



THE RIGHTS OF MIGRANTS

in the United States



All Migrants Have a Right to:

SAFETY AND SECURITY: The right to life and personal security.¹

HUMANE TREATMENT IN DETENTION: The right to be treated with respect and dignity while in detention.²

EQUAL PROTECTION AND DUE PROCESS: Equality before the law, freedom from arbitrary arrest and detention, and the right to a fair trial.³

ASYLUM: The right to seek safety in other countries from persecution.⁴

FAMILY UNITY: Legal migrants have a right to reunification with spouses and children in an expeditious manner.⁵

NON-DISCRIMINATION: The right to live free from discrimination, especially on the basis of national origin.⁶

FREEDOM FROM SLAVERY: The right to be free from slavery, servitude, and other forms of involuntary work.⁷

JUST WORKING CONDITIONS: Access to fair wages, a decent living, and workplace standards of safety, leisure, and health equivalent to U.S. citizens.⁸

CULTURAL CONTINUITY: The right to enjoy their own culture, to practice their religion of choice, and to use their own language.⁹

EDUCATION: Equal access to K-12 education without regard to the citizenship status of parents or children.¹⁰

HEALTH CARE: Medical care necessary for health and well-being, especially care that is urgently required for the preservation of life or the avoidance of irreparable harm to health.¹¹

HOUSING: Access to adequate housing, without segregation or discrimination.¹²

WHAT IS A MIGRANT?

A migrant is “any person who lives temporarily or permanently in a country where he or she was not born....”¹³ Migrants leave one place for another in search of a decent living or better education, to flee persecution, or simply to be close to family or friends.

Migration is an ancient and natural human response to hunger, deprivation, persecution, war, or natural disaster. Today, most governments regulate their borders and govern who enters or leaves the country. Migrants are classified based on their intent and the manner in which they enter a country. Tourists, business travelers, students, temporary workers, asylum seekers, refugees, permanent residents, and undocumented migrants all are part of the worldwide migrant population. In 2010, an estimated 214 million people lived outside their country of birth.¹⁴ Approximately 42.8 million migrants live in the United States.¹⁵

WHAT ARE THE RIGHTS OF MIGRANTS?

International human rights apply to all human beings, regardless of immigration status. Everyone – citizen or migrant, documented or undocumented – enjoys basic human rights such as the right to life, liberty, and security of person; freedom from slavery or torture; the right to equal protection of the law and freedom from discrimination; freedom from arbitrary arrest and detention; the presumption of innocence; and freedom of association, religion, and expression.

These human rights are protected by international treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Several treaties specifically address the human rights of migrants, including the Convention relating to the Status of Refugees and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. These treaties outline rights of particular importance to migrants, including due process, family reunification, and asylum.

DOES U.S. LAW RECOGNIZE THE RIGHTS OF MIGRANTS?

The U.S. Constitution guarantees most rights for all people in the United States, whether citizens or migrants, documented or undocumented. These include equal protection under the law, the right to due process, freedom from unlawful search and seizure, and the right to fair criminal proceedings, among many others. Other U.S. laws, such as those governing immigration proceedings, also grant rights to migrants.

The U.S. is also bound by international treaties such as the ICCPR, the Refugee Convention and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), all of which grant basic human rights to all peoples, including migrants.

IS THE U.S. FULFILLING THE RIGHTS OF MIGRANTS?

Despite the commitments made in international and domestic law, the U.S. system often fails to protect the human rights of migrants. Certain domestic laws discriminate between citizens and migrants, or between documented and undocumented migrants, especially in the provision of basic social services. Migrants encounter prejudice and intimidation in the workplace and in society at large; unequal access to basic services such as health care, housing, and education; arbitrary infringement of their civil liberties; and the denial of their fundamental rights to due process.

Safety and Security

U.S. domestic law protects migrants against violence and intimidation, but in recent years, the extreme and often racist rhetoric surrounding immigration issues has increased the threats migrants face to their personal safety. According to the FBI, 11% of all hate crimes in 2008 were based on the national origin of the victim.¹⁶ In other areas, the United States also has trouble guaranteeing the safety of migrants. For example, migrant women are more vulnerable than citizen women in cases of domestic violence and sexual assault, due to language barriers, social isolation, lack of financial resources, and fear of deportation.¹⁷ The violence often goes unreported, and the women do not receive the critical services they need.



Safety and Security (continued)

U.S. border enforcement policies and the lack of legal entry options have placed migrants in mortal danger along the Mexico–U.S. border. The dangers migrants risk in crossing the increasingly militarized border are known to the United States, yet the government has failed to minimize the threats to safety. Instead, deployment of heavy security near population centers has pushed migrant flows to more treacherous and remote corridors where they are dependent on smugglers, increasing the risk of death. Between 365 and 725 migrants died in 2008 as a result of these border enforcement policies.¹⁸

Humane Treatment in Detention

The U.S. lacks mandatory standards for immigration detention facilities, and as a result, migrants are frequently denied their rights to necessary medical care and humane conditions of detention. Virtually all immigrant detainees are held in prison-like settings, wear prison uniforms, are regularly shackled during transport and in their hearings, and are mingled with the general prison population. Immigrants in detention may be held for prolonged periods of time without access to the outdoors. Appropriate psychological and medical services for torture survivors are universally unavailable.¹⁹ Between 2003 and April 2009, Immigration and Customs Enforcement reported over 90 deaths of non-citizens in their custody, many as a result of denied medical care or suicide.²⁰ Temporary holding facilities are even worse, with some holding cells essentially large cages in the desert, while in other cases, migrants are held on buses with inadequate food, water, and medical care.²¹

Equal Protection and Due Process

All people in the United States have the right to due process and equal protection under the U.S. Constitution. Under immigration law, however, many migrants are subject to mandatory detention and to deportation without a hearing, even when they are lawfully present in the United States.²² Over 30,000 people in 2009 were deported without ever appearing before an immigration judge to plead the specific facts of their case.²³ Many migrants, including asylum seekers who are fleeing government persecution and torture, are also detained - sometimes for months - without an individual hearing on whether they can be safely released.²⁴

Immigrants are also denied their right to effective representation. While U.S. law provides that migrants facing deportation have “the privilege of being represented,” representation must be “at no expense to the Government.” In 2008, approximately 57% of detainees in deportation cases were unrepresented, which limits the ability of migrants to present compelling cases on why they should be allowed to stay, especially given the complexities of the immigration system.²⁵ Migrants with mental disabilities face even greater odds, since the immigration system routinely fails to take into account their competency to stand trial, even when they do not understand the charges being brought against them.²⁶

Asylum

Though the United States has ratified the Refugee Convention, certain policies in the asylum and refugee system deny protection to migrants who would face persecution or death if returned to their country of origin. U.S. law denies asylum to migrants who fail to file their claims within one year of arriving, which penalizes those most in need of protection, such as survivors of torture who struggle with memory loss, PTSD, depression, and other barriers to quickly applying for asylum.²⁷ The United States also defines the risk of being tortured very narrowly, denying protection to many at-risk people.²⁸ Finally, the United States bars individuals who have provided support to terrorist groups, but the definition is so broad that it covers peaceful political speech, assistance provided under coercion or threat of force, and even association with groups that support U.S. policies such as anti-Taliban fighters or Kurdish groups that fought against Saddam Hussein.²⁹

Family Unity

The right to maintain the unity of a family is one of the most fundamental human rights. The United States recognizes this by granting special preference to family members of immigrants who wish to join them in the United States. However, in practice, a strict quota system combined with slow processing times has led to an enormous backlog of visa applications – almost 3.5 million.³⁰ As a result, migrants have waited years – and sometime decades – before being reunited with family members. The United States also does not take into account family unity when enforcing immigration laws, detaining and deporting family members without considering the impact on families left behind. Over 1 million family members were separated by deportation between 1997 and 2007.³¹ U.S. law also establishes high penalties for unlawfully residing in the United States, forcing immigrants who may have entered illegally to spend up to 10 years apart from family members even after acquiring a pathway to legal status.³²

Non-discrimination

Though both U.S. laws and international treaties protect people from discriminatory treatment on the basis of ethnicity or national origin, migrants are often denied these protections. In many cases, immigration officials and local police rely almost entirely on Hispanic ethnicity to justify stopping, questioning, searching, and detaining suspected undocumented migrants.³³ In Texas, allowing local police to enforce immigration laws led to a sharp increase in the numbers of Hispanics detained on minor misdemeanor charges compared to other races, even though most of those arrested were lawfully present in the United States.³⁴

After September 11, 2001, Arab and Muslim Americans were also victims of discrimination. The FBI questioned thousands of men of Middle Eastern descent despite having no evidence of their involvement in terrorist activity or even immigration violations, while new immigration policies target migrants from Middle Eastern and Muslim countries even when there is no evidence that the migrant poses a risk.³⁵



Freedom from Forced Labor

Both undocumented and documented immigrants can be victims of forced labor. The H-2 guestworker program allows people to enter the United States legally for temporary seasonal employment. Once here, these workers are vulnerable to exploitation and enslavement, including stolen wages, seizure of identity documents, poor living conditions, and denial of medical care for workplace injuries.³⁶ Many undocumented migrants end up in slavery-like situations as a result of human trafficking. While the Trafficking Victims Protection Act of 2000 was created to reduce trafficking violations, many victims are too afraid of their traffickers to report the crime and less than one percent of cases are solved annually.³⁷

Just and Favorable Working Conditions

Migrants to the United States face serious barriers to economic prosperity and favorable working conditions. On average, migrants have median weekly earnings that are less than 80% of the earnings of native-born Americans.³⁸ Many of the industries in which immigrants work, particularly in the agricultural and domestic services sectors, are excluded from minimum wage, overtime, trade union, and occupational health and safety laws. Employers also use the threat of deportation and workplace raids to discourage undocumented migrants and their co-workers from reporting labor law violations.³⁹

Cultural Continuity

The rights of individuals to enjoy their own culture and to practice the religion of their choosing are core American principles, and are generally well protected under the Constitution. The right of migrants to their own language, however, is under threat. Currently, at least 26 states have passed constitutional amendments or statutes declaring English to be the official language and limiting the circumstances in which other languages can be used for government business.⁴⁰ At the federal level, repeated efforts have been made to ban the use of non-English languages for official purposes, in violation of U.S. obligations under the ICCPR.

Education

Though migrant children enroll in elementary and high school at about the same rate as citizen children, they have worse educational outcomes. In most states, English Language Learners score between 30-40 percentage points lower than their classmates on national assessments.⁴¹ In addition, undocumented migrant children are denied equal access to higher education in the United States. Under a 1996 federal immigration law, states are discouraged from providing in-state tuition, work-study, or financial aid to undocumented migrants. As a result, only 5-10% of undocumented migrants currently receive any post-secondary schooling.⁴² These children, many of whom were brought by a parent at a young age and have lived and attended school in the United States for most of their lives, face limited job opportunities because they lack college degrees.

Health Care

Migrants suffer from unequal access to both health insurance and health care. Most legal migrants who have been in the United States for less than 5 years, as well as undocumented migrants, are denied access to federally funded health insurance programs such as Medicaid. As a result, 47% of non-citizens are uninsured as compared to 15% of citizens.⁴³ In addition, many states have statutory bans on providing non-emergency health care to undocumented migrants. As a result of these restrictions, migrants are far less likely to receive health care than citizens. A recent study found that 25% of migrants had not seen a doctor in the past 2 years compared to only 10% of citizens.⁴⁴

Housing

Migrants suffer from discrimination in their access to housing. Local governments use housing regulations to prevent migrants from moving to their areas, either by targeting immigrant residency patterns, such as large or extended-kin households, or by requiring verification of legal status before buying homes or renting apartments.⁴⁵ Between 2005 and 2007, thirty municipalities across the country made it a criminal offense to rent apartments to undocumented migrants.⁴⁶ Landlords and real estate agents also discriminate against migrants, discouraging them from living in particular areas or creating higher barriers for migrants who want to rent or purchase a home. Hispanic renters, for instance, were found to face discrimination in housing in 25% of cases studied by the Department of Housing and Urban Development.⁴⁷

U.S. Government Obligations

To ensure the rights of migrants, the United States has the following obligations:

RESPECT:

Governments must not deprive any migrant of their rights under domestic and international law and must refrain from taking retrogressive measures that are incompatible with the rights of migrants.

PROTECT:

Governments must take measures to prevent individuals or third parties, such as employers or civil society organizations, from interfering in any way with the realization of the rights of migrants.

FULFILL:

Governments must adopt necessary measures and create an enabling environment such that all migrants can enjoy their full rights.

MEET MINIMUM STANDARDS:

Governments must ensure the satisfaction of the minimal, but essential, standard laid out in the UDHR and immediately address extreme situations of abuse.

NON-DISCRIMINATION:

Governments must work to prevent discriminatory outcomes due to class, race, gender, language, or other factors, in order to ensure equity in the fulfillment of the rights of migrants.

PROTECT MOST VULNERABLE:

Governments must actively reach out to the most frequently marginalized and excluded communities, who face the greatest barriers in realizing their rights as migrants.

MONITOR AND REPORT:

Governments must monitor and report on their fulfillment of the rights of migrants and ensure accountability for their actions and inactions.

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www.EnergyofaNation.org

A website dedicated to providing accurate information about immigration.

ENDNOTES: The Rights of Migrants in the United States Fact Sheet



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