



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 “a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently.”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 2020, an estimated 281 million people lived outside their country of birth. Approximately 51 million migrants live in the United States.¹⁴

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 the right to 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 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. Civil rights laws protect people from discrimination on the basis of race, color, national origin, citizenship, and other status.¹⁵

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

Despite the commitments made in international and domestic law, the United States 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 the fundamental right 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, 56% of all hate crimes in 2019 were based on the perceived race, ethnicity, or national origin of the victim.¹⁶ In other areas, the U.S. 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. The violence often goes unreported, and the women do not receive the critical services they need.¹⁷

U.S. border enforcement policies and the lack of legal entry options have placed migrants in mortal danger along the Mexico/United States border. The dangers people face in crossing an increasingly militarized border are known to the United States, yet the government has failed to minimize the threats to safety. Nearly 500 migrants died in 2019 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. People are held in prison-like settings, wear prison uniforms, and are shackled during transport and in their hearings. Immigrants in detention may be held for prolonged periods of time without access to the outdoors or in prolonged solitary confinement. Appropriate psychological and medical services for torture and trauma survivors are universally unavailable.¹⁹ Between October 2003 and April 2021, Immigration and Customs Enforcement reported over 214 deaths of people in their custody, many as a result of denied medical care or suicide.²⁰ Temporary facilities are even worse. In some cases, migrants are crowded into makeshift tents 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 140,000 people in 2019 were deported without ever appearing before an immigration judge to plead the specific facts of their case.²³ Many migrants are also detained, sometimes for months, without an individual hearing on whether they can be safely released, including asylum seekers who are fleeing government persecution and torture.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 2020, approximately 64% of all 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 U.S. 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. Though there are existing exceptions to the one-year rule, most are difficult if not impossible to meet without access to counsel.²⁷ The U.S. also defines the risk of being tortured very narrowly, denying protection to many at-risk people.²⁸ Finally, the U.S. 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 at one time have been allies of the U.S. military or supported by the U.S. government.²⁹

Family Unity

The right to maintain the unity of a family is one of the most fundamental human rights. The U.S. 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 – over 3.7 million.³⁰ As a result, migrants have waited years – and sometime decades – before being reunited with family members. The U.S. also does not consider family unity when enforcing immigration laws, detaining and deporting family members without considering the impact on families left behind. Over 1.6 million family members were estimated to have been separated by deportation between 1997 and 2005, and as many as half-a-million U.S.-citizen children experienced the deportation of at least one parent from 2011 through 2013.³¹ United States law also establishes high penalties for entering the country without permission, forcing immigrants 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. For example, throughout the COVID-19 pandemic, much federal and state assistance was denied to individuals and families based on immigration status.³³

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 U.S. 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.³⁴ Many undocumented migrants end up in forced labor situations as a result of human trafficking. While the Trafficking Victims Protection Act of 2000 and Justice for Victims of Trafficking Act of 2015 were created to reduce trafficking violations, many victims are too afraid of their traffickers to report the crime.³⁵

The Rights of Migrants in the United States

Just and Favorable Working Conditions

Migrants to the U.S. face serious barriers to economic prosperity and favorable working conditions. Throughout the COVID-19 pandemic, undocumented workers faced significant peril as they labored in agriculture and food processing, nursing and healthcare, janitorial, and other essential industries without adequate health and safety protections.³⁶ On average, migrants have median weekly earnings that are less than 90% of the earnings of native-born Americans.³⁷ 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.³⁸

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, 32 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.³⁹ 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 the 2006-07 school year, English Language Learners scored between 30-40 percentage points lower than their classmates on national assessments.⁴⁰ The Obama-Biden Administration's 2012 program Deferred Action for Childhood Arrivals (DACA), which enables its beneficiaries to live, work, and study in the U.S. on a temporary, renewable basis without the fear or threat of deportation, allowed hundreds of thousands of undocumented youth to pursue higher education.⁴¹ A report released by the Presidents' Alliance on Higher Education and Immigration found that undocumented migrant students make up about 2% (more than 450,000) of all students enrolled in U.S. higher education. Of these, approximately 216,000 students (1% of all students enrolled in higher education) have DACA status or are DACA-eligible.⁴²

DACA, under the Trump administration, became a tool for advancing his racist and anti-immigrant agenda. He was ultimately unsuccessful in dismantling the program with the 5-4 Supreme Court ruling in June 2020 that upheld its procedural legitimacy.⁴³ The nearly 650,000 young immigrants with current DACA status and the estimated one million more who are DACA-eligible are, however, once again in a state of limbo with the July 2021 ruling by a federal judge that DACA was unlawful.

Health Care

Migrants suffer from unequal access to both health insurance and health care. Noncitizens, both lawfully present and undocumented migrants, are significantly more likely than citizens to be uninsured, according to a recent study by KFF (Kaiser Family Foundation). In 2019, more than four in ten (46%) nonelderly undocumented migrants who were ineligible for federally-funded health insurance programs such as Medicaid, were uninsured compared to 9% of citizens. Even legal migrants must wait five years before enrolling in such programs, with 25% of lawfully present migrants uninsured. As a result of these restrictions, migrants are far less likely to receive health care than citizens.⁴⁴

Housing

Migrants suffer from discrimination in their access to housing. Local governments sometimes use housing regulations to prevent migrants from moving to their area, either by targeting immigrant residency patterns such as large or extended-kin households with zoning restrictions, or by requiring verification of legal status before buying a home or renting an apartment.⁴⁵ Between 2005 and 2007, towns across the country tried to use local ordinances to make it illegal for landlords to rent to undocumented migrants, most of which have since been struck down in court rulings.⁴⁶ Landlords and real estate agents also discriminate against migrants by limiting the information and options offered to minority homeseekers. Hispanic renters, for instance, learn about 12.5% fewer available units than equally qualified whites and are shown 7.5% fewer units, according to a study 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.

ENDNOTES: The Rights of Migrants in the United States

1. Article 3 of the Universal Declaration of Human Rights (UDHR). Accessed at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Accessed at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.
2. Article 10 of the ICCPR.
3. Articles 6, 7, 9, 10 & 11 of the UDHR; Articles 9, 13, 14, 15 & 16 of the ICCPR. 5th, 6th and 14th Amendments to the U.S. Constitution. Accessed at <http://topics.law.cornell.edu/constitution/billofrights#amendmenti>.
4. Article 14 of the UDHR. Convention on the Status of Refugees. Accessed at <http://www.unhcr.org/3b66c2aa10.pdf>.
5. Article 16 of the UDHR; Article 23 of the ICCPR. Article 44 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Accessed at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>.
6. Article 2 of the UDHR; Articles 2 & 26 of the ICCPR; 14th Amendment to the U.S. Constitution.
7. Article 4 of the UDHR; Article 8 of the ICCPR.
8. Articles 23 & 24 of the UDHR.
9. Article 27 of the ICCPR.
10. Article 26 of the UDHR; Article 30 of the Migrant Workers Convention.
11. Article 25 of the UDHR; Article 28 of the Migrant Workers Convention.
12. Article 25 of the UDHR.
13. "Migrant." International Organization for Migration. Accessed July 2021 at <https://www.iom.int/key-migration-terms#Migrant>.
14. "International Migrant Stock 2020." United Nations Department of Economic and Social Affairs, Population Division. Accessed July 2021 at <https://www.un.org/development/desa/pd/content/international-migrant-stock>.
15. See the Civil Rights Division of the Department of Justice website for an overview of federal anti-discrimination laws: <https://www.justice.gov/crt>.
16. "Table 1: Incidents, Offenses, Victims, and Known Offenders." 2019 Hate Crimes Statistics. Federal Bureau of Investigation. Accessed July 2021 at <https://ucr.fbi.gov/hate-crime/2019>.
17. "A Window into the Challenges Immigrant Women and Girls Face in the United States and the Policy Solutions to Address Them." Tahirih Justice Center (January 2018). Accessed July 2021 at <https://1t1t613brj137bt4k4eg60v-wpengine.netdna-ssl.com/wp-content/uploads/2018/01/Tahirih-Justice-Center-Survey-Report-1.31.18-1.pdf>.
18. "More Deaths Recorded in the Americas in 2019 than in Previous Years." International Organization for Migration (28 January 2020). Accessed July 2021 at <https://www.iom.int/news/more-deaths-recorded-americas-2019-previous-years-iom>.
19. "Designing a Trauma-Informed Asylum System in the United States." The Center for Victims of Torture (February 2021). Accessed July 2021 at https://www.cvt.org/sites/default/files/attachments/u101/downloads/2.4.designing_a_trauma_informed_asylum_report.feb42021.pdf.
20. "List of Deaths in ICE Custody, 10/01/2003 to 06/05/2017." U.S. Immigration and Customs Enforcement. Accessed July 2021 at <https://www.ice.gov/doclib/foia/reports/detaineedeaths-2003-2017.pdf>. "Detainee Death Reporting, FY2018-2021." U.S. Immigration and Customs Enforcement. Accessed July 2021 at <https://www.ice.gov/detain/detainee-death-reporting>.
21. "Factsheet: Immigration Detention in the United States by Agency." American Immigration Council (2 January 2020). Accessed July 2021 at <https://www.americanimmigrationcouncil.org/research/immigration-detention-united-states-agency>.
22. "Stakeholder Report for the United Nations Universal Periodic Review Relating to Asylum, Immigration Enforcement, and Detention." The Advocates for Human Rights (October 2019). Accessed July 2021 at <https://www.theadvocatesforhumanrights.org/Publications/Index?id=282>.
23. "FY2020 Enforcement Lifecycle Report." U.S. Department of Homeland Security. Accessed July 2021 at https://www.dhs.gov/sites/default/files/publications/immigration-statistics/Special_Reports/Enforcement_Lifecycle/2020_enforcement_lifecycle_report.pdf.
24. "Stakeholder Report for the United Nations Universal Periodic Review Relating to Asylum, Immigration Enforcement, and Detention."
25. "Immigration Report." Transactional Records Access Clearinghouse. Accessed July 2021 at <https://trac.syr.edu/phptools/immigration/nta/>.
26. "Deportation by Default: Mental Disability, Unfair Hearings and Indefinite Detention in the US Immigration System." Human Rights Watch and ACLU (July 2010). Accessed July 2021 at https://www.aclu.org/files/assets/usdeportation0710_0.pdf.
27. INA § 208(a)(2)(B); see also "Stakeholder Report for the United Nations Universal Periodic Review Relating to Asylum, Immigration Enforcement, and Detention."
28. "Stakeholder Report for the United Nations Universal Periodic Review Relating to Asylum, Immigration Enforcement, and Detention."
29. Krajcski, Jenna. "A Victim of Terrorism Faces Deportation for Helping Terrorists." The New Yorker (12 June 2019). Accessed July 2021 at <https://www.newyorker.com/news/news-desk/a-victim-of-terrorism-faces-deportation-for-helping-terrorists>.
30. "Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2020." U.S. Department of State. Accessed July 2021 at https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2020_vF.pdf.
31. "Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses." Human Rights Watch (April 15, 2009). Accessed July 2021 at <https://www.hrw.org/reports/2007/us0707/us0707web.pdf>. "U.S. Citizen Children Impacted by Immigration Enforcement." American Immigration Council (24 June 2021). Accessed July 2021 at https://www.americanimmigrationcouncil.org/sites/default/files/research/us_citizen_children_impacted_by_immigration_enforcement_0.pdf.
32. "Prosecuting People for Coming to the United States." American Immigration Council (10 January 2020). Accessed July 2021 at https://www.americanimmigrationcouncil.org/sites/default/files/research/prosecuting_people_for_coming_to_the_united_states.pdf.
33. Gelatt, Julia, Randy Capps and Michael Fix. "Nearly 3 Million U.S. Citizens and Legal Immigrants Initially Excluded under the CARES Act Are Covered under the December 2020 COVID-19 Stimulus." Migration Policy Institute (January 2021). Accessed July 2021 at <https://www.migrationpolicy.org/news/cares-act-excluded-citizens-immigrants-now-covered>.
34. Alvarez, Priscilla. "When Sex Trafficking Goes Unnoticed in America." The Atlantic (23 February 2016). Accessed July 2021 at <https://www.theatlantic.com/politics/archive/2016/02/how-sex-trafficking-goes-unnoticed-in-america/470166/>.
35. "Joint Stakeholder Report on Labor Trafficking and Labor Exploitation in the U.S." The Advocates for Human Rights (October 2019). Accessed July 2021 at <https://www.theadvocatesforhumanrights.org/res/byid/8649>.
36. Svajlenka, Nicole Prchal. "Protecting Undocumented Workers on the Pandemic's Front Lines." Center for American Progress (2 December 2020). Accessed July 2021 at <https://www.americanprogress.org/issues/immigration/reports/2020/12/02/493307/protecting-undocumented-workers-pandemics-front-lines/>.
37. "Foreign-born Workers: Labor Force Characteristics - 2020." Bureau of Labor Statistics (18 May 2021). Accessed July 2021 at <https://www.bls.gov/news.release/forbrn.nr0.htm/labor-force-characteristics-of-foreign-born-workers-summary>.
38. "Joint Stakeholder Report on Labor Trafficking and Labor Exploitation in the U.S."
39. Official Languages of U.S. States and Territories. Accessed July 2021 at https://en.wikipedia.org/wiki/Template:Official_languages_of_U.S._states_and_territories.
40. Chudowsky, Naomi and Victor Chudowsky. "State Test Score Trends Through 2007-08, Part 6: Has Progress Been Made in Raising Achievement for English Language Learners?" Center on Education Policy (7 April 2010). Accessed July 2021 at <https://files.eric.ed.gov/fulltext/ED509348.pdf>.
41. Alulema, Daniela. "DACA Recipients are Essential Workers and Part of the Front-line Response to the COVID-19 Pandemic, as Supreme Court Decision Looms." The Center for Migration Studies of New York (30 March 2020). Accessed July 2021 at <https://www.presidentsalliance.org/report-undocumented-students-in-higher-education-how-many-students-are-in-u-s-colleges-and-universities-and-who-are-they/>.
42. "Undocumented Students in Higher Education How Many Students are in U.S. Colleges and Universities, and Who Are They?" The Presidents' Alliance for Higher Education and Immigration (April 2020). Accessed July 2021 at <https://www.presidentsimmigrationalliance.org/wp-content/uploads/2020/07/Undocumented-Students-in-Higher-Education-April-2020.pdf>.
43. Totenberg, Nina. "Supreme Court Rules for DREAMers, Against Trump." NPR.org (18 June 2020). Accessed July 2021 at <https://www.npr.org/2020/06/18/829858289/supreme-court-upholds-daca-in-blow-to-trump-administration>.
44. "Health Coverage of Immigrants." Kaiser Family Foundation (15 July 2021). Accessed July 2021 at <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-of-immigrants/>.
45. Esbenshade, Jill. "Division and Dislocation: Regulating Immigration Through Local Housing Ordinances." Immigration Policy Center (Summer 2007). Accessed July 2021 at <https://www.americanimmigrationcouncil.org/research/division-and-dislocation-regulating-immigration-through-local-housing-ordinances>.
46. Harlan, Chico. "In these six American towns, laws targeting 'the illegals' didn't go as planned." The Washington Post (26 January 2017). Accessed July 2021 at https://www.washingtonpost.com/business/economy/in-these-six-american-towns-laws-targeting-the-illegals-didnt-go-as-planned/2017/01/26/b3410c4a-d9d4-11e6-9f9f-5c3db4b7f8dd7_story.html.
47. "Housing Discrimination Against Racial and Ethnic Minorities 2012." Department of Housing and Urban Development (June 2013). Accessed July 2021 at https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012_execsumm.pdf.