un.org/en/chronicle/article/national-security-versus-global-security (last visited Nov. 9, 2022).

153. Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, THE WHITE HOUSE (Mar. 13, 2020), https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-

tracking and management of the virus, as well as the mass distribution of COVID-19 vaccinations, have served as defenses against the virus. The Department of Homeland Security (DHS) continues to implement various precautions and emergency mandates in response to COVID-19.[154] For example, the USCIS, a department of the DHS, responded to COVID-19 by implementing a list of precautions to prevent the spread of the coronavirus disease.[155] This list includes a mask mandate inside federal buildings in areas of high or substantial transmission, according to a CDC COVID-19 Data Tracker, that supersedes all local, state, tribal, or territorial rules and regulations regarding face masks.[156] COVID-19 safety precautions are a matter of national security, and the people holding the front line of the American healthcare system should be treated as people making extraordinary contributions to national security.

Under section 1427, sub-section (f)(3) limits the number of non-citizens naturalized under the "extraordinary contributions" category to five people every fiscal year.[157] But much like the mask mandate implemented by the DHS during COVID-19, the limit on the number of people naturalized under this category should be expanded as an emergency COVID-19 precaution. Furthermore, the "extraordinary contributions" category should be expanded to include Filipino nurses working during the pandemic. This expansion of section 1427 would ensure the continued health and well-being of the nation. Filipino nurses provide an essential and special service to the people of the U.S, the *isang bagsak* level of care, and they deserve a special path to naturalization via the extraordinary contributions category of sub-section 1427(f) of the United States Code.

---

emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/; *COVID-19 Disaster Declarations*, FED. EMERGENCY MGMT. AGENCY, https://www.fema.gov/disaster/coronavirus/disaster-declarations (last visited Nov. 9, 2022).

154. *DHS Responds: Coronavirus (COVID-19)*, DEP'T OF HOMELAND SEC. (Oct. 26, 2022), https://www.dhs.gov/coronavirus.

155. *USCIS Response to COVID-19*, U.S. CITIZENSHIP AND IMMIGR. SERVICES (Oct. 24, 2022), https://www.uscis.gov/about-us/uscis-response-to-covid-19.

156. *Id.*

157. 8 U.S.C. § 1427(f)(3): "The number of aliens naturalized pursuant to this subsection in any fiscal year shall not exceed five. The Director of Central Intelligence shall inform the Select Committee on Intelligence and the Committee on the Judiciary of the Senate and the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives within a reasonable time prior to the filing of each application under the provisions of this subsection."

B. COVID-Time Service of Filipino Nurses: A New Path, Parallel to Naturalization Through Military Service

Title 8, section 1440 of the United States Code offers a special provision for the naturalization of U.S. veterans and active members of the U.S. armed forces who served during military hostilities.[158] COVID times have often been compared to times of war for healthcare workers,[159] and Filipino nurses serving during COVID-19 deserve access to a similar pathway.

President Biden himself equated the vaccine rollout to a "wartime effort."[160] However, when assessing the number of deaths, COVID times are much worse than times of war. Between World War I, World War II, the Vietnam War, and 9/11, 583,112 Americans were killed.[161] As of August 17, 2022, the COVID-19 death toll in the U.S. is 1,034,234 people.[162] COVID-era America is a much deadlier place than wartime America. While others have abandoned healthcare positions due to overwhelmed hospitals and dire work conditions, Filipino nurses have held the front lines of this war against COVID-19. [163]

COVID-19 times should be considered a period of hostility. Section 1440, named "Naturalization through active-duty service in the Armed Forces during World War I, World War II, Korean hostilities, Vietnam hostilities, or other periods of military hostilities," offers a special path of naturalization for veterans and active military personnel who served or are actively serving during a period of hostilities.[164] As the section title suggests, periods of hostilities include times of war but they should also include COVID times, as the U.S. and the world continue to experience unprecedented levels of death that vastly overshadow wartime losses. The U.S. has been in an active period of hostility since September 11, 2001.[165] Since the U.S. declared its global War on Terror, over 900,000 people were

158. 8 U.S.C. § 1440.

159. Martin & Yeung, *supra* note 107*;* Holcombe, *supra* note 105.

160. Jason Murdock, *How Many Americans Died in World Wars, Vietnam, 9/11 After Joe Biden's Covid Death Claim*, NEWSWEEK (Mar. 12, 2021, 7:04 AM), https://www.newsweek.com/joe-biden-covid-death-comparison-world-wars-vietnam-9-11-1575650h-comparison-world-wars-vietnam-9-11-1575650.

161. *Id.*

162. *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, https://www.nytimes.com/interactive/2021/us/covid-cases.html (last visited Nov. 18, 2022).

163. *Id.*

164. *Naturalization Through Military Service*, U.S. CITIZENSHIP AND IMMIGR. SERVICES (Sept. 22, 2022), https://www.uscis.gov/military/naturalization-through-military-service.

165. *Id.*

killed in twenty years of "counter-terror" activity.[166] From February 2020 to November 2021, over 5,000,000 people globally have died from COVID-19.[167] That is less than two years of COVID. COVID-19 presents a much more urgent hostility to human life than war, and COVID times, spanning from February 2020 to the present, should be treated as a period of hostility.

Correspondingly, like foreign members of the U.S. armed forces during war, Filipino nurses deserve a special path to citizenship for serving during COVID-19. Like war veterans, Filipino nurses working during the pandemic risk their lives to serve the U.S. In addition to risking their lives, Filipino nurses also take on a heightened risk of infection and long COVID. Although long COVID is still being researched as more symptoms are recognized, the precarious and lasting nature of it can be likened to Post Traumatic Stress Disorder (PTSD) suffered by many war veterans. Both afflictions come with cognitive dysfunction symptoms that can be debilitating and lead to loss of quality of life. Also, like Filipino veterans who fought under the U.S. flag and played a crucial role in the recapture of the Pacific during World War II, Filipino nurses are offering services only they can provide. They are stepping up and into roles that other nurses are not willing to do. Crucially, Filipino nurses are providing exceptional services under heightened risk of infection and death while anti-Asian sentiments are on the rise.[168] Finally, like foreign veterans, Filipino nurses are national heroes, and they deserve a special path to citizenship fit for national heroes. Section 1440 of the United States Code offers a blueprint for what this special path could look like.

Mirroring the requirements of military personnel who qualify for naturalization,[169] Filipino nurses should qualify for naturalization for

166. Jill Kimball, *Costs of the 20-Year War on Terror: $8 Trillion and 900,000 Deaths*, BROWN UNIV.: NEWS FROM BROWN (Sept. 1, 2021), https://www.brown.edu/news/2021-09-01/costsofwar.

167. *Coronavirus in the U.S.: Latest Map and Case Count*, *supra* note 162.

168. Martin & Yeung, *supra* note 107.

169. *Naturalization Through Military Service*, *supra* note 164. Requirements to apply for naturalization through military service during periods of hostility: "1) Have served honorably in the U.S. armed forces during a designated period of hostility, and if separated, have been separated under honorable conditions from your qualifying period of service; 2) Have submitted a completed Form N-426, Request for Certification of Military or Naval Service at the time of filing your N-400; 3) Be a lawful permanent resident or have been physically present at the time of enlistment, reenlistment, or extension of service or induction into the U.S. armed forces: (a) In the United States, the Canal Zone, American Samoa, or Swains Island; or (b) On board a public vessel owned or operated by the United States for noncommercial service; 4) Demonstrate the ability to read, write and speak English, unless qualified for a waiver or exception; 5) Demonstrate knowledge of U.S. history and government, unless excepted; 6) Demonstrate good moral character for at least 1 year prior to filing your N-400 through the day you naturalize; and 7) Demonstrate an attachment to the principles of the U.S. Constitution and be well disposed to the

serving as a registered nurse in the U.S. during COVID-19 and fulfilling the following requirements: (1) be a lawful permanent resident or physically present at the time of service as a registered nurse in the U.S. and U.S. territories; (2) demonstrate the ability to read, write and speak English; (3) demonstrate knowledge of U.S. history and government, unless excepted; (4) demonstrate good moral character for at least one year prior to applying for naturalization; and (5) demonstrate an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States. Like the section 1440 special provision for service members contained in sub-section (b)(2), registered nurses filing for naturalization during COVID-19 should be exempt from the continuous residence and physical presence requirements of naturalization.

While critics, seeking to neutralize the parallel to wartime service, may argue that not all Filipino nurses work the type of health care jobs that necessitate close contact with patients in high-risk environments,[170] this argument only highlights the complete disregard for human life that the U.S. has maintained toward Filipinos since the colonial era. The idea of setting a near-death standard for foreigners' citizenship is cruel and impossible to measure. How close must one come to death to earn citizenship? And what other stipulations must they meet in addition to their service to the U.S. during a global pandemic? Do they need to catch COVID, pass it onto a family member, and show signs of long COVID? Requiring close proximity to death creates a dangerous precedent and bleak path to citizenship, particularly when set against the history of colonial violence that the U.S. has waged on Filipinos. Moreover, there is no stipulation in section 1440 that foreign soldiers must have fought in the deadliest battles and come within arm's length of death to earn citizenship. The basis for section 1440 is military service during periods of hostilities, as it should be for Filipinos serving during COVID.

The U.S. has amended and added special pathways to citizenship for foreigners who provide special services to the country. During the COVID-19 pandemic, Filipino nurses are providing the most essential service. The U.S. should carve out a special path to citizenship in Title 8 of the United States Code for Filipino nurses working during the pandemic. This path can be created in an expansion of section 1427(f),[171] the provision for persons making extraordinary contributions to national security, because public health is a national security issue. The path could also be created within

---

good order and happiness of the United States during all relevant periods under the law, unless waived."

170. 8 U.S.C. § 1440; McFarling, *supra* note 7.

171. 8 U.S.C. § 1427(f).

section 1440,[172] which offers naturalization as a reward for military service to the U.S., because history shows that COVID times are far deadlier than war times and both foreign-born U.S. veterans and Filipino nurses serving in the U.S. during COVID have, and continue to take on, similar risks of death and long-term effects of service.[173] Either path to citizenship would combat not only the systemic and institutional exploitation of Filipino nurses at the hands of U.S. employers, but also the community's tragic and disproportionate COVID-19 death rates.

V. CONCLUSION

Filipino nurses are entitled to a special path to citizenship because they provide something essential and special to the people of the U.S—the *isang bagsak* level of care. A special pathway would allow Filipino nurses greater autonomy over what jobs they take without risking their status in the country. It would debilitate the exploitative practices of human traffickers and fraudulent recruiters and lead to a safer and more empowered Filipino nursing community.

Since the late 1800s, Filipino nurses have been serving the U.S. During times of crisis, from World War II to the AIDS epidemic, the U.S. turned to Filipino nurses to fill the ranks when U.S.-born nurses would not. Filipino nurses take the nursing jobs that no one else will take, and they do so for their families back home and for their patients, living up to the cultural pull of community care. Human traffickers and duplicitous recruiters and facilities continue to take advantage of Filipino nurses, using deportation and financial ruin as leverage for entrapping them in hazardous work conditions, long hours, and little pay.

Now, during the COVID-19 pandemic, they are dying at disproportionate rates, accounting for 31.5% of all COVID-19 nurse deaths while only making up 4% of the U.S. registered nurse population. This staggering statistic holds the weight of American colonialism and imperialism, as well as the ongoing exploitation of Filipino community care. The U.S. owes a debt to Filipino nurses. The country can begin to repay that debt by granting Filipino nurses the expedited path to citizenship that they have earned many times over.

172. 8 U.S.C. § 1440.

173. Martin & Yeung, *supra* note 107; Holcombe, *supra* note 105; Murdock, *supra* note 160.