

# Moving from Exclusion to Belonging

## Immigrant Rights in Minnesota Today

The Advocates for Human Rights  
March 2014



Because every person matters.

## ABOUT THE ADVOCATES FOR HUMAN RIGHTS

The mission of The Advocates for Human Rights is to implement international human rights standards to promote civil society and reinforce the rule of law. By involving volunteers in research, education, and advocacy, we build broad constituencies in the United States and select global communities.

The Advocates for Human Rights investigates and exposes human rights violations and abuses internationally and in the United States; represents immigrants and refugees who are victims of human rights violations and abuses; trains and assists groups to protect human rights; and works through research, education, and advocacy to engage the public, policy makers, and children in understanding human rights.

The Advocates for Human Rights was founded in 1983 by a group of Minnesotans who recognized the community's unique spirit of social justice as an opportunity to promote and protect human rights in the United States and around the world. Today, The Advocates has produced more than 75 reports documenting human rights practices and policy recommendations, and works with partners overseas and in the United States to restore and protect human rights. The Advocates for Human Rights holds Special Consultative Status with the United Nations.

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*Moving from Exclusion to Belonging* is dedicated

to Minnesota's immigrants and refugees, whose unique experiences enhance our state.

May you continue to feel a deeper sense of inclusion and belonging.



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<sup>1</sup> Tamara Downs Schwei and Katherine Fennelly, “Diversity Coalitions in Rural Minnesota Communities,” CURA Reporter (Winter 2007), 13.

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# METHODOLOGY

When The Advocates for Human Rights set out to measure the extent to which Minnesota respects, protects, and fulfills the human rights of refugees and immigrants in our state, we faced the challenge of eliciting people’s lived experiences – good and bad – in our community. We knew that by asking people about the human rights violations they faced, we would get only part of that story.

We also were mindful of the potential divisions that can occur when talking about immigration. Too often, conversations about immigration fail to make room for considerations of the broader problems of racism, segregation, and poverty in Minnesota. And for many black and American Indian Minnesotans in particular, conversations about “immigration” can seem to leave them out altogether.

The notion of creating “welcoming communities” was grabbing the attention of the national immigrant integration movement, and we decided to test what that concept of “welcome” means by using it to frame our discussions. We asked participants to answer questions about what makes a community welcoming and to share experiences where they felt welcome, or not, in an effort to understand how they perceive the community and what they understand to be problems or solutions.

Using the framework of “welcome” proved useful. Individuals, organizations, institutions, and civic groups were both open to, and excited by, the idea of exploring the issue of immigration through this lens.

Over the course of more than two years of conversations, interviews, and research, however, we learned that while making newcomers feel “welcome” is important, it is insufficient in the face of discrimination, exclusion, and the denial of access and opportunity that results from human rights violations.

We began with a series of community conversations held around Minnesota to elicit ideas of what defines a welcoming community. While people spoke to the importance of opportunities to build understanding and friendship, they quickly turned to more concrete issues of exclusion, fear, and denial of fundamental human rights as the factors which contribute to, or inhibit, integration in the community. People acknowledged that while Minnesota works hard to “welcome” people, many individuals struggle to belong and to live with dignity. We continued these conversations throughout the project, as groups across the state heard of the project and wanted to join our effort to build inclusive communities where people could truly belong.

Based on the scope of these conversations, we developed an interview questionnaire to guide our discussions with individual community members, service providers, advocates, activists, and government personnel. Informed by the discussions with hundreds of Minnesotans, we explored

## METHODOLOGY

issues related to immigration, law enforcement, and the justice system; housing, education, and access to basic needs; and issues Minnesotans are facing in the workplace.

We invited people to help us reach into their communities. We trained over 60 volunteers, including two university classes, about human rights monitoring and the protocols relating to this project. These people, in turn, conducted community conversations and individual interviews, which helped to form the findings of this report.

The voices of the participants in our conversations and interviews are the heart of our report. We present their experiences and insights anonymously, both to preserve their privacy and because the issues they discussed crossed boundaries of place, ethnicity, occupation, and immigration status. Quotes presented are accurate, but do not represent transcripts.

The Advocates held community conversations in partnership with host organizations, including community-based organizations and human rights commissions in the metro area and in greater Minnesota. Approximately 500 people participated in these conversations. Approximately 50 percent of participants reported being long-term residents. Of those who reported a place of birth outside the United States, approximately 40 percent were from Africa; 30 percent from Asia; 20 percent from Mexico, Central, and South America; and 10 percent from Europe.

The Advocates also conducted approximately 200 individual interviews. In addition to speaking with individual immigrants and refugees, The Advocates interviewed elected officials, civil rights officials, attorneys, public defenders, civil legal services attorneys, medical professionals, domestic violence and sexual assault victim advocates, community-based organizations, human rights commissions, refugee resettlement agencies, police, chamber of commerce representatives, educators and administrators, labor organizers, economic development agencies, and other service providers. The Advocates met with people throughout Minnesota, visiting communities in each region of the state.

We then analyzed our findings through the lens of human rights. We considered those rights which the United States and the State of Minnesota have acknowledged through their constitutions, statutes, and courts to be binding. We also considered those rights which the United States has recognized in principle, but which it has not yet incorporated into the domestic legal framework – the “economic, social, and cultural” rights – for while they may not (yet) be legally enforceable in the United States, they remain rights which all human beings should enjoy. By including them in our analysis, we challenge ourselves, our colleagues in the human rights movement, and those who make and enforce the laws to all work for the recognition of all human rights.

# EXECUTIVE SUMMARY

Too often, the discussion about immigration focuses judgment on the actions of immigrants – whether they followed increasingly complicated immigration rules, their adeptness at adjusting to life in the United States, and their willingness to meet the broader community’s expectations of behavior and appearance. This report reverses the terms of the discussion and examines the actions of Minnesota’s government, civic institutions, and long-term residents – how well do they fulfill their responsibilities towards immigrants? International human rights standards provide an important framework for analyzing the actions of the broader community and the government and judging whether Minnesota is fulfilling its responsibility to ensure that every person is treated with dignity and enjoys freedom, justice, equality, and peace.

Minnesota takes seriously the commitment to provide a safe community in which everyone thrives, and in recent decades Minnesota has welcomed thousands of refugees and immigrants. Nonetheless, people’s fundamental human rights are being violated and abused. The findings of this report remind Minnesota that while welcoming gestures can help ease transitions and build friendships, welcome by itself, without upholding fundamental human rights, ultimately leaves some Minnesotans excluded from the most basic protections needed to ensure that every person lives with dignity.

The Advocates for Human Rights’ report draws on nearly 200 individual interviews and more than 25 community conversations involving approximately 500 people throughout the state. It places the findings within the context of state, federal, and international human rights law to identify what is working to promote integration and success, what is failing, and what gaps exist in public policy. While The Advocates for Human Rights specifically documented the experiences and perceptions of refugees and immigrants in this report, it recognizes that these experiences highlight – and indeed have been allowed to occur because of – the longstanding failure to protect the human rights of all Minnesotans, regardless of race, poverty, and marginalization.

## DISCRIMINATION AND DISTANCE

Immigrants and refugees face barriers to belonging in Minnesota communities because of discrimination and social distance. Immigrants and refugees face the challenge of living in a state plagued by some of the nation’s worst racial disparities in the areas of employment, health, civic engagement, and educational outcomes.<sup>2</sup> Discrimination against Muslim immigrant communities continues in employment, immigration, and religious expression. Immigrants and refugees with

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<sup>2</sup> Minnesota Department of Health: Commissioner’s Office, *Advancing Health Equity in Minnesota: Report to the Legislature*, Melanie Peterson-Hickey, and Jeanne Ayers (Feb. 2014), 5-6; Minneapolis Foundation, and Amherst H. Wilder Foundation, *One Minneapolis: A vision for our city’s success*, Jane E. Tigan (Oct. 2013), 9.

legal status often remain ineligible for public safety net programs and face difficulty establishing new lives in Minnesota due to a lack of credit history, recognized credentials, or social and professional networks. Parents and teachers struggle to communicate around linguistic and cultural barriers, given a student population that speaks approximately 230 languages at home and represents at least as many different cultures.<sup>3</sup>

### EXCLUSION AND FEAR

Thousands of undocumented Minnesotans and their families live excluded from the community and in constant fear of deportation, leaving them vulnerable to human rights violations and abuses in Minnesota. For Minnesotans who lack legal immigration status, and their families, fear of detention and deportation defines how they interact with all facets of the system. Undocumented immigrants often avoid calling the police, complaining about dangerous or exploitative working conditions or unsafe housing, seeking medical care, or engaging in their children's schools in an attempt to stay "under the radar." Unable to access an effective remedy, undocumented immigrants often fall victim to human rights abuses by private actors, including discrimination and exploitation. Undocumented immigrants in Minnesota also face human rights violations by the government, including serious due process violations and violations of their rights to safety and security of the person, housing, food, and health.

### PUBLIC SAFETY

Immigrants' ability to enjoy safety and security in their communities suffers because of fear and mistrust of law enforcement. People consistently cited fear of detention and deportation as a reason to avoid contact with law enforcement. For undocumented victims of crime or for crime victims who have undocumented family members, this fear can be an obstacle to seeking protection. Advocates for battered immigrant and refugee women, in particular, reported that fear of deportation remains a barrier to seeking safety, despite federal immigration law intended to protect certain crime victims from deportation.

Reports indicate that fear of deportation following contact with local law enforcement agencies appears to be well founded. Immigrants, service providers, and legal services attorneys reported drivers and passengers being arrested following stops for traffic violations. Once in jail for any reason, people are subject to interrogation by Immigration and Customs Enforcement (ICE). Individuals are routinely turned over to ICE or Border Patrol upon a "detainer request" from those agencies, with no scrutiny by prosecutors or courts about the constitutional validity of the underlying arrest. This has left Minnesota law enforcement without an effective mechanism to detect or combat any immigration profiling that may take place.

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<sup>3</sup> Minnesota Department of Education, Division of Student Support, *English Learner Education in Minnesota: 2013*, 12, <http://w20.education.state.mn.us/MDEAnalytics/Data.jsp>.



Immigrants, refugees, advocates, and law enforcement all reported that trust of law enforcement is essential to individual and community safety, but building that trust can be challenging. Perceptions of cooperation with federal immigration officials and experiences with police in both home countries and Minnesota affect the relationship between immigrant communities and law enforcement. People pointed to the important role police can play in fostering trust, both through specific outreach and through day-to-day interactions.

## ACCESS TO JUSTICE

Immigrants and refugees in Minnesota face serious barriers to accessing justice that are compounded by lack of immigration status, language, and lack of familiarity with the U.S. legal system. People reported limited availability of free civil legal services, in general, and immigration legal services, in particular. In the criminal context, people noted that immigrants and refugees may face grossly disproportionate consequences for criminal convictions. People also noted perceptions of bias in the criminal justice system, lack of access to high quality interpreters in all aspects of proceedings, lack of understanding by immigrants and refugees of how the court system works, and significant delays in cases that cause hardship to immigrant plaintiffs. Finally, for people who have been victims of discrimination in housing, employment, public benefits, or other sectors, fear of deportation acts as a barrier to seeking an effective remedy.

## ECONOMIC OPPORTUNITY

Many individual immigrants reported feeling that economic opportunity for immigrants in Minnesota is similar to the opportunities available to the U.S.-born population. Immigrants and refugees did report barriers to employment, including lack of employment authorization, limited opportunities due to language proficiency, lack of recognition of foreign training and credentials, and limited access to education and technology. Other barriers include the limited availability of living wage jobs, benefits, and paid time off. Despite these barriers, many immigrants and refugees report optimism about their economic opportunities due to hard work.

While immigrants and refugees often viewed their economic opportunities with optimism, service providers and advocates reported patterns that indicate a more sobering situation. Some immigrant workers face exploitation by employers who prey on fear of deportation or job loss. Serious workplace abuses including wage and hour violations and wage theft, lack of training and access to safety equipment, physical and sexual assault, false imprisonment, and human trafficking were reported in a variety of industries.

Immigrant and refugee workers in Minnesota have widely divergent experiences based on their race, religion, country of origin, education level, and immigration status. Some face employment discrimination based on these circumstances. While most individuals interviewed did not report being the victim of illegal discrimination, organizations and advocates who serve immigrant workers

uniformly reported incidents of discrimination in the workplace. At the same time, some people reported willingness by their employers to remedy problems.

### EDUCATION

Minnesota, which has a unique immigrant demographic and accompanying challenges, has seen overall improvements in academic outcomes that are shared by immigrant and refugee populations. Nonetheless, persisting disparities highlight inequities within the system. Interviewees pointed to systemic root causes, such as poverty and segregation, that require community commitment to school integration to remedy. Additionally, interviewees identified the need for state-level policy changes in order to reduce bullying and mitigate disparate negative effects of school discipline policies on immigrant and refugee students. They also noted state-, community-, and school-level policies that could be changed to alleviate barriers related to school readiness, preparedness of content staff to work with immigrant students, insufficient funding and staffing levels, and hiring and retention of staff of color.

Participants also identified the need for increased attention and resources accorded to English learner (EL) services, including more staffing, improved curricula and pedagogy, and better placement procedures of immigrants and refugees in both EL and special education classes.

Community members and interviewees cited several ways in which schools could create a more welcoming environment that included providing human rights and multicultural education, encouraging positive staff treatment and intervention, and enhancing the facility's physical environment. They also noted the importance of reducing barriers that limit family involvement, including perceptions of unwelcome, a range of communication issues linked to language and culture, and a lack of resources.

Many of the same issues extend themselves into postsecondary systems, resulting in unequal access manifested in student expectations, college readiness and support, available options, and discrimination. Finally, interviewees articulated the need for all systems to be routinely and systematically monitored.

### HOUSING

Immigrants in Minnesota struggle to find safe and well-maintained housing, a problem fueled by a shortage of affordable housing, restrictions on public benefits, immigration status, exploitation by landlords, and outright discrimination in renting and buying. Lack of housing is not exclusively the problem of a particular immigrant group, but affects all immigrants, regardless of their country of origin, immigration status, place of residence in Minnesota, or ethnicity. Some immigrant populations, however, face added difficulties that complicate the search for affordable housing. The systems that protect people from exploitative and discriminatory landlords, realtors, and mortgage

lenders are not working for immigrants. The private market is failing to provide affordable housing, and public housing cannot meet the demand, constrained by a lack of funding and a political environment that views it as acceptable to deny the rights of all people to decent, safe housing.

## BASIC NEEDS

Immigrants and refugees do not receive the support they need to meet their basic needs, primarily because public assistance programs are built not to include everyone who requires assistance, but to exclude certain people from consideration, regardless of their needs.

Despite the United States' commitment to refugee protection, the United States makes scant public benefit provisions for refugees and asylum seekers. Refugees are eligible for basic services, but face strict time limits and complications if they relocate. Asylum seekers receive no support upon their arrival in the United States and face a waiting period for work authorization after applying for asylum.

Many other immigrants face a host of barriers to accessing services to meet their basic needs. Communication around public benefits suffers from the paradoxical problem of both not enough information and "information overload" driven by the complexity of the benefits eligibility system. Language barriers and cultural differences create an additional challenge to communicating with clients about their benefits. Service providers also noted the problematic design of the U.S. public assistance system, which is built on addressing individuals' "deficiencies," instead of their strengths.

The health care system contains additional barriers. Many immigrants are simply unable to access services due to exorbitant health care costs. Health care professionals also face serious challenges in communicating with their patients due to language, literacy, and cultural barriers. This challenge is particularly acute in the mental health care field, which faces a severe lack of culturally appropriate providers.

Eligibility for most public benefits hinges on immigration status, and confusing and complex rules lead to denial of benefits to qualified immigrants or family members. Some immigrants fear accessing the system at all due to their immigration status or the fear of being labeled a "public charge." Finally, the categorical exclusion of undocumented immigrants from almost all public benefits and recent cuts to state-funded programs denies basic human rights to many people.

## CIVIC ENGAGEMENT

Immigrants in Minnesota reported mixed experiences with community involvement, which includes everything from attending local events and volunteering with community organizations to serving in the government. Immigrant engagement is strongest within their own ethnically based organizations and weakest when it comes to holding decision-making power in government or as leaders of large organizations that serve the broader community. English language classes and volunteering are two highly positive sources of connection to the larger community, but not all

immigrants took advantage of those opportunities. One of the primary obstacles to greater immigrant involvement is simply a lack of information about community resources. Additional difficulties arise from different cultural norms or unfamiliarity with the U.S. political and civic systems. In other cases, government and organizations either do not know how to become more inclusive or lack the political will to be more open. In a few cases, active religious discrimination prevents immigrants from fully enjoying their rights.

### IMMIGRATION

In the majority of interviews conducted for this report, participants made a distinction between the issues facing undocumented people and those facing immigrants with legal status. The problems experienced by those with legal immigration status include long waits for application processing, difficulties communicating with immigration officials, and discrimination based on religion and country of origin. The situation facing undocumented people is much worse by virtually every marker. Not having legal immigration status means living with a continual, abiding fear that you or a family member could be deported at any moment. This fear undermines the ability of undocumented people to live safely and with dignity and to fully realize other fundamental human rights. Though the problems are fundamentally different between these two groups of immigrants, they all reflect a lack of respect for the right to live with dignity and security.

### BUILDING A MINNESOTA BEYOND “NICE”

As The Advocates for Human Rights interviewed individuals and held community conversations around Minnesota, participants were asked to describe what “welcome” means to them, what has made them feel welcome in Minnesota, and what barriers to welcome they have encountered.

Participants noted that while Minnesota is welcoming, the welcome does not extend very far. Newcomers face discrimination and exclusion from social networks and by extension, exclusion from the economic opportunities and political power such networks bring. People spoke about the need to be “accepted” without having to discard their identities in order to be able to live with dignity. People pointed to opportunities where long-term residents can learn about other cultures and believed such education is essential to helping foster acceptance. Participants also described the barrier that segregation creates in building networks and recognized the power of connections, whether fostered through formal programs or informal encounters, to help overcome this.

### CONCLUSION

While Minnesota takes seriously the commitment to create welcoming communities, too often the fundamental human rights of immigrants and refugees are violated and abused. Although welcoming gestures can help ease transitions and build friendships, welcome by itself, without upholding fundamental human rights, ultimately leaves some Minnesotans excluded from the most basic protections.

Immigrants and refugees report barriers to belonging in Minnesota that result from discrimination, social distance, exclusion from the greater community, and fear. These barriers lead to human rights violations that impact safety and security and that undermine immigrants' ability to earn a living and to meet their basic needs. The failure to protect these fundamental human rights undermines Minnesotan values and squanders the rich resources that Minnesota's newcomers bring. Public policy must guarantee that all people who live in Minnesota, regardless of where they were born or what their immigration status is, enjoy the fundamental human rights that allow them to live with dignity.



# FINDINGS AND RECOMMENDATIONS

## PUBLIC SAFETY

Finding: Undocumented immigrants and their family members fear that contacting law enforcement as a victim or witness will lead to deportation.

### Recommendations

- Law enforcement agencies and county attorneys should encourage crime reporting by undocumented crime victims by adopting policies that articulate clear standards for exercising charging or prosecutorial discretion when evidence of the victim's unlawful presence in the United States is uncovered during the course of the investigation or prosecution.
- Cities, counties, and the State of Minnesota should enact local separation ordinances, rules, or laws to provide clear guidance to public employees, including law enforcement officers, about when to inquire about immigration status.

Finding: Existing protections for undocumented crime victims are not effectively implemented.

### Recommendations

- Federal, state, and local law enforcement agencies should establish clear points of contact for U-visa certification. Points of contact should receive training on the U-visa certification's purpose and requirements on a regular basis.
- Minnesota should establish a single statewide point of contact at the Department of Public Safety who can make decisions on certification requests and who can provide training and support to other points of contact statewide.
- Minnesota should increase the capacity of local domestic violence and sexual assault programs to serve as points of contact, leveraging the relationships between Minnesota's robust Domestic Violence Coordinated Community Response (DV CCRs), Domestic Assault Response Teams (DARTs), Sexual Assault Multidisciplinary Response Teams/Sexual Assault Response Teams (SMARTs/SARTs), and key criminal justice personnel.

## RECOMMENDATIONS

- Federal, state, and local agencies charged with enforcing civil anti-discrimination laws, labor and employment laws, worksite safety provisions, and housing codes should identify points of contact for U-visa certification and should establish protocols for reviewing certification requests to ensure that victims of discrimination and exploitation who are also victims of serious crimes can be identified and certified for U-visas.

Finding: Undocumented immigrants cannot obtain Minnesota driver's licenses, undermining public safety and increasing opportunities for discriminatory targeting of people who appear to be immigrants by law enforcement officers.

### Recommendation

- Minnesota should enact legislation or make regulatory changes to decouple driving privileges from immigration status.

Finding: Increased coordination between local law enforcement and federal immigration agencies creates conditions for constitutional violations with no effective remedy.

### Recommendations

- Law enforcement agencies responsible for the enforcement of traffic laws, including municipal police departments, sheriff's offices, and the Minnesota State Patrol, should establish clear protocols for involving federal immigration agencies at the point of traffic stops. Federal immigration officers should never be called to provide interpretation assistance.
- To avoid practices by individual officers that result in racial profiling, law enforcement agencies should provide clear guidance about when patrol officers should ask passengers in vehicles to provide identification.
- Information should be available, in an accessible and understandable format, to everyone booked into county jails in Minnesota about their right to remain silent and the possible consequences of voluntary interviews with federal immigration officials.
- Free immigration legal services should be accessible to every person booked into county jails.



- Municipal and county jails should develop clear guidelines for when to honor ICE detainer requests.
- Prior to turning an individual who has not been criminally charged over to ICE pursuant to an informal detainer request, the case should be reviewed by the city or county attorney to ensure that the initial stop or arrest meets the standards sufficient to justify criminal charges, including review to ensure that the stop was not based on race or national origin.
- Prior to turning an individual who has been criminally charged over to ICE pursuant to an informal detainer request, the case should be reviewed by the city or county attorney to ensure that deportation does not interfere either with the state's interest in pursuing criminal charges against the individual or with the individual's right to defend themselves against the charges. The city or county attorney should not authorize the individual's release to ICE without moving to dismiss the pending criminal charges against the individual.
- Minnesota should enact legislation that allows law enforcement to honor ICE detainer requests only in certain clearly defined circumstances to eliminate the opportunity to engage in immigration profiling through traffic stops.

Finding: Immigrant communities lack trust in local law enforcement.

### **Recommendations**

- Everyday encounters between immigrant and refugee community members and police officers affect the community's understanding of, and level of trust in, the public safety system. Police officers should use routine traffic stops and other low-level encounters as an opportunity to explain why a stop was made or the police were called, what laws were broken, and how to avoid future violations.
- Police departments should invest in community liaisons who can build relationships with community members. Outreach strategies might include: regular community orientation sessions that focus on frequent violations identified by police and on questions and problems identified by the community; citizen academies and cadet programs; and active participation in community events.

## ACCESS TO JUSTICE

Finding: Immigrants and refugees do not have sufficient access to free legal counsel for civil cases or immigration procedures.

### Recommendations

- Increase funding for legal services to ensure access to counsel for all who need representation in civil and immigration matters.
- Implement a guarantee of free counsel in civil cases to ensure free legal representation for those who cannot afford it and who are facing loss of a fundamental human right, such as housing, employment, or family unity.
- Remove funding restrictions tied to immigration status from legal aid money to enable undocumented immigrants to qualify for all free legal services.
- The federal government should provide free legal counsel for those facing deportation, given the deprivation of rights that comes with effective exile.

Finding: Criminal convictions have disproportionate consequences in the immigration system.

### Recommendations

- Increase funding for public defender offices to ensure quality representation.
- Public defender offices should have an on-staff immigration attorney dedicated to screening cases for immigration consequences and advising public defenders in the office on consequences of pleas and convictions for immigrant clients. Funding for this position should be provided as a new item and not drawn from existing staff.
- Congress should revise and narrow the definitions and types of crimes that qualify as aggravated felonies and deportable offenses under immigration law.

Finding: Immigrants perceive bias in the justice system based on language, culture, and national origin.

#### Recommendations

- Provide training for judges, prosecutors, probation officers, and other staff about immigrant groups in Minnesota, the refugee experience, cross-cultural communication, and other topics as needed to ensure quality service delivery to all.
- Consider creating a refugee court, similar to the existing Veterans Court, to address the special needs of refugees who are often survivors of trauma and torture.

Finding: The court system does not have sufficient high quality interpreters in all languages to meet demand.

#### Recommendations

- Minnesota courts should continue to recruit and train additional interpreters in less common languages, including ongoing monitoring of the quality of interpretation.
- Continue to support training for judges and other court staff on effective use of interpreters.

Finding: Immigrants and refugees do not fully understand the legal system.

#### Recommendations

- Expand promotion and dissemination of existing educational resources, including videos by ECHO Minnesota and *pro se* guides by LawHelpMN.org.
- Continue to develop a wide range of *pro se* materials in all relevant languages that are effective for low-literacy populations, including videos and picture-based resources.

## RECOMMENDATIONS

Finding: Delays in resolving cases makes immigrants feel that the justice system is not working for them.

### Recommendations

- Increase funding for the court system to ensure timely adjudication of civil cases.

Finding: Undocumented immigrants face barriers to filing discrimination claims, especially if they are deported before they can file their case.

### Recommendations

- Permit discrimination claims to be filed from outside Minnesota to allow immigrants who have been deported and who may have suffered discrimination to pursue a remedy and bring to light illegal conduct.

## ECONOMIC OPPORTUNITY

Finding: Immigrant and refugee workers face barriers to economic opportunity, due to lack of employment authorization, limited English language ability, lack of recognition of foreign credentials, and lack of access to education or technology needed for employment.

### Recommendations

- Municipal and state licensing boards should review policies regarding acceptance of foreign credentials and ensure that foreign training is licensed when appropriate.
- Employers should review recruitment and hiring practices that rely on lengthy applications or require applicants to apply online to ensure that these practices do not unnecessarily create barriers to immigrant and refugee workers.
- The minimum wage should be raised to ensure that all full-time workers earn a sufficient income to move out of poverty.
- Local chambers of commerce, community economic development initiatives, and local governments should actively engage immigrant business owners.

Finding: Immigrant workers face exploitation in the workplace, such as low wages and wage theft, sexual assault, and outright imprisonment.

### Recommendations

- Increase resources devoted to enforcement of workplace exploitation, including resources for training, investigation, and prosecution under state and federal laws.
- Ensure that victims of exploitative employment practices are protected from retaliation and deportation when they come forward.
- The IRS and Minnesota Department of Revenue should increase oversight of subcontractors in construction, retail cleaning, and other industries to ensure that their workers are not misclassified as contractors to avoid wage, hour, and other workplace protections.
- In light of increasing reliance on temporary workers to fill permanent positions, Minnesota should consider whether standards for employee protections need to be expanded.
- OSHA and the Minnesota Department of Labor and Industry should increase oversight of subcontractors in construction, retail cleaning, and other industries to ensure that workers receive health and safety information, equipment, and training, and are not subject to unsafe working conditions.
- Recognizing that workers are often isolated, government agencies and labor rights organizations should take creative measures to ensure that agricultural and horticultural workers have access to information about their rights under U.S. and Minnesota civil rights and workplace safety laws.

Finding: Immigrant and refugee workers face employment discrimination based on race, religion, national origin, and citizenship.

### Recommendations

- Expand anti-discrimination enforcement mechanisms to decrease the reliance on individual complaints.
- Ensure that low-wage workers who experience discrimination in the workplace are not effectively barred from prosecuting complaints because of litigation costs.
- Ensure that newcomers to the workforce have clear, accessible information about non-discrimination standards and means of enforcement.

## EDUCATION

Finding: There are disparities in education that reveal the fact that all students do not receive an equal education.

### Recommendations

- Raise overall funding levels for public education and change funding structures so that all schools are reasonably equal in quality and resources.
- Change the accountability focus from teachers and students to federal and state government bodies and officials, and thus to individuals and communities at large, for ensuring the success of all students.
- Create mechanisms to look at the root causes of educational disparities, including institutional racism, and at solutions for long-term sustainable change at the state, district, and school levels, with participation from immigrants and other affected communities.
- Raise awareness of the causes, potential solutions, and extent of disparities among individuals at the neighborhood and community level.

Finding: The educational system is currently not well equipped to meet the needs of refugee children.

### Recommendations

- Create a plan that meets the educational and emotional needs of refugees who enter the United States as teenagers and young adults and have missed several years of school.
- Hire more mental health professionals in schools and provide culturally appropriate referrals.

Finding: Undocumented students and families and mixed-status families live with the fear of having a loved one deported and face unique challenges around documentation.

### Recommendations

- Provide clear guidance in an administrative rule, law, or communication from the Minnesota Department of Education to all schools that staff members are prohibited from asking about immigration status.
- Change parent volunteer forms so that they do not ask for Social Security numbers, which are not required to run background checks.
- Issue photo IDs so that undocumented students have some form of identification.
- Hire more social workers in schools, and train administrators, teachers, and other staff on how to safely provide referrals for available resources.

Finding: Segregation has increased in Minnesota over the last two decades, leaving many immigrant students in segregated, high-poverty, low-performing schools.

### Recommendations

- Make information about school options more accessible and increase outreach to immigrants to ensure that families understand all available choices for their child's education.
- Revise state laws regarding integration, fixing Minnesota Administrative Rule 3535.0110 "Equal Opportunity in Schools" so that it does not require proof of intent to segregate and does not exempt charter schools and open enrollment policies.
- Create a statewide integration plan that requires inter-district planning and cooperation and includes all public schools.

Finding: Many students, in both K-12 and postsecondary institutions, are bullied or discriminated against.

### Recommendations

- Improve state laws regarding bullying to ensure safety and security for every child.
- Conduct school and college campus climate surveys and address areas of concern.

## RECOMMENDATIONS

Finding: Students of color, including some immigrant and refugee students, are disproportionately affected by punitive school discipline policies.

### Recommendation

- Conduct an audit of discipline policies that includes input from affected student groups and create a plan to bring policies into alignment with new federal guiding principles from the Departments of Education and Justice.

Finding: Some immigrant and refugee students are not well prepared to enter school.

### Recommendations

- Fund universal early childhood education in Minnesota.
- Increase funding for Early Childhood Family Education (ECFE) and raise awareness among immigrant parents of the program and its benefits.

Finding: There are insufficient overall levels of staff, and an insufficient number and percentage of staff members who represent the student demographic.

### Recommendations

- Provide funding for more educational staff, in general.
- Hire more staff who represent the ethnic, cultural, and linguistic background of students in all professions within the school, and especially as teachers and administrators.
- Conduct audits of hiring policies and practices and survey staff members from all backgrounds to find ways to hire and retain representative staff.
- Recruit and support immigrants and refugees to become teachers and administrators, including foreign-credentialed teachers.



Finding: There is a lack of funding for, and focus on, English learner (EL) staffing levels and support.

### Recommendations

- Require and fund in-depth, tailored trainings for pre-service and current teachers on strategies to effectively teach ELs and work with students from a variety of different cultures.
- Provide more funding, staff, and administrative support for EL services, including district-level EL coordinators who are both language experts and licensed as administrators.
- Implement “Research-based Recommendations for Effective EL Instruction” on page 146.
- Improve EL and special education placement, and ensure immigrant families more fully understand the benefits of these services when students are appropriately placed.

Finding: Some schools are not currently teaching enough about diverse perspectives and experiences.

### Recommendations

- Provide immigration basics trainings to school staff to help them better understand students’ experiences and teach about immigration.
- Ensure that standards related to human rights and multicultural education are being taught. Revise curriculum, where necessary, to include more diverse perspectives.
- Facilitate integration among students at the interpersonal level, being cognizant that sometimes students self-segregate as part of their identity formation.

## RECOMMENDATIONS

Finding: Parent and family involvement can be limited among immigrant populations, due to perceptions of being unwelcome, communication issues around language and culture, and lack of resources.

### Recommendations

- Ensure that reception areas in schools are adequately staffed and that staff members have the training and resources to accommodate immigrant and refugee family members.
- Hire more liaisons, interpreters, and others who can reduce language and cultural barriers.
- Ensure that all school communication is clear and direct; meets the needs of the ethnic and cultural groups represented in the school; and is made available in relevant languages through the use of interpreters, language lines, and new translation technologies.
- Request that teachers communicate directly with immigrant families as much as possible and not rely solely on school or district liaisons.
- Seek input from parents and families about how to best engage with them.
- Understand cultural differences in expectations regarding family engagement, and where possible, make accommodations for work schedules and provide transportation and childcare for parent-teacher conferences and other important events.
- Provide funding for parent/family classes in all districts.
- Ensure openness to, and inclusion of, all parents in at least one integrated parent-teacher group in which key decisions are made.
- Explicitly explain the student engagement benefits of extracurricular activities for students and help to remove barriers to participation, such as transportation.

Finding: Immigrant and refugee youth receive less information about the full range of postsecondary options and face lower expectations of their future success. Many immigrant students need more college readiness support and greater access to affordable postsecondary education.

### Recommendations

- Hire more guidance counselors.

- Provide assistance to immigrant students in preparing for postsecondary education, including setting goals, taking appropriate high school classes, filling out college applications, finding financial aid options, and selecting colleges or universities.
- Hire multicultural and racially diverse advisors and administrators in postsecondary institutions and provide accommodating services for ELs and immigrant students.
- Improve affordability of college in Minnesota and expand financial aid options.
- Remove eligibility limits based on immigration status for federal financial aid and college readiness programs.

Finding: There is not enough monitoring of the system or data collected on specific immigrant groups.

#### **Recommendations**

- Provide increased funding for monitoring to schools, districts, and the Minnesota Department of Education.
- Review the data being collected at all levels to ensure appropriate measurements and disaggregation by affected populations. Make the data available to school faculty, parents, and students.

## **HOUSING**

Finding: A shortage of public and private affordable housing leaves immigrants struggling to find a decent place to live.

#### **Recommendations**

- Increase federal and state funding of affordable housing, whether from public or private sources or in partnership with community groups.
- Encourage more landlords to accept Section 8 housing vouchers, either through education or incentives.
- Change state and local zoning laws to make it easier to build affordable rental housing in higher-income neighborhoods with high-achieving schools, either by expanding the areas zoned for multi-family buildings or by making it easier to waive zoning for affordable housing developments.

## RECOMMENDATIONS

- Provide a robust housing referral system so that immigrants can receive assistance at their first point of contact, whether with a government agency, nonprofit service provider, religious or cultural institution, employer, or school.
- Educate residents on the need for, and benefits of, affordable housing in their community to reduce opposition to affordable housing developments.

Finding: Immigrants with large or extended families cannot find affordable housing that can accommodate all of their family members.

### Recommendations

- Provide incentives to build affordable rental units with four or more bedrooms.
- Cities should evaluate occupancy codes to ensure they adequately balance health and safety concerns with the ability of families, including extended families, to live together.

Finding: Eligibility restrictions and immigrants' lack of rental history, credit history, and Social Security numbers create barriers to finding rental housing and to buying a home.

### Recommendations

- Educate landlords and tenants about alternate ways to conduct background checks and verify identity that do not rely on Social Security numbers and U.S.-issued identification.
- Prohibit landlords from requiring or asking for information regarding a prospective tenant's immigration or citizenship status, including requiring a Social Security number from applicants.
- Consider alternate ways for people with no U.S. credit history or rental history to provide other proof of creditworthiness and qualify for an apartment or mortgage.
- Change the law to allow mixed-status families to receive federally subsidized housing assistance at the same rate as fully eligible families.
- Pass a federal law codifying the most expansive interpretation of the eligibility rules for housing assistance to provide clarity to housing agencies charged with enforcing the law and to guarantee access to the broadest possible group of people.

- Remove eligibility restrictions based on immigration status for federal, state, and local housing assistance.

Finding: Immigrants face discrimination by landlords, neighbors, realtors, and mortgage lenders on the basis of race, language, religion, national origin, and immigration status.

### Recommendations

- Increase enforcement of federal and state fair housing rules through an efficient, timely complaint process that ensures individuals receive an effective remedy for housing discrimination.
- Fair housing officials and other groups protecting the rights of tenants and homeowners should conduct more independent investigations that allow enforcement of housing laws without relying on individual complaints, especially when groups such as undocumented immigrants face strong incentives to stay quiet no matter what abuse they experience.
- Educate renters and homebuyers about what constitutes illegal discrimination and how to construct a strong case so that people who experience discrimination are better prepared to gather evidence and file a claim.
- Ensure HUD's new disparate impact rule is disseminated and enforced to prevent discriminatory practices even where discriminatory intent is absent or hard to prove.
- Provide incentives for bank lenders to increase access to prime loans in poor, segregated neighborhoods.
- Prosecute subprime lenders for targeting poor, minority communities for predatory loans.

Finding: Immigrants who live in substandard housing or who suffer exploitation by their landlord cannot access an effective remedy because of unfamiliarity with the system, fear of retaliation, and language barriers.

### Recommendations

- Educate renters about tenants' rights and responsibilities so they are able to recognize exploitative behavior by landlords and know how to enforce their rights.

## RECOMMENDATIONS

- Cities should assume the primary responsibility for uncovering predatory housing practices, so that the burden of preventing landlord exploitation does not depend primarily on individual complaints from tenants who may be reluctant to report because of immigration status, language, or retaliation. As part of this effort, cities should increase funding and staffing of independent housing inspection, especially of multi-family units.
- Agencies should protect undocumented immigrants who have experienced housing law violations from being reported to immigration enforcement to reduce their fear of filing a claim.
- Strengthen legal protections against landlord retaliation by creating a procedure for tenants to bring retaliation claims outside of an eviction action so they can pursue their claim without the risk of having an eviction on their rental history.
- Fully fund the requirement that public housing agencies provide assistance in other languages.
- Encourage partnerships between government agencies, community groups, tenants, and landlords to provide access to free or low-cost interpretation and translation so that immigrants with limited English can understand leases, housing policies, and other important documents.

Finding: Residential segregation isolates immigrants in high-crime, low-opportunity neighborhoods with low-performing schools.

### Recommendations

- Rigorously analyze local and state government housing plans against the federal standard of “affirmatively furthering fair housing” and make that a central goal of Minnesota housing agencies.
- Reform the Low Income Housing Tax Credit and other forms of affordable housing subsidies to prioritize integration, access to job centers, and access to high-performing schools in the selection criteria.
- Create public transit that links high economic opportunity areas with affordable housing.

## BASIC NEEDS

Finding: Federal refugee resettlement services are inadequate in their scope and duration and focus mainly on employment.

### Recommendations

- The 90-day period of initial refugee resettlement services should be extended to a minimum of 180 days in order to allow an adequate transition period for refugees coming to the United States. Furthermore, the five-year period for initial refugee resettlement services should be restored.
- Refugee resettlement organizations need funding beyond federal requirements to expand their scope to include robust and comprehensive integration services, including case management, that promote the wellbeing and stability of refugees in their new communities.
- To facilitate the integration of refugees in the United States, the orientation period allotted for refugees abroad should be sufficient to ready them for arrival and should include services such as intensive English language classes.
- Resettlement grants to refugees should be increased in order to adequately meet the demands refugees face in meeting their basic needs.

Finding: Refugees face a long waiting period for eligibility determination and approval for public benefits.

### Recommendation

- Expedite the eligibility determination and approval period for public benefits for refugees in order to address their needs within the limited time allotted for refugee resettlement services.

Finding: Secondary migration by refugees results in disconnection from refugee services.

### Recommendations

- Refugee services should be decoupled from the designated resettlement locations and follow the refugee through secondary migration to the extent possible.
- County agencies should create a point of contact for partnering with refugee resettlement organizations to provide resettlement services to refugees who relocate to areas outside of the coverage of the designated refugee resettlement organizations, ensuring uninterrupted delivery of services.

Finding: Although asylum seekers flee their countries and face similar issues as refugees, they are ineligible for public benefit assistance and are barred from employment.

### Recommendations

- State and federal public benefits eligibility rules should expand the “qualified immigrant” category to include asylum seekers, an especially vulnerable population, in order to grant them access to public assistance benefits and reduce hardship while they are waiting to be granted asylum.
- Shorten the wait for asylum seekers to receive work authorization, in order to allow them to be gainfully employed and reduce their need for public assistance.

Finding: Public benefit rates that have been stagnant since 1986 keep benefit recipients in poverty and unable to meet their basic needs.

### Recommendations

- Congress should increase funding for public assistance grants and adjust them to meet the current costs of basic needs.



Finding: Insufficient or incorrect information about available benefits creates barriers to services for those who are eligible.

#### Recommendations

- Public benefit agencies should partner with community-based organizations to conduct outreach and provide information about benefit programs and eligibilities at safe venues outside of government offices.
- Increase public funding for community-based and nonprofit organizations that serve immigrant communities in order to increase capacity and immigrants' access to information and basic needs services.

Finding: The complexity of public benefits programs and compliance requirements deter immigrants from accessing services.

#### Recommendations

- Forms and written communication should be drafted in simple language to assure they reach a wide range of readers with various literacy levels.
- Written communication should be streamlined and coordinated to indicate only the most current and timely information.
- Automated communications should be clear, simple, and concise, as well as include visual cues to flag levels of importance and the need for an urgent response from participants.
- Participants in public benefits programs should have access to a single worker who handles their cases in order to build rapport and receive coordinated service delivery.

Finding: Language, literacy, and cultural barriers, as well as inadequate interpreters and translation, stand in the way of effective service delivery.

#### Recommendations

- Public benefit agencies and other social service agencies should recruit and hire more individuals from within the communities they serve in order to build capacity

## RECOMMENDATIONS

around language access and cultural understanding and to develop a more trusting relationship with immigrant clients.

- Increase access to language lines and interpreters.
- Increase funding for interpretation and translation training and services.
- Recruit more individuals from within the communities served to be trained and certified as interpreters and translators.
- Ensure continued access to training for public benefits staff on appropriate use of interpreters.
- Minnesota’s Commissioner of Administration should clarify which agencies are required to provide meaningful access to services under state law, either through bilingual staff or translation, and information about these requirements should be readily accessible.

Finding: Public benefits programs focus on complicated eligibility rules and restrictions, rather than ensuring that basic needs are met.

### Recommendations

- Public benefit services should focus more on meeting families’ and individuals’ specific needs and focus less on eligibility criteria that are complex and may not best address the issues expressed by recipients.
- Public benefit application forms should reflect a program design that addresses specific needs by asking applicants to state their needs and the issues they face.

Finding: The cost of health care deters people from seeking medical treatment and preventative care.

### Recommendation

- Immigration status should not determine access to health subsidies under the Affordable Care Act.

Finding: Inadequate bilingual and bicultural health and mental health care create major barriers to immigrants' access to health care services.

### Recommendations

- Engage foreign-trained health professionals who are culturally and linguistically competent in health and mental health care delivery.
- Support and train individuals from immigrant communities to become health care professionals.
- Provide ongoing cultural proficiency training to all health care staff at all levels.
- Train and empower patients to make informed health decisions on their own and their families' behalf.
- Increase the use of interpreter services and language lines.

Finding: Immigrants, especially those from mixed- status families, fear that accessing public benefits may result in deportation or becoming a "public charge."

### Recommendations

- If immigration status is not a legal condition for accessing a service or benefit, service providers should not ask about status and should conduct outreach to make clear that they are not connected to immigration authorities.
- Public benefits application forms should clearly indicate that Social Security numbers or other identifying information are not required for parents and guardians applying on behalf of minor children who are eligible for public benefits.
- Nonprofit and community-based organizations should make use of existing resources such as the Bridges to Benefits website and United Way's 2-1-1 to safely and confidentially determine eligibility for benefits and search for appropriate social and health services.
- Public agencies should clearly delineate the specific public benefit programs that will result in a person becoming a "public charge," as defined by federal immigration law, and make this information widely accessible.
- Public benefits workers should receive training on basic immigration laws that affect benefit recipients.

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Finding: Requiring sponsors to financially support immigrating family members results in a denial of the right to family unity and hinders the ability of immigrants to meet their basic needs.

### Recommendation

- Federal law should eliminate the requirement that a family sponsor's income be included in public benefits eligibility determinations.
- The public charge ground for exclusion should not apply when it would prevent family reunification.

Finding: State and federal laws exclude many noncitizens in Minnesota from accessing benefits and services to meet their basic needs.

### Recommendations

- Public benefits assistance should be accessible to all those who are not able to meet their basic needs in order to comply with international human rights standards.

## CIVIC ENGAGEMENT

Finding: Muslim immigrants face discrimination limiting their religious practice, especially in land use decisions.

### Recommendation

- City councils should abide by the requirements of the Religious Land Use and Institutionalized Persons Act and avoid land use decisions that limit the religious practices of Muslim immigrants and other religious groups.
- Educate the broader community on religious tolerance, combating the myths and misinformation about Islam and other minority religions that fuel discrimination.

Finding: Immigrant-led, ethnically based organizations see strong participation from immigrants and refugees, but lack the resources and support to fully serve their constituents.

### Recommendations

- Funders should ensure broad dissemination of their programs and priorities so that immigrant-led organizations that may not be well established or connected to the funding community can access funding and technical support.
- Government agencies and institutions with resources for small organizations, such as free space or low-cost technology assistance, should increase outreach so that immigrant-led organizations know what help is available.
- Encourage partnerships between new immigrant-led and established organizations to gain more input from immigrants in programs that affect the broader community, while providing capacity building, technical assistance, and shared resources to help immigrant-led organizations become more effective.

Finding: Immigrants are not always aware of community resources and opportunities for engagement with the larger community.

### Recommendations

- Use existing forums to reach immigrant communities, such as English language classes, immigrant churches, grocery stores, and other trusted institutions.
- Centralize information about community resources so that it is easy for immigrants to find what they need, using methods such as telephone hotlines, online referral services, and community connector organizations.
- Adequately fund organizations that serve as connectors between immigrant communities and existing public institutions so that they can serve as linguistic and cultural navigators for everyone who needs assistance.
- Government agencies with significant public contact, such as child protection, housing inspectors, and residential regulation enforcement (e.g. shoveling and mowing), should conduct community orientation and listening sessions. These should be in collaboration with community groups, and focus on both educating new arrivals about laws and common violations, as well as hearing from immigrants about problems and concerns.

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Finding: Immigrants feel that organizations serving the broader community do not reflect their priorities, encourage their leadership, accommodate their cultural norms, or assist them in overcoming language barriers, which limits their participation.

### Recommendations

- Organizations should encourage volunteering and other engagement that values immigrant expertise.
- Use forms of outreach and communication that place a strong emphasis on forming personal relationships as a way to bring immigrants into existing community institutions.
- Actively solicit input from all constituents to help shape the priorities and processes of organizations that serve the broader community.
- Organizations should evaluate potential barriers to immigrant involvement and consider changes to accommodate cultural differences, where practical.
- Recognize the need for integrated organizations that include newcomers and long-term residents working in partnership.
- Provide language services where possible to facilitate involvement by all members of the community.
- Avoid asking for Social Security numbers or U.S.-issued identification from potential participants. Keep confidential any personal information about volunteers and other participants, especially regarding immigration status.

Finding: Immigrants are not well represented in the political system, whether as elected officials, government employees, appointees, or members of boards and commissions.

### Recommendations

- Municipalities may need to re-examine electoral districts and voting processes to promote a more representative government that reflects the demographic shifts caused by immigration.
- Public and private organizations should provide widely available civic education for adults on voting, running for office, and holding appointed positions.
- Political parties should think about ways to leverage immigrant communities as volunteers, activists, and candidates.

- Local governments should consider changing how appointed positions are publicized and filled to attract a more diverse pool of applicants, for instance by centralizing all applications or conducting targeted outreach to achieve diversity goals.
- Local governments and community institutions should help immigrants build the capacity and personal connections to be involved in politics and government through citizen academies, leadership trainings, or other outreach programs.

## IMMIGRATION

Finding: Immigrants face lengthy waits for a resolution to their immigration cases.

### Recommendations

- Congress should allocate increased funding to the Executive Office for Immigration Review in order to hire more Immigration Court judges, judges at the Board of Immigration Appeals, and support staff in order to decrease the wait time for, and between, hearings on types of relief from removal.
- Agencies should conduct investigations of immigration applications expediently and not hold decisions indefinitely.
- Agencies running fingerprint clearances and biometric checks for immigration applications should prioritize adjudication of those applications to reduce wait times.
- USCIS should minimize repeated requests for fingerprint and biometric data collection by automating resubmission of collected information for renewed clearances on pending applications.

Finding: USCIS does not communicate well with immigrants, leaving them uncertain about the status of their case and whether more information is required.

### Recommendations

- USCIS should provide an option on the 1-800 Customer Service number to immediately speak with a customer service representative to facilitate communication with immigrants who may not be able to navigate the menu.
- USCIS should better use existing online case status and customer service information to provide meaningful answers about case processing delays, such as

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“case is pending review of potential ineligibility under section 212(a)(3)(B) based on prior membership in the \_\_\_ organization. Case is pending at headquarters with an indefinite timeline.”

- Automatic, periodic case update letters should be sent to applicants to assure them that their case is pending.
- USCIS should ensure offices are easily accessible by public transit.

Finding: Muslim immigrants face discrimination based on religion and country of origin.

### Recommendation

- Increase oversight of border enforcement by permitting legal review in the immigration court or federal court of allegations of discrimination or inappropriate treatment by CBP officers at ports of entry. Provide information about this mechanism for discrimination complaints to every person taken to secondary inspection for questioning.

Finding: Fear of deportation dominates the lives of undocumented immigrants and prevents them from accessing services and protections to which they are entitled and is a barrier to engaging with the broader community.

### Recommendations

- Congress must pass commonsense immigration law reform that provides a roadmap for people who are currently undocumented to gain status that does not prohibit naturalization.
- Congress should restore discretion to immigration judges so that individual circumstances can be considered in deportation cases.
- Congress should repeal mandatory detention laws and ensure that every person detained by immigration authorities has access to a review of their custody status before an independent judicial authority.
- Congress should repeal the unlawful presence bars to adjustment of status to permanent residence that prevent family reunification.
- Congress should create realistic ways for workers to immigrate to the United States that meet the needs of the U.S. economy.



# BACKGROUND



## INTRODUCTION

The Advocates for Human Rights opened its first asylum case file in 1984, a pivotal period in the development of U.S. immigration and refugee policy. The passage of the Refugee Act in 1980 ushered in the modern asylum process, formalizing individualized refugee status determinations for refugees outside the United States and for those seeking asylum from within. That same year, the Reagan Administration undertook a review of all immigration control policies. The presumption that detention of arriving immigrants should be the exception, not the rule, which had emerged at the closure of Ellis Island in 1954<sup>4</sup>, ended abruptly in 1981.<sup>5</sup> By 1987, The Advocates had issued its first report on the violations of human rights within immigration detention centers.

In the years that followed, the issue of immigration has continued to grow increasingly punitive and politicized. Responding to that trend, in 1994 The Advocates for Human Rights launched a concerted effort to combat anti-immigrant bias. Meeting fiction with facts, The Advocates' Building Immigrant Awareness and Support (BIAS) Project sought to provide credible, fact-based information about immigrants and immigration as an antidote to anti-immigrant myths that pervaded the debate. The Advocates published its teaching guide, *Energy of a Nation: Immigrants in America*, in 1997 to provide educators with tools to understand how and why people immigrate to the United States.

As it reaches its 20th year of working to eliminate anti-immigrant bias, The Advocates for Human Rights seeks to build on its work to dispel anti-immigrant myths and deepen understanding of newcomers. Minnesota prides itself on a high quality of life, with strong education, health, and public benefits systems creating a safe community. At the same time, Minnesota is struggling with alarming disparities between white and non-white Minnesotans in nearly every area of measurement. This apparent contradiction was hidden (at least from the view of those in the majority) when less than three percent of the population was non-white. But, with today's increasing diversity – driven in large part by immigration – the breakdown in systems are becoming increasingly apparent.

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<sup>4</sup> *Leng May Mu v. Barber*, 357 U.S. 185 (1958) (noting “physical detention of aliens is now the exception, not the rule. Certainly this policy reflects the humane qualities of an enlightened civilization.”)

<sup>5</sup> Under the direction of the Reagan Administration, the Immigration and Naturalization Service abruptly ended the release policy the agency had followed since 1954. In 1982, a Haitian asylum seeker challenged the new detention policy, arguing in part that the INS had violated federal rulemaking procedures. INS published interim detention regulations “under protest” that complied with the notice and comment requirements of the federal Administrative Procedures Act but which took effect immediately. In promulgating the rule, INS stated: “The Administration has determined that a large number of Haitian nationals and others are likely to attempt to enter the United States illegally unless there is in place a detention and parole regulation. Such a large scale influx would clearly be contrary to the public interest.” *Louis v. Nelson*, 544 F.Supp. 973, 979 (S.D. Fla. 1982).

Human rights standards recognize very few instances where human beings fall outside consideration. Instead, human rights articulate the most basic building blocks which all people – regardless of race, religion, national origin, or other status – need to live with dignity.

This report outlines the human rights implications of the treatment of immigrants and refugees in Minnesota. Public policy grounded in human rights principles allows everyone the opportunity to live with dignity and recognizes that each of us is born equal in rights and is deserving of justice, freedom, and peace.

## IMMIGRATION TO MINNESOTA

In recent decades, Minnesota has welcomed large numbers of new immigrants and refugees to the state. Driven by the resettlement of refugees and the subsequent secondary migration of refugees resettled to other communities in the United States, Minnesota has become home to tens of thousands of refugees from around the world. Today, the second largest Hmong community<sup>6</sup> and largest Somali community<sup>7</sup> in the United States call Minnesota home. According to The Minneapolis Foundation, “Latinos have been living in Minnesota for generations—the first record of Latino residents dates back to 1860. Since the 1990 Census, the state’s Latino population has more than tripled, increasing from about 54,000 to more than 175,000 people in 2004.”<sup>8</sup> In addition to being home to large diaspora communities, Minnesota’s immigrants and refugees are remarkably diverse, with more than 230 languages spoken in the homes of Minnesota students.<sup>9</sup>

The area is no stranger to immigrants. The federal government attracted waves of European settlers, from those posted at Fort Snelling in the 1820s to those lured by the Homestead Act later in the century, as it created the political entity today known as “Minnesota.” This federal push used a combination of forced migration and forced assimilation to decimate the Dakota, Anishinabe, and Ho Chunk peoples and allow the United States to justify laying claim to the land and resources of the region.<sup>10</sup>

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<sup>6</sup> Hmong American Partnership, 2010 Census Hmong by State, <http://www.hmong.org/page33422626.aspx>.

<sup>7</sup> See Williams, Chris, “New census data: Minnesota Somali population grows,” *Minneapolis Star Tribune*, Oct. 27, 2011, available at <http://www.startribune.com/132670583.html>.

<sup>8</sup> The Minneapolis Foundation, *Immigration in Minnesota: Discovering Common Ground*, October 2004, <http://www.minneapolisfoundation.org/uploads/cuteeditor/publications/community/immigrationbrochure.pdf>.

<sup>9</sup> Minnesota Department of Education, Division of Student Support, *English learner Education in Minnesota: 2013*, 12.

<sup>10</sup> Trina R. Williams Shanks, *The Homestead Act of the Nineteenth Century and its Influence on Rural Lands*, Center for Social Development, Washington University in St. Louis, 2005, 8-9. (Generally describing the effect of the Homestead Act on Native Americans).

## BACKGROUND

Soon private industry was luring immigrants to Minnesota. Minnesota's first Board of Immigration,<sup>11</sup> which operated from 1867 to 1886, encouraged immigration to the state.<sup>12</sup> Re-established in 1907,<sup>13</sup> the Minnesota State Board of Immigration, funded by state appropriations and private contributions, was intended "to facilitate and encourage the immigration of persons of 'good moral character' to the state and to assist immigrants on their way to Minnesota. In that capacity it acted primarily as an information service, collecting and disseminating information about Minnesota's agricultural, industrial, and commercial opportunities. It published books, brochures, pamphlets, and maps in English, Danish, Dutch, French, German, Irish, Norwegian, Swedish, and Welsh. Many of the publications advertised Minnesota public lands available for homesteading."<sup>14</sup>

But it was the promise of jobs, particularly on Minnesota's Iron Range, that drew workers from around the world. Many came from Finland and Italy, which had strong existing labor movements. Mining companies went on to use immigrants to break attempts by existing workers to organize. During the 1907 Mesabi strike, mine owners recruited strikebreakers from amongst newly arrived immigrants to the United States, with labor recruiters supplying workers throughout the strike. "The appearance of whole trainloads became a common sight by the middle of August. One labor agent alone supplied the mining companies with more than 1,100 strikebreakers in a single month. The new workers — Greek, Italian, Slovenian, Croatian, and Montenegrin immigrants — had not yet learned the meaning of labor solidarity."<sup>15</sup>

At the same time, throughout the period of territorial settlement pre-dating the Civil War, the area was home to a relatively small number of African Americans. While the number of Minnesota's African Americans would grow significantly during the Great Migration<sup>16</sup> from the American south, it would remain relatively small compared to other northern cities such as Chicago, Detroit, and New York.

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<sup>11</sup> Laws 1867 s28.

<sup>12</sup> Minnesota Historical Society, Minnesota State Archives, "Immigration Board: An Inventory of Its Records," <http://www.mnhs.org/library/findaids/immigbd.pdf>, (accessed February 3, 2014).

<sup>13</sup> Laws 1790 c267.

<sup>14</sup> Minnesota Historical Society, Minnesota State Archives, "Immigration Board: An Inventory of Its Records," <http://www.mnhs.org/library/findaids/immigbd.pdf>, (accessed February 3, 2014).

<sup>15</sup> Neil Betten, "Strike on the Mesabi — 1907," *Minnesota History*, Fall 1967, p. 340, 347, <http://collections.mnhs.org/MNHHistoryMagazine/articles/40/v40i07p340-347.pdf>, (accessed Feb. 3, 2014).

<sup>16</sup> "Between 1915 and 1970, more than 6 million African-Americans, propelled out of the South by the boll weevil, economic discrimination and Jim Crow, migrated North in search of new industrial jobs, better education and living conditions for themselves and their children. This movement was especially intense around the time of the First World War, when the temporary suspension of foreign immigration left factories in need of new workers. Called "The Great Migration," this black exodus out of the South transformed the racial landscape of northern cities, introduced African American music and literature into the national culture, and, despite the hopes of millions, brought the color line North." Minnesota History Center, "Journey to the Promised Land: The Great Migration," <http://www.minnesotahistorycenter.org/events-programs/tours-lectures-workshops/history-forum/journey-promised-land-great-migration>, (accessed Mar. 20, 2014).

Anti-immigrant sentiment spiked in Minnesota during World War I, resulting in the establishment of Minnesota's Commission of Public Safety and the passage of the Alien Registration Act of 1918.<sup>17</sup> "America's entry into World War I created a climate of fear of "otherness" and suspicion about the allegiance of those who expressed reservations about joining in a conflict that was not of our making...Not only the Germans, but all immigrants, those who spoke a foreign language, those who belonged to unions and supported strikes and those who belonged to suspect organizations... Foreign language instruction was discontinued in many schools. Foreign language speakers were disparaged as unpatriotic."<sup>18</sup> This anti-immigrant sentiment had a lasting effect on how some communities view newcomers.<sup>19</sup>

Immigration during this period of Minnesota's history took place within the context of America's nationality-based immigration laws, which allowed only people from European countries to immigrate.<sup>20</sup> Asians, Africans, and Central and South Americans were excluded. It is no accident, therefore, that the "face" of Minnesota – which was settled at the height of this era – was largely European.

The immigrants of recent decades, therefore, found themselves in the midst of a complex social, historical, and racial landscape undergoing rapid change. Minnesota, once among the United States' most demographically homogeneous states, is now 17.6 percent non-white.<sup>21</sup>

As the Wilder Foundation notes:

*Minnesota's foreign-born population has grown dramatically over the past several decades, outpacing the rate of the nation as a whole. In 1980, about three percent of our residents were foreign born, compared with more than seven percent in 2011. About 389,000 residents are foreign born, including many refugees or asylees who fled their home countries. An additional 179,000 children living in Minnesota are U.S. born but have one or more foreign-born parents (2008-2010). Immigrants and their children represent an*

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<sup>17</sup> Minnesota Historical Society, "Commission of Public Safety," <http://libguides.mnhs.org/publicsafety> (accessed February 3, 2014); La Vern J. Rippley, "Conflict in the Classroom: Anti-Germanism in Minnesota Schools, 1917-19," *47 Minnesota History* 5 (spring 1981), 170-83.

<sup>18</sup> Minnesota Historical Society, "Commission of Public Safety," <http://libguides.mnhs.org/publicsafety> (accessed February 3, 2014).

<sup>19</sup> Ambar Espinoza, *St. Cloud's History of Friction with Outsiders*, Minnesota Public Radio, July 30, 2010, <http://www.ambarespinoza.com/radio/minnesota-public-radio/>.

<sup>20</sup> While non-Europeans were allowed in some cases to live in the United States, immigration laws prevented them from permanently residing, or "immigrating," to the U.S. See e.g.: The Chinese Exclusion Act of 1882, Act of May 6, 1882, ch. 126, 22 Stat. 58, repealed by Act of Dec. 17, 1943, ch. 344, 57 Stat. 600 (expressly excluding Asians from immigrating to the United States).

<sup>21</sup> Wilder Foundation, "Minnesota Compass – Demographics Overview," <http://www.mncompass.org/demographics/overview>, (accessed Mar. 20, 2014).

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*important component of the state's current and future workforce, and are vital contributors to our state's educational, cultural, and civic life.*<sup>22</sup>

Immigrants and refugees in Minnesota hoping to establish a productive life face disproportionate levels of poverty. In Minnesota, 17 percent of immigrant families live in poverty; this is nearly three times the poverty rate among native-born families (5.5 percent).<sup>23</sup> The percentage of older adults (age 65 or above) living in poverty is nearly twice as high among Minnesota's foreign-born (16.5 percent), compared to the state's total population (8.3 percent).<sup>24</sup> Moreover, 43 percent of female-headed foreign-born households live in poverty, compared with 21.6 percent of all of the state's female-headed households.<sup>25</sup> Persons who live in poverty often live in low-opportunity neighborhoods that suffer from a disproportionate lack of access to quality schools, housing, transportation, and social services.

One of the root causes of ongoing poverty among foreign-born populations is lack of legal status. Undocumented workers frequently work for sub-minimum wages,<sup>26</sup> often find only seasonal work, and have difficulty securing stable, lucrative, and safe employment.<sup>27</sup> Chronically under-employed, undocumented workers earn considerably less than working citizens and have restricted access to jobs.<sup>28</sup> Undocumented immigrants do not have access to the social services safety net, making them prone to remain impoverished or suffer financial crises as a result of health problems.<sup>29</sup> Undocumented workers face serious barriers to enjoying employment rights and protections from occupational hazards. They fear employer retaliation and are subject to threats to contact immigration officials.<sup>30</sup>

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<sup>22</sup> Wilder Foundation, "Minnesota Compass – Immigration Overview," <http://www.mncompass.org/immigration/index.php>, (accessed Feb. 3, 2014).

<sup>23</sup> The Minneapolis Foundation, *A New Age of Immigrants: Making Immigration Work for Minnesota*, Aug. 2010, .6 (citing American Community Survey).

<sup>24</sup> The Minneapolis Foundation, *A New Age of Immigrants: Making Immigration Work for Minnesota*, Aug. 2010, .6 (citing American Community Survey).

<sup>25</sup> The Minneapolis Foundation, *A New Age of Immigrants: Making Immigration Work for Minnesota*, Aug. 2010, .6 (citing American Community Survey).

<sup>26</sup> The Minneapolis Foundation, *A New Age of Immigrants: Making Immigration Work for Minnesota*, Aug. 2010, .6 (citing American Community Survey).

<sup>27</sup> Sharat G. Lin, *Undocumented Workers in the US*, *Economic and Political Weekly* (Nov. 25, 2006), ("...78% of undocumented immigrants are employed in low wage and low education occupations." 4870, citing 2005 Current Population Survey, US Census Bureau).

<sup>28</sup> Jeffrey Passel, Randolph Capps, and Michael Fix, *Undocumented immigrants: Facts and Figures*, The Urban Institute, (Jan. 12, 2004); Amy Rynell, *Causes of Poverty: Findings from Recent Research*, The Heartland Alliance Mid-America Institute on Poverty, (Oct. 2008), 19.

<sup>29</sup> American Community Survey, *The Foreign-Born Population in the United States: 2010*, U.S. Census Bureau, (May 2012), 20 ("About 9 out of 10 native born (87 percent) had some form of health insurance coverage, compared with just under 2 out of 3 foreign born (66 percent).").

<sup>30</sup> Michael J. Wishnie, *Emerging Issues for Undocumented Workers*, 6 U.Pa. J. Lab. & Emp. L. 497 (2004).

By securing legal status, an undocumented person often can move out of poverty. Legal status allows greater access to a steady job and a greater ability to meet basic needs; the possibility to reunify with family left back home; and the chance to live openly and come out of the shadows.

## U.S. IMMIGRATION POLICY

Securing legal status in the United States is difficult. Immigration to the United States is limited largely to narrowly defined family and employment relationships that leave ordinary workers without a way to immigrate. Existing laws bar most of the estimated 11 million undocumented people already in the United States from any legal status at all. While often characterized as a broken system, U.S. immigration laws today resemble less a system than a patchwork of statutes, regulations, policies, and practices that have emerged over more than six decades.<sup>31</sup>

In 1952, Congress passed the Immigration and Nationality Act (INA), which although amended over a dozen times, remains the backbone of the immigration law today. The INA took a new approach to U.S. immigration policy, deeming every noncitizen seeking to enter the United States an “immigrant” unless that person established that he was a “nonimmigrant” seeking temporary entry for a limited purpose. The INA also imposed numerical limitations on the number of immigrants admitted each year.<sup>32</sup> The 1952 law retained national origin quotas<sup>33</sup> and continued to exclude immigration from countries in the Western Hemisphere. The new law created special racial quotas for Asians, allowing them to immigrate in small numbers, and established preferences within the quotas for immigrants with specialized skills and certain relatives of American citizens and of resident aliens.<sup>34</sup>

In 1965, Congress eliminated the national origins quota system that had been in place since the 1920s and replaced it with immigration priorities based on family and employment.<sup>35</sup> The 1965 law retained the concept of preferences within immigration quotas for immigrants with specialized skills and certain relatives of U.S. citizens and lawful permanent residents. It also continued to divide admissions into “nonimmigrant” and “immigrant” categories. The 1965 law also ended the

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<sup>31</sup> One commentator calls the Immigration and Nationality Act a “hideous creature” and notes “Its hundreds of pages contain highly technical provisions that are often hopelessly intertwined. That high degree of inter-relationship makes it difficult to separate the law into discrete components that can be comprehended by newcomers without frequent cross references and asides.” Stephen H. Legomsky, *Immigration and Refugee Law and Policy*, (2d ed. 1997), 1.

<sup>32</sup> Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, (1996), §§2.02-2.04.

<sup>33</sup> The Immigration Act of 1952 was vetoed by President Truman, who “castigated the national origins quota system which carried over from the 1924 Act, criticized the severity of the grounds prescribed for exclusion, deportation, and denaturalization, and opposed the limitations on the authority to alleviate hardships. However, the [INA] became law when Congress overrode the President’s veto, and it was enacted on June 27, 1952.” Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, (1996), §§2.02-2.04.

<sup>34</sup> Charles Gordon, Stanley Mailman, and Stephen Yale-Loehr, *Immigration Law and Procedure*, (1996), §§2.02-2.04.

<sup>35</sup> The 1965 Amendments to the Immigration and Nationality Act, Pub. Law 89-236, 70 Stat. 911.

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*bracero* program, effectively ending channels for Mexican agricultural laborers to legally enter the United States.<sup>36</sup> (For a more detailed description of current U.S. immigrant policies, see Appendix A: Immigration Law Primer on page 281).

The new system retained numerical limits on immigration. While immediate relatives<sup>37</sup> can immigrate without limit, a fixed number of immigrant visas are available for all other immigrants, and immigration from a single country cannot exceed seven percent of total immigration. These limits quickly resulted in significant backlogs. By the early 1970s, the system showed signs of strain.

An immigration reform deal brokered in the 1980s revolved around a bifurcated strategy to legalize the estimated two to three million undocumented immigrants in 1986<sup>38</sup> and make small adjustments to the legal immigration system in 1990. These changes did little to address the weaknesses of the immigration system when faced with continued migration pulled by economic growth in the United States and pushed by increasing instability in Mexico and Central America.<sup>39</sup> Instead, the changes yielded unsustainable backlogs in visa categories and an ever-growing undocumented population.

Today, family-based immigration is characterized by backlogs that separate family members for years or even decades, which, when combined with bars to entry, can leave families with little hope for reunification. Employment-based immigration aims to attract the “best and brightest” from around the world, but is often unpredictable and largely out of sync with employer needs. Built on a preference system that prioritizes high-skilled immigrants, only 10,000 “other workers” are eligible for immigrant visas annually, and temporary or seasonal agricultural workers are not eligible for employment-based immigration at all.<sup>40</sup> The system offers few protections against worker exploitation.<sup>41</sup>

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<sup>36</sup> Marc R. Rosenblum., William A. Kandel, Clare Ribando Seelke, and Ruth Ellen Wasem, *Mexican Migration to the United States: Policy and Trends*, Congressional Research Service, (Jun. 7, 2012), 7.

<sup>37</sup> 8 U.S.C. §1151(b)(2)(A)(i). Federal immigration law defines an “immediate relative” as a United States citizen’s spouse; minor, unmarried child; or parent if the U.S. citizen is age 21 or older.

<sup>38</sup> The Immigration Reform and Control Act of 1986, Pub. Law 99-603, 100 Stat. 3359 (Nov. 6, 1986), 1986 S. 1200 authorized the legalization of certain undocumented immigrants and also created the employment verification system.

<sup>39</sup> Doris Meissner, Donald M. Kerwin, Muzzafar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, (Jan. 2013), 1.

<sup>40</sup> Marc R. Rosenblum, William A. Kandel, Clare Ribando Seelke, and Ruth Ellen Wasem, *Mexican Migration to the United States: Policy and Trends*, Congressional Research Service, (Jun. 7, 2012), 8 (citing U.S. Congress, House Committee on the Judiciary, Immigration, hearings on H.R. 2580, 89th Cong., 1st sess., 1965, and noting that this restriction remains in 8 U.S.C. §1153(b)(3)(A)(iii)).

<sup>41</sup> Southern Poverty Law Center, “How Guestworker Programs Operate,” <http://www.splcenter.org/publications/close-to-slavery-guestworker-programs-in-the-united-states/how-guestworker-programs-ope>.



Congress responded to these stresses by passing increasingly punitive laws designed to target people without documentation. It expanded detention and deportation authority and eliminated access to judicial review or, in some cases, to hearings at all. In addition, noncitizens with criminal convictions found themselves the targets of new legislation designed to ensure their deportation.<sup>42</sup>

At the same time, federal spending on enforcement of immigration laws began to climb dramatically, and funding skyrocketed following September 11, 2001.<sup>43</sup> Between the legalization program's enactment in 1986 and 2012, the United States spent \$186.8 billion on immigration enforcement.<sup>44</sup> Combined with the broad authority established under federal immigration laws, this spending has resulted in the detention of nearly 430,000 people and deportation of over 400,000 in fiscal year 2012 alone.<sup>45</sup>

Alongside expanded detention and deportation authority developed the strategy of “deportation by attrition.” Federal and state legislation eliminated outright access to the social safety net, including federally funded public assistance or legal services in an effort to force “voluntary” return to countries of origin.<sup>46</sup>

State and local governments moved to regulate immigration. The effort gained traction with the passage of California's Proposition 187 in 1994, a measure designed to deny access to public benefits or services, including public education, to undocumented immigrants and their families. Although later overturned as unconstitutional, Proposition 187 reflected growing resentment toward undocumented immigrants. Other states and local governments would later turn to efforts to criminalize unauthorized presence and to prevent landlords from renting to undocumented people, most notably with the 2010 passage of legislation in Arizona criminalizing undocumented presence and requiring people suspected of being in the United States without authorization to produce proof of legal status.<sup>47</sup>

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<sup>42</sup> Immigration Act of 1990, Pub. Law 101-649, 104 Stat. 4978 (Nov. 29, 1990), 1990 S. 358; Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. Law 104-132, title IV; 110 Stat. 1214, 1258-81 (Apr. 24, 1996); Illegal Immigration Reform and Immigrant Responsibility Act, Pub. Law 104-208 § 656(b), 110 Stat. 3009, 3009-716-18 (1996).

<sup>43</sup> Doris Meissner, Donald M. Kerwin, Muzzafar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, (Jan. 2013).

<sup>44</sup> Doris Meissner, Donald M. Kerwin, Muzzafar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, (Jan. 2013), 3.

<sup>45</sup> U.S. Department of Homeland Security, Annual Report: Immigration Enforcement Actions: 2012, John Simarski and Lesley M. Sapp (December 2013), [http://www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2012\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_0.pdf).

<sup>46</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. Law 104-193, title IV; 110 Stat. 2105, 2260-77 (Aug. 22, 1996).

<sup>47</sup> *Lozano v. City of Hazleton*, 620 F.3d 170 (2010);

Peter Hall, *Supreme Court Declines to Hear Appeal in Hazleton Immigration Case*, The Morning Call, (Mar. 3, 2014);

## BACKGROUND

The laws and policies governing immigration enacted over the past 60 years are not consistent with international human rights standards, and indeed, evolved with little consideration of basic human rights. U.S. immigration laws reflect a broader disregard for the fundamental human rights of the poor and disenfranchised in the United States, among whom many newcomers find themselves. While intended to reflect the policy priorities of family reunification and employee attraction, immigration laws today undermine both the right to protection of the family unit and the right to just and favorable working conditions.

The United States' failure to consider its fundamental human rights obligations has led to a situation in which over 11 million people, including an estimated 85,000 in Minnesota, live without legal immigration status. This situation exists not because a whole group of people set out to break the law. Rather, the United States has historically looked the other way when employers seeking low-wage labor recruited and hired undocumented workers, a system that has thrived on the push factors – the poverty, violence, and instability abroad – that make leaving one's home in exchange for a life in the shadows seem like a rational choice.

Human rights law recognizes that while the United States has the power to control immigration, it also has the obligation to respect the fundamental human rights of all persons living within its borders. In designing and in enforcing its immigration and other laws, the United States must protect fundamental rights. These include the rights to due process of law; to seek and enjoy asylum from persecution; to freedom from arbitrary detention and from discrimination based on race, religion, or national origin; and to access to the basic social safety net, housing, health, and education.

Analyzing the human rights implications of immigrant integration helps confront head on the commonly accepted notion that ensuring that the needs of refugees and immigrants somehow must come at the expense of another (often historically marginalized) community's needs. Instead, the human rights of all individuals must be considered when developing immigrant integration policies. A policy that provides help to newcomers at the expense of existing communities, for example, fails to meet human rights standards. This is critical in light of the deliberate targeting by anti-immigrant forces of messages in historically disadvantaged communities, which is designed to undermine potential alliances between communities of color and immigrant communities.

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Ariz. Rev. Stat. Ann. § 11-1051 (In the "intent" section of the legislation that created § 11-1051, the Legislature stated that its purpose was to "discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States." See *Unlawfully Present Aliens*, 2010 Ariz. Legis. Serv. Ch. 113, Sec. 1 (S.B. 1070) (WEST). *Arizona v. United States*, 132 S. Ct. 2492, 2495, 183 L. Ed. 2d 351 (2012) overturned much of § 11-1051 on preemption grounds, finding that Arizona's imposing criminal penalties based on immigration status interfered with the federal government's regulation of immigration affairs; National Conference of State Legislatures (NCSL), "Arizona's Immigration Enforcement Laws," (accessed on March 7, 2014), <http://www.ncsl.org/research/immigration/analysis-of-arizonas-immigration-law.aspx>.

Human rights standards require public policy that allows every person to live with dignity. This fundamental respect for human rights contradicts the underlying assumption made by many individuals and embedded throughout public policy that people can be denied respect, protection, and basic necessities based on their immigration status.



# CHAPTER 1: PUBLIC SAFETY



## INTRODUCTION

Immigrants' ability to enjoy safety and security in their communities suffers because of fear and mistrust of law enforcement. People consistently cited fear of detention and deportation as a reason to avoid contact with law enforcement. For undocumented victims of crime or for crime victims who have undocumented family members, this fear can be an obstacle to seeking protection. Advocates for battered immigrant and refugee women, in particular, reported that fear of deportation remains a barrier to seeking safety, despite federal immigration law intended to protect certain crime victims from deportation.

Reports indicate that fear of deportation following contact with local law enforcement agencies appears to be well founded. Immigrants, service providers, and legal services attorneys reported drivers and passengers being arrested following stops for traffic violations. Once in jail for any reason, people are subject to interrogation by Immigration and Customs Enforcement (ICE). Individuals are routinely turned over to ICE or Border Patrol upon a "detainer request" from those agencies, with no scrutiny by prosecutors or courts about the constitutional validity of the underlying arrest. This has left Minnesota law enforcement without an effective mechanism to detect or combat any immigration profiling that may take place.

Immigrants, refugees, advocates, and law enforcement all reported that trust of law enforcement is essential to individual and community safety, but building that trust can be challenging. Perceptions of cooperation with federal immigration officials and experiences with police in both home countries and Minnesota affect the relationship between immigrant communities and law enforcement. People pointed to the important role police can play in fostering trust, both through specific outreach and through day-to-day interactions.

## HUMAN RIGHTS AND PUBLIC SAFETY

Everyone has the right to security of person.<sup>48</sup> The right to "security of person" refers to freedom from bodily injury, including fatal injury.<sup>49</sup> The government violates the right to personal security when it unjustifiably inflicts bodily injury.<sup>50</sup> The government also violates this right when it fails to take appropriate measures to protect individuals from known threats to life or bodily integrity

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<sup>48</sup> Universal Declaration of Human Rights (UDHR), Art. 3.

<sup>49</sup> UN Human Rights Committee, Draft General Comment No. 35, Art. 9: Liberty and Security of the Person ¶13, UN Doc. CCPR/C/107/R.3 (Jan. 28, 2013) (noting that "[s]ecurity of person concerns freedom from injury to the body, or bodily integrity. Article 9 guarantees these rights to everyone. "Everyone" includes girls and boys, soldiers, persons with disabilities, aliens, persons convicted of crime, and persons who have engaged in terrorist activity" (citing 265/1987, Vuolanne v. Finland, para. 9.3; 1069/2002, Bakhtiyari v. Australia, para. 9.5; 1062/2002, Fijalkowska v. Poland, para 8.3; 1090/2002, Rameka v. New Zealand, paras. 7.2-7.3; 1051/2002, Ahani v. Canada, para. 10.3)).

<sup>50</sup> *Leehong v. Jamaica*, Communication No. 613/1995, ¶ 9.3, U.N. Doc. CCPR/C/66/D/613/1995 (12 Aug. 1999).

proceeding from private sources.<sup>51</sup> The government must take both prospective measures to prevent future injury and retrospective measures such as enforcement of criminal laws in response to past injury.<sup>52</sup> In particular, the government must respond appropriately to patterns of violence such as violence against women, including domestic violence.<sup>53</sup>

Everyone also has the right to liberty.<sup>54</sup> No one shall be subjected to arbitrary arrest or detention.<sup>55</sup> No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.<sup>56</sup> Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.<sup>57</sup> Anyone arrested or detained on a criminal charge shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release.<sup>58</sup> It shall not be the general rule that persons awaiting trial shall be detained in custody.<sup>59</sup> Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.<sup>60</sup> Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.<sup>61</sup>

No one shall be subjected to arbitrary or unlawful interference with his privacy.<sup>62</sup> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.<sup>63</sup> In this respect, the law shall prohibit any discrimination and guarantee to all persons equal

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<sup>51</sup> *Marcellana and Gumanoy v. Philippines*, Communication No. 1560/2007, ¶ 7.7, U.N. Doc. CCPR/C/94/D/1560/2007 (17 Nov. 2008); UN Human Rights Committee, *Concluding observations: Uganda 2004*, ¶ 12, U.N. Doc. CCPR/CO/80/UGA (4 May 2004) (internally displaced persons subject to attack by insurgents).

<sup>52</sup> *Chongwe v. Zambia*, Communication No. 821/1998, ¶ 5.3; U.N. Doc. CCPR/C/70/D/821/1998 (2000); *Lalith Rajapakse v. Sri Lanka*, Communication No. 1250/2005, ¶ 9.7; U.N. Doc. CCPR/C/83/D/1250/2004 (24 Mar. 2005); *Gunaratna v. Sri Lanka*, Communication No. 1432/2005, ¶ 8.4, U.N. Doc. CCPR/C/95/D/1432/2005 (17 Mar. 2009).

<sup>53</sup> UN Human Rights Committee, *Concluding observations: Georgia 2002*, ¶ 14, U.N. Doc. CCPR/CO/74/GEO (19 Apr. 2002); UN Human Rights Committee, *Concluding observations: Republic of the Congo 2000*, ¶ 271, U.N. Doc. CCPR/C/79/Add.118 (25 Apr. 2000).

<sup>54</sup> UDHR, Art. 3.

<sup>55</sup> UDHR, Art. 9.

<sup>56</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 9, ¶ 1.

<sup>57</sup> ICCPR, Art. 9, ¶ 2.

<sup>58</sup> UDHR, Arts. 10 - 11.

<sup>59</sup> ICCPR, Art. 9, ¶ 3.

<sup>60</sup> ICCPR, Art. 9, ¶ 4.

<sup>61</sup> ICCPR, Art. 9, ¶ 5.

<sup>62</sup> ICCPR, Art. 17, ¶ 1.

<sup>63</sup> ICCPR, Art. 26.

and effective protection against discrimination on any ground such as race, color, language, religion, national origin, or other status.<sup>64</sup>

Non-discrimination is especially important in law enforcement to prevent racial profiling in arrests, prosecutions, convictions, and sentencing. Governments should make sure that police, prosecutors, and judges do not act out of conscious or unconscious racial bias.

### BARRIERS TO SAFETY FOR VICTIMS OF CRIME

People consistently cited fear of detention and deportation by federal immigration authorities as a reason to avoid any contact with law enforcement.<sup>65</sup> An attorney explained, “There’s a very real underlying fear that they will be deported or their kids taken away.”<sup>66</sup> One interviewee summed up the situation: “Of course undocumented immigrants feel less safe.”<sup>67</sup>

For undocumented victims of crime or for crime victims who have undocumented family members, lack of status often creates a barrier to seeking protection from violence.<sup>68</sup> A public defender reported, “People are afraid of the police. We see a lot of people who are victims of crime because they will not call the police. People are so afraid of detention.”<sup>69</sup> Fear of detection by federal immigration authorities also impacts the ability of witnesses to come forward. One participant described witnessing a crime, but deciding with her husband that calling the police was too risky because she was undocumented.<sup>70</sup> One service provider reported that plainclothes ICE agents question Spanish-speaking individuals who are waiting outside of the county’s courtrooms, creating a serious deterrent to any involvement with the justice system.<sup>71</sup>

Crime victims themselves may face prosecution for forgery or identity theft when their status comes to light.<sup>72</sup> A service provider reported that her immigrant clients “are totally afraid to call the police, especially the undocumented. There are rumors that they will be investigated first. There have been stories of victims being questioned. It depends on the officer you get.”<sup>73</sup>

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<sup>64</sup> ICCPR, Art. 26.

<sup>65</sup> Conversation 9.

<sup>66</sup> Interview 110.

<sup>67</sup> Interview 119.

<sup>68</sup> Interview 83.

<sup>69</sup> Interview 124.

<sup>70</sup> Conversation 23.

<sup>71</sup> Interview 112.

<sup>72</sup> Paul McEnroe, *Protecting illegal immigrants to catch criminals*, Minneapolis Star Tribune, Oct. 27, 2011, <http://www.startribune.com/local/132387733.html>.

<sup>73</sup> Interview 123.



Advocates throughout Minnesota report particular barriers to safety for battered refugee and immigrant women.<sup>74</sup> One advocate reported that women in her community are not willing to talk to the police.<sup>75</sup> Regardless of immigration status, victims of domestic violence also are reluctant to report abuse for fear of their partners being deported.<sup>76</sup> One advocate reported there is a “fear of deportation as they are financially dependent on the man.”<sup>77</sup> Another advocate described several individuals who refused to seek police help from domestic violence out of fear that their partners – often the breadwinners – will subsequently be deported.<sup>78</sup>

In 2004, The Advocates for Human rights documented serious violations of refugee and immigrant women’s right to safety and security of the person in Minnesota.<sup>79</sup> In the decade since that report, significant progress has been made around language access in state courts and in new immigration protections which have become available to victims of domestic violence. However, the tightening relationship between federal immigration authorities and local law enforcement agencies now poses a significant barrier to domestic violence victims’ ability to seek protection from the police.

The Victims of Trafficking and Violence Protection Act of 2000 amended federal law by creating the U-visa program.<sup>80</sup> Designed to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes... committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States,”<sup>81</sup> the U-visa classification facilitates “the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status.”<sup>82</sup>

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<sup>74</sup> The Advocates for Human Rights documented barriers to access to safety for battered refugee and immigrant women in its 2004 report, *The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report*.

<sup>75</sup> Interview 99.

<sup>76</sup> Interview 94; Interview 60; Interview 69; Interview 75; 8 U.S.C. §1227(a)(2)(E)(i)-(ii) (enumerates crimes of domestic violence as ground for deportation).

<sup>77</sup> Interview 99.

<sup>78</sup> Interview 94.

<sup>79</sup> The Advocates for Human Rights, *The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report*, (Dec. 10, 2004).

<sup>80</sup> Victims of Violence and Trafficking Prevention Act of 2000, Public Law No. 106-386, 114 Stat. 1464 (2000).

<sup>81</sup> Victims of Violence and Trafficking Prevention Act of 2000, Pub. Law No. 106-386, 114 Stat. 1464, sec. 1513(a)(2)(B) (2000).

<sup>82</sup> Victims of Violence and Trafficking Prevention Act of 2000, Pub. Law No. 106-386, 114 Stat. 1464, sec. 1513(a)(2)(B) (2000).

While the U-visa sought to bring undocumented crime victims out of the shadows by eliminating the fear of deportation, implementation of the program has been uneven. Advocates report that crime victims face significant hurdles in seeking protection from deportation.<sup>83</sup> This appears due in part to a misunderstanding of the U-visa regulations by state and local law enforcement officials who are asked to sign the required certification paperwork that allows a U-visa to be considered by federal immigration authorities.<sup>84</sup> Advocates reported that they often must explain the U-visa regulations and the certification purpose and process to local law enforcement.<sup>85</sup>

Law enforcement willingness to sign U-visa certifications varies among Minnesota jurisdictions.<sup>86</sup> Advocates noted that some certifiers appear to approach U-visa certification requests “looking for reasons not to sign.”<sup>87</sup> While some jurisdictions appear to sign U-visa certifications when the criteria under the federal program are met, other jurisdictions impose their own restrictions, such as certifying only after a case results in conviction, and still others refuse to sign any U-visa certifications.<sup>88</sup> One law enforcement agency reported that because Congress only makes 10,000 U-visas available each year, the local law enforcement agency felt an obligation to certify only cases they felt were “real” or “deserving” cases, rather than all cases which qualify for certification.<sup>89</sup> Advocates also said the potential deportation of a spouse or partner who perpetrated the crime had a chilling effect on the willingness of women to apply for a U-visa.<sup>90</sup>

Advocates also report that undocumented people who call police increasingly face suspicion that they are making false reports to gain immigration status under the U-visa program.<sup>91</sup> Criminal defense attorneys are raising potential eligibility for a U-visa in an attempt to undermine the victim’s credibility as a witness.<sup>92</sup> One criminal defense attorney expressed concern about an individual the attorney believed had reported a crime in hopes of getting a U visa.<sup>93</sup>

In one sexual assault trial, an undocumented victim was asked by defense counsel about her legal status.<sup>94</sup> When the victim replied she did not know if she should answer the question, the defense

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<sup>83</sup> Correspondence 1; Correspondence 6.

<sup>84</sup> Correspondence 1; Correspondence 6.

<sup>85</sup> Correspondence 1; Correspondence 6.

<sup>86</sup> Interview 87; Interview 63; Interview 99; Interview 69; Interview 60.

<sup>87</sup> Correspondence 8.

<sup>88</sup> Interview 99; Interview 87; Interview 60.

<sup>89</sup> Interview 76.

<sup>90</sup> Interview 94, Interview 99.

<sup>91</sup> Notes on file with the author.

<sup>92</sup> Interview 180, Interview 173.

<sup>93</sup> Interview 112.

<sup>94</sup> Correspondence 9.

moved for her to be charged with the crime of illegal entry and identify theft.<sup>95</sup> The judge ordered the county attorney to provide a definitive answer on whether the state was going to charge her and told the victim that she needed to be represented by counsel at the hearing scheduled for the next morning.<sup>96</sup> The judge then asked the victim if she would receive immigration status from reporting.<sup>97</sup> Given the real risk that reporting a crime could lead to exposure of their immigration status and that their status could weaken the case against the perpetrator, undocumented crime victims face strong incentives to remain silent.

## DRIVING AND DEPORTATION

A combination of restrictions on Minnesota driver's license eligibility and expanded ICE presence in local jails leaves undocumented Minnesotans vulnerable to arrest, detention, and deportation. Because immigrants who are turned over to immigration authorities for deportation following traffic stops typically do not face any criminal charges, state and local law enforcement officials are left without an effective mechanism to identify and address instances or patterns of racial or national origin profiling.

“They are so afraid of being stopped, constantly thinking, when was the last time I saw my kids, will I be deported?”

### RESTRICTIONS ON DRIVER'S LICENSES

Minnesota regulations require proof of lawful presence in the United States for all applicants for driver's licenses and state identification cards, effectively barring undocumented immigrants from obtaining driver's licenses and making it difficult for many people who are lawfully present to obtain licenses.<sup>98</sup> Advocates reported numerous cases of individuals who were arrested following traffic stops for failure to carry a driver's license or proof of insurance and booked into local jails. Once in jail, they were interviewed by ICE officers to obtain admissions of unlawful presence in the United States and later turned over to federal authorities for deportation.

The driver's license issue stokes fear in the community. One advocate reports, “We have big meetings and ask people what the biggest issue is – driver's licenses. They are so afraid of being stopped, constantly thinking, when was the last time I saw my kids, will I be deported?”<sup>99</sup> One

<sup>95</sup> Correspondence 9.

<sup>96</sup> Correspondence 9.

<sup>97</sup> Correspondence 9.

<sup>98</sup> Minn. Rules 7410.0410 (2013) (as amended by 28 SR 314, Sept. 15, 2003). Even for some refugees and immigrants who are legally present in the United States, Minnesota's restrictive driver's license rules pose a problem. A public defender said “homeless refugees often have no documents. So, they end up getting arrested because they don't have documents and can't prove their identity.” Interview 124.

<sup>99</sup> Interview 128.

person offered the opinion that the bar on driver's licenses is another way for police and other law enforcement agencies to target immigrants.<sup>100</sup>

This fear appears well founded. As one community organizer explained, "A number of our leaders have been lost because they were driving to work, arrested for not having their address on their ID, and brought to the county jail where ICE comes."<sup>101</sup>

One U.S. citizen whose husband was deported following a traffic stop described the experience: "He knew he shouldn't drive, but he needed to go to work." Arrested in May 2013 for driving without a license, her husband was detained in immigration custody until his deportation in November.<sup>102</sup>

A national trend to restrict state-issued identification documents to U.S. citizens and lawfully present immigrants spread after passage of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, which required states to include Social Security numbers on licenses and encouraged states to pilot programs denying licenses to undocumented immigrants.<sup>103</sup> After the September 11th terrorist attacks, the movement to deny driver's licenses to those in the country without legal status gained new momentum. Supporters cited the need to "prevent criminals and potential terrorists from obtaining and using state identification cards" as a primary reason for restrictions.<sup>104</sup> In 2002, a bill to include "visa expiration dates" on driver's licenses in Minnesota failed to pass the legislature.<sup>105</sup> The Department of Public Safety then used the emergency rulemaking process to enact a requirement that Minnesotans provide proof of lawful immigration status in order to receive a state issued identity card or driver's license.<sup>106</sup> This rule remains in place, requiring proof of legal immigration status and, in the cases of persons admitted for a temporary period of time, listing the expiration date of that status on the face of the license or identity card.<sup>107</sup>

### EXPANDED ICE PRESENCE IN LOCAL JAILS

The increased capacity of ICE officers to identify and interview noncitizens who are in the custody of Minnesota's county jails means that noncitizens in jail may be identified and questioned by ICE and

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<sup>100</sup> Interview 139 ("people end up in contact with immigration because of driver's license problems.")

<sup>101</sup> Interview 107.

<sup>102</sup> Dianne Towalski, *Couple's plight spotlights need for immigration reform*, *The Catholic Spirit*, Jan. 2, 2014, at 6.

<sup>103</sup> Illegal Immigration Reform and Immigrant Responsibility Act, Pub. Law 104-208 § 656(b), 110 Stat. 3009, 3009-716-18 (1996). The requirement to include Social Security numbers was subsequently repealed.

<sup>104</sup> Rich Stanek, *Essay: Terrorism: Minnesota Responds to the Clear and Present Danger*, 29 W. Mitchell L.Rev. 739, 744 (2003).

<sup>105</sup> Report of the Administrative Law Judge, 15-2400-15360-1, bullet 3, <http://mn.gov/oah/multimedia/pdf/240015360.rr.pdf>.

<sup>106</sup> Minn. Rules 7410.0410 subp. 1 (2013).

<sup>107</sup> Minn. Rules 7410.0410 subp. 1 (2013).

turned over for deportation without any criminal charges being filed. People reported that immigrants in local jails were not given any explanation of their rights or of the potential consequences of voluntarily providing information prior to being placed on the telephone with or interviewed by ICE officers and were not represented by counsel at any point in the process.<sup>108</sup> “Sometimes they just say ‘sign here’ and we don’t know what to do,”<sup>109</sup> stated one immigrant.

In Minnesota, ICE uses the Criminal Alien Program (CAP), Secure Communities (S-COMM), detainer requests, and stipulated removal orders to identify, interrogate, and secure deportation orders against aliens who are booked into county jails. Although characterized in ICE’s public communications and congressional appropriations requests as tools which target “criminal aliens,” data indicate that many people identified and deported through these programs have no criminal convictions or have convictions for minor offenses.<sup>110</sup>

Developed following the passage of the Immigration Reform and Control Act of 1986 (IRCA),<sup>111</sup> the Criminal Alien Program (CAP) today provides “ICE-wide direction and support in the biometric and biographic identification, arrest, and removal of priority aliens who are incarcerated within federal, state, and local prisons and jails, as well as at-large criminal aliens that have circumvented identification.”<sup>112</sup> CAP utilizes over 125 jail enforcement teams nationwide to screen incarcerated aliens as they are being booked into jail, which occurs after a person is arrested but before the arrested person faces specific criminal charges.<sup>113</sup> Under CAP, immigration officers review booking sheets and interview people they suspect of being aliens. These interviews are almost uniformly conducted without access to counsel. Any admissions made during the interview form the basis of a detainer request and can result in the initiation of removal proceedings.

According to ICE, Secure Communities “uses an already-existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (FBI) that helps to identify criminal aliens without imposing new or additional requirements on state and local law

<sup>108</sup> Interview 124.

<sup>109</sup> Conversation 23.

<sup>110</sup> Aarti Kohli, Peter L. Markowitz and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*, Chief Justice Earl Warren Institute on Law and Social Policy, University of California, Berkley Law School, (Oct. 2011).

<sup>111</sup> IRCA required the Attorney General, “in the case of an alien who is convicted of an offense which makes the alien subject to deportation...[to] begin any deportation proceeding as expeditiously as possible after the date of the conviction.”

<sup>112</sup> Immigration and Customs Enforcement, “Criminal Alien Program,” <http://www.ice.gov/criminal-alien-program/> (accessed February 21, 2014).

<sup>113</sup> Marc R. Rosenblum and William A. Kandel, *Interior Immigration Enforcement: Programs Targeting Criminal Aliens*, Congressional Research Service (December 20, 2012) at 14, <https://www.fas.org/sgp/crs/homesec/R42057.pdf>.

enforcement. For decades, local jurisdictions have shared the fingerprints of individuals who are arrested or booked into custody with the FBI to see if they have a criminal record. Under Secure Communities, the FBI automatically sends the fingerprints to DHS to check against its immigration databases.”<sup>114</sup> If the record check indicates that the alien is unlawfully in the United States, ICE initiates a detainer request for the alien to be turned over to ICE custody upon release from criminal custody.

In cases where ICE wishes to assume custody of a person who is in the custody of a local or state law enforcement agency, 8 C.F.R. § 287.7 permits ICE to issue a “detainer request” that the law enforcement agency notify ICE before releasing the alien and maintain custody of the subject for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) following the scheduled release to allow ICE to assume custody. Once the individual is in ICE custody, he may be removed, even if criminal charges against the individual remain pending. Unlike some other requests for transfer of custody, the state or local law enforcement agency is under no obligation to honor ICE’s request.<sup>115</sup>

Immigration law provides for the entry by an immigration judge of an order of removal stipulated to by the alien (or the alien’s representative) and ICE; a stipulated order shall constitute a conclusive determination of the alien’s removability from the United States.<sup>116</sup> The use of stipulated removals increased over 500 percent between 2004 and 2008,<sup>117</sup> today comprising approximately one-third of all removals from the United States.<sup>118</sup> Ninety-three percent of all persons removed under stipulated removal orders were charged with being in the United States without permission.<sup>119</sup>

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<sup>114</sup> Immigration and Customs Enforcement, “Secure Communities,” [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/) (accessed February 21, 2014).

<sup>115</sup> Honoring of detainer requests also interferes with the criminal justice system. When criminal charges were filed, The Advocates for Human Rights received reports of immigrants being turned over to immigration and deported before completion of their criminal cases, leaving unresolved criminal charges and outstanding warrants for failure to appear on their criminal records.

<sup>116</sup> 8 U.S.C. §1229a(c); 8 C.F.R. 1003.25(b). A “stipulated removal order” is where an immigrant agrees or “stipulates” to deportation and gives up his or her right to an immigration court hearing. These agreements are reviewed by a judge to determine whether the waiver of the right to a hearing and acceptance of deportation was done “knowingly, voluntarily, and intelligently.” If the judge signs off on the agreement, the immigrant is deported without ever appearing in court.

<sup>117</sup> Jayashri Srikantiah and Karen Tumlin, *Backgrounder: Stipulated Removal*, Stanford Immigrants’ Rights Clinic and National Immigration Law Center, [http://www.law.stanford.edu/sites/default/files/child-page/163220/doc/slspublic/Stipulated\\_removal\\_backgroundunder.pdf](http://www.law.stanford.edu/sites/default/files/child-page/163220/doc/slspublic/Stipulated_removal_backgroundunder.pdf) (accessed March 19, 2014).

<sup>118</sup> Jennifer Lee Koh, *Stipulated Orders of Removal and the Crisis in Immigration Adjudication*, 91 N.C. L.Rev. 475, 479 (2013).

<sup>119</sup> Jayashri Srikantiah and Karen Tumlin, *Backgrounder: Stipulated Removal*, Stanford Immigrants’ Rights Clinic and National Immigration Law Center, [http://www.law.stanford.edu/sites/default/files/child-page/163220/doc/slspublic/Stipulated\\_removal\\_backgroundunder.pdf](http://www.law.stanford.edu/sites/default/files/child-page/163220/doc/slspublic/Stipulated_removal_backgroundunder.pdf) (accessed March 19, 2014).

## IMMIGRATION PROFILING

The greatly expanded capacity to screen and obtain admissions of alienage or unlawful entry from people in Minnesota jails before any charges have been brought has left Minnesota law enforcement without an effective mechanism to detect or combat any immigration profiling that may take place. This relationship between local and immigration enforcement bypasses the procedural safeguards against constitutional violations which exist in the criminal justice system, where searches and seizures can be challenged and where evidence, including testimony, may be suppressed if found to have been obtained in violation of law. Because ICE interviews, detainer requests, and transfers often take place prior to criminal charges, no prosecutor reviews the evidence, no public defender is assigned, and no hearing before a judge takes place.

When the driver failed to produce a valid Minnesota driver's license and was unable to communicate in English, the officer called federal immigration officials.

Several people interviewed pointed to specific incidents they perceived to be unjustified stops.<sup>120</sup> One advocate reported that law enforcement routinely sat across the street from a local mobile home park, where many immigrants live,<sup>121</sup> while another reported police sitting in a neighborhood convenience store parking lot where he ran plates on Latino-driven cars.<sup>122</sup> One public defender reported different justifications used to stop people believed to be undocumented based on their appearance: "Those 'pine tree scent' things that hang from the rearview mirror – lots of Hispanic clients get pulled over for it or for having the license plate lights out."<sup>123</sup>

Regardless of the motivation for these stops, the result for undocumented drivers can be deportation. A legal service provider reported an example: "One family, they were stopped for no reason. Dad and son were referred to ICE. Local police made the stop, but there was never even a ticket."<sup>124</sup>

One advocate shared a police report involving a client who was pulled over by local police for failure to use a turn signal.<sup>125</sup> The police report describes how, when the driver failed to produce a valid Minnesota driver's license and was unable to communicate in English, the officer called federal immigration officials. "I advised [them] of the situation... [and] the federal immigration officer

<sup>120</sup> Conversation 16; Conversation 21; Conversation 8; Conversation 9; Interview 12; Interview 42.

<sup>121</sup> Interview 94.

<sup>122</sup> Interview 172.

<sup>123</sup> Interview 122.

<sup>124</sup> Interview 75.

<sup>125</sup> Correspondence 10.

advised me that [the driver] is illegal and he wants her held for deportation.”<sup>126</sup> The police report lists charges of no proof of insurance, no driver’s license, and illegal entry.<sup>127</sup> Another person shared the story of an acquaintance stopped for expired license tabs while driving home from work. “He was picked up, taken to the county jail, and deported two weeks later.”<sup>128</sup>

Another person reported being stopped by local police in northern Minnesota after pulling into a parking lot.<sup>129</sup> The officer made no allegations of traffic violations and instead asked the driver repeatedly to give him her address and to explain what she was doing in that part of the state before radioing for Border Patrol backup.<sup>130</sup> Border Patrol arrived, continued asking questions, and demanded proof of citizenship from everyone in the vehicle.<sup>131</sup> When the driver’s license checked out as valid, they were allowed to leave. Border Patrol followed the vehicle to their campsite and then continued to follow them to a local gas station.<sup>132</sup>

Staff at one northern Minnesota college also talked about the cooperation between Border Patrol and law enforcement. “One issue we have is to remind students to carry their documentation. Last year a group of students was stopped by the state patrol and border patrol was called. The student showed a foreign driver’s license and college ID but not a passport or green card. They were detained until their parents drove from the Cities with their green card and the roommate came in and corrected the birthdate that had been given so the international student could be found in the system.”<sup>133</sup>

Advocates also reported arrests following stops or questioning by police that appear to fall outside the scope permitted by law, including numerous reports of people who were stopped by local police who had run their license plates and found no driver’s license issued in the vehicle owner’s name.<sup>134</sup> An advocate reported people who were passengers in a vehicle had been asked for identification.<sup>135</sup>

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<sup>126</sup> Correspondence 10.

<sup>127</sup> Correspondence 10.

<sup>128</sup> Conversation 23.

<sup>129</sup> Correspondence 12.

<sup>130</sup> Correspondence 12.

<sup>131</sup> Correspondence 12.

<sup>132</sup> Correspondence 12

<sup>133</sup> Interview 61.

<sup>134</sup> Correspondence 11.

<sup>135</sup> Interview 63.



Law enforcement generally performs traffic stops to (1) investigate a suspected crime; (2) issue a traffic citation; or (3) arrest a person suspected of a crime.<sup>136</sup> Despite their brevity and limited scope, traffic stops are seizures and, thus, trigger Fourth Amendment protections against unreasonable searches and seizures.<sup>137</sup>

Not all searches and seizures are unreasonable.<sup>138</sup> The U.S. Supreme Court has identified situations in which it is reasonable for an officer to seize or search a suspect without a warrant or probable cause in *Terry v. Ohio*.<sup>139</sup> One of these situations is a “‘comparatively non-threatening’ temporary detention justified where an officer’s ‘‘observations lead him [or her] reasonably to suspect’ that a particular person has committed, is committing, or is about to commit a crime.”<sup>140</sup> During a *Terry* stop, an officer may only ask questions to determine the suspect’s identity and to gain information related to the circumstances that led to the stop.<sup>141</sup> Unless the officer has independent reasonable suspicion of other criminal activity, this means that the scope of a *Terry* stop must be confined to the initial justification for the stop.<sup>142</sup> Minnesota has fully adopted the principles outlined in *Terry*.<sup>143</sup> In general, traffic stops are *Terry* stops.<sup>144</sup> In order to remain within the scope of the *Terry* doctrine, questioning by an officer during a stop must be limited to inquiries relating to the identity of the driver and to the circumstances that provided reasonable suspicion for the stop.<sup>145</sup>

Under the Fifth Amendment, all drivers and passengers have a right to remain silent during traffic stops.<sup>146</sup> While the Fifth Amendment privilege against self-incrimination does not extend to disclosures of identity,<sup>147</sup> Minnesota does not require identification. Thus, other than proof of insurance and a driver’s license,<sup>148</sup> drivers do not have an obligation to provide any additional information to police and passengers do not have to provide any information at all.

<sup>136</sup> Federal Law Enforcement Training Center, “Traffic Stop Study Guide 2010,” at 7, <http://resources.learningforlife.org/exploring/lawneforfcement/study/tstop.pdf> (accessed Dec. 6, 2012).

<sup>137</sup> *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *State v. Day*, 461 N.W.2d 404, 406 (Minn. Ct. App. 1990); *State v. Engholm*, 290 N.W.2d 780, 783 (Minn. 1980).

<sup>138</sup> *U.S. v. Sharpe*, 470 U.S. 675, 682 (1985).

<sup>139</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>140</sup> *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (quoting *Terry v. Ohio*, 392 U.S. 1, 29 (1968)).

<sup>141</sup> *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (quoting *Terry v. Ohio*, 392 U.S. 1, 29 (1968)).

<sup>142</sup> *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005).

<sup>143</sup> *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004).

<sup>144</sup> *State v. Wiegand*, 645 N.W.2d 125, 133-34 (Minn. 2002) (citing *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)).

<sup>145</sup> *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984).

<sup>146</sup> *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). ([T]he officer may ask the detainee a moderate number of questions...[b]ut the detainee is not obliged to respond.”)

<sup>147</sup> *California v. Byers*, 402 U.S. 424, 429-30 (1971).

<sup>148</sup> Minn. Stat. §§169.791, sub. 2, 171.08 (2013) (drivers must provide proof of insurance and driver’s license upon officer’s demand).

One interviewee reported being called over for questioning by police while walking into a gas station to pay for fuel.<sup>149</sup> In a similar incident, a public defender described an incident where a Latino individual parked his car and was walking toward a restaurant when he was asked for identification by a patrol officer.<sup>150</sup> The officer made no allegations of any violation of motor vehicle operation or suspicion of any criminal activity.<sup>151</sup> When the individual failed to produce a valid Minnesota driver's license he was arrested and booked into the county jail and turned over to ICE for deportation.<sup>152</sup>

One advocate reported the case of an individual who was parked on the wrong side of the street while jump-starting a friend's car.<sup>153</sup> The police stopped, asked him for identification, and when he presented a Mexican *matricula consular*, they arrested him.<sup>154</sup> He was booked into jail, interviewed by ICE under the Criminal Alien Program, and placed in deportation proceedings.<sup>155</sup> The individual had no criminal history and no criminal charges were brought against him.<sup>156</sup>

A legal service provider recounted an incident when a van leaving an employer site was followed by the county sheriff who pulled the van over and asked everyone inside for identification.<sup>157</sup> While they allegedly had a warrant for the driver, all the passengers were turned over to ICE for questioning and placed in removal proceedings.<sup>158</sup> Despite a probability that some of these stops are unconstitutional, immigrants are transferred to ICE before any criminal proceedings and so there is no review of the constitutionality of the initial arrest.

## TRUST BETWEEN IMMIGRANT COMMUNITIES AND LOCAL LAW ENFORCEMENT

Trust in the justice system and understanding law enforcement's role were cited as important preconditions to immigrants voluntarily accessing law enforcement protection. Conversations with law enforcement officials reflect recognition that trust between immigrant and refugee communities and local law enforcement is important. Nonetheless, building trust can be challenging. Perceptions of cooperation with federal immigration officials and experiences with police in both home countries and Minnesota affect the relationship between immigrant

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<sup>149</sup> Interview 172.

<sup>150</sup> Interview 124.

<sup>151</sup> Interview 124.

<sup>152</sup> Interview 124.

<sup>153</sup> Interview 121.

<sup>154</sup> Interview 121.

<sup>155</sup> Interview 121.

<sup>156</sup> Interview 121.

<sup>157</sup> Interview 63.

<sup>158</sup> Interview 63.

communities and law enforcement. People pointed to the important role police can play in fostering trust through day-to-day interactions and in specific outreach programs.

### DAY-TO-DAY INTERACTIONS

“Some people are from countries where when you speak out you aren’t safe, but here you have to speak up to be safe.”

While some law enforcement agencies appear to actively reach out to the immigrant and refugee community with a message “*no somos la migra*” (we are not federal immigration officials),<sup>159</sup> interviews from around the state indicate that cooperation with federal immigration authorities increasingly is embedded in local law enforcement operations.<sup>160</sup> Law enforcement officers’ decisions whether to take people to jail for traffic violations, where they routinely are interrogated by federal immigration officials and often turned over to ICE for deportation, in particular create an impression in the immigrant and refugee community that police are actively engaged in enforcing federal immigration laws.<sup>161</sup> Participants cited actual or perceived cooperation between local law enforcement agencies and federal immigration authorities as a cause of undermined community trust of the police and a barrier for immigrants who need to access law enforcement.<sup>162</sup>

Many people interviewed expressed that Minnesota is a safe place in which to live, especially in comparison to their countries of origin.<sup>163</sup> “Minnesota is safer than the country I come from,” reported one participant. “There are lots of police, there is a government, education for everyone, less violence, there are rules, and the law is enforced.”<sup>164</sup> Participants’ perceptions of law enforcement ranged from, “I feel so safe. The law is applied and the police do a great job,<sup>165</sup> to “I’m not afraid of the gangs but I am afraid of the government. I feel unsafe, like the police will throw me in jail.”<sup>166</sup> Some people noted outright fear of law enforcement either because of experiences in their home countries or perceptions that they would not be treated fairly here.<sup>167</sup>

Immigrants and refugees reported that their experience with police in their home countries colored their perception of law enforcement in the United States. As one interviewee stated, “Police make me feel unsafe. In my country, the police are always watching; they never help people. They always

<sup>159</sup> Interview 63.

<sup>160</sup> Interview 112; Interview 116; Interview 124; Interview 121; Interview 94; Interview 99; Interview 75.

<sup>161</sup> Interview 94.

<sup>162</sup> Conversation 22; Conversation 23; Conversation 2; Conversation 8; Conversation 9; Conversation 15.

<sup>163</sup> Conversation 8; Interview 14; Interview 50; Interview 11.

<sup>164</sup> Conversation 8.

<sup>165</sup> Interview 24.

<sup>166</sup> Interview 42.

<sup>167</sup> Interview 106; Interview 23.

make trouble for me. And when I'm in America I see police and I'm scared first." Another summarized the feeling within his community: "When we deal with the police we don't tell them everything. In our country, police are just for repression, killing. We think it will be the same here."<sup>168</sup> Adjusting to this new culture was not easy; as one participant stated, "Some people are from countries where when you speak out you aren't safe, but here you have to speak up to be safe."<sup>169</sup>

While perceptions of law enforcement varied greatly, law enforcement interaction with immigrant and refugee community members impacts immigrants' perceptions of the community at large. Numerous participants reported that police conduct through outreach or during the normal course of business was a factor in their perception of Minnesota as a whole.<sup>170</sup> Positive encounters with law enforcement in the course of their duties helped earn trust. Interviewees particularly focused on whether they were treated with respect by the police.<sup>171</sup> Participants also identified outreach by law enforcement as the best way to overcome cultural barriers to accessing assistance.<sup>172</sup>

While education and outreach are important in building trust, interviews with community members and advocates made clear that people's perceptions are most influenced by actual experiences with law enforcement. Numerous participants reported believing they had been stopped without cause.<sup>173</sup> This undermined their trust in the police and contributed to a perception that law enforcement engages in racial profiling. "How can I feel welcome if I can't move freely?" asked one participant who reported having been stopped by police.<sup>174</sup>

Enacted to help crime victims and witnesses come forward to assist police in investigations without fear of questions about their immigration status, city separation ordinances attempt to ensure that immigrants and refugees who are victims of crime are protected by the police, regardless of immigration status, and that perpetrators of domestic violence and other crimes cannot use the threat of deportation to keep victims from turning to the police for help. While city separation ordinances in Minneapolis<sup>175</sup> and Saint Paul<sup>176</sup> continue to help promote a trusting relationship between immigrant and refugee community members and local police departments, the

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<sup>168</sup> Interview 5; Interview 23; Interview 4; Conversation 2.

<sup>169</sup> Conversation 9.

<sup>170</sup> Conversation 16; Conversation 8; Conversation 9; Conversation 12; Interview 13; Interview 18; Interview 24; Interview 25; Interview 32; Interview 6; Interview 46.

<sup>171</sup> Conversation 16; Conversation 9; Conversation 12; Interview 18; Interview 22; Interview 23.

<sup>172</sup> Conversation 11; Interview 146; Interview 5.

<sup>173</sup> Interview 12; Interview 42; Interview 49.

<sup>174</sup> Conversation 6.

<sup>175</sup> Minneapolis Code of Ordinances, Title II, Chapter 19, Employee Authority in Immigration Matters (2013).

<sup>176</sup> Saint Paul Code of Ordinances, Title III, Chapter 44, Employee Authority in Immigration Matters (2013).

effectiveness of these ordinances has been undermined by the expanded ICE presence in county jails, which are not subject to the municipal ordinances.

#### BEST PRACTICE: POLICE – COMMUNITY RELATIONS

The police departments in Brooklyn Park and Brooklyn Center recognized that changing demographics in their communities signaled a need to adjust their community policing strategies. The holistic approach they undertook has had a positive effect on law enforcement, community members, and served as a model for other departments and agencies.<sup>177</sup>

The initial step was creating a Joint Community Police Partnership, which has evolved and now includes six communities (all metro-area suburban cities) in addition to the county and area human services council. A new position of community liaison took the lead role in connecting with the community and learning what community members identified as their needs. The liaison for one community emphasized the need for a variety of strategies for outreach, including “one on one interviews, talking with police officers, and spending time out in the community,” among others.<sup>178</sup>

The impact on the police department has been notable. The goal is to educate the officers and “give them a toolbox” to best serve the needs of their community. This involves continuing to tweak and adjust officer training. The liaison noted that she regularly goes to “roll-call” and talks about various strategies, such as reminding officers about the language line and how to use it.<sup>179</sup> It is effective because the police officers can see how these strategies have made their jobs easier. The officers also have opportunities to engage in positive community events: a group from the police academy volunteers at the Latino food shelf a few times a year, and officers attend community events. “When you can give an officer a positive two-way communication with a community member, it’s a win for both.”<sup>180</sup> This also builds trust and provides community members a chance to interact with police officers in a friendly situation.

Some interviewees reported believing they would not be treated the same as U.S. citizens by law enforcement. As one person reported, “Immigrants are people they do not want to help.”<sup>181</sup> This belief appears to be rooted in immigrants’ own experiences or the experiences of those around them.

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<sup>177</sup> Pradine Saint-Fort, Noëlle Yasso, Susan Shah, “Engaging Police in Immigrant Communities: Promising Practices from the Field,” VERA Institute of Justice, November 13, 2012, 8-14, <http://www.vera.org/pubs/engaging-police-immigrant-communities-promising-practices-field>.

<sup>178</sup> Interview 190.

<sup>179</sup> Interview 190.

<sup>180</sup> Interview 190.

<sup>181</sup> Interview 41; Conversation 22; Conversation 23; Interview 5.

One immigrant explained an incident with a neighbor over a property disagreement: “The neighbors called the police and he took their side, even though the bush was on our property and our side of the yard. I do not think that guy even cared to get into it enough. He probably saw the white family against the Somali family, and sided with the whites.”<sup>182</sup> Another immigrant reported feeling humiliated by the police following a minor traffic incident: “My sister was driving down the parking lot at normal speeds when someone backed her car into ours. When the officer arrived he immediately walked up to the Caucasian lady who caused the accident and treated us as if we didn’t have the capacity to deal with the situation.”<sup>183</sup> Another participant reported that his Latino friend moved from his suburban community because he had been pulled over so frequently.<sup>184</sup>

In general, people interviewed seemed to believe that when racial profiling occurred it resulted from individual officer misconduct combined with lack of oversight.<sup>185</sup> Nonetheless, perceptions by participants that some officers or departments engaged in racial profiling more routinely than others were reported.<sup>186</sup> Public defenders and advocates were able to list jurisdictions where traffic offenders are ticketed without arrest and those where arrest and booking for failure to provide a license is routine.<sup>187</sup> One advocate reported that a local police department had a reputation among Latino immigrants of police officers who act like ICE agents.<sup>188</sup>

Such immigration profiling may contribute to disproportionate minority contact with law enforcement. One county attorney noted that “The initial treatment of people by law enforcement is a challenge,” and talked of an ongoing effort to address racial disparities in pretrial release and bail decisions.<sup>189</sup>

### ORIENTATION TO LAWS AND REGULATIONS

One key way to build trust between immigrant communities and law enforcement is through education by law enforcement about the many laws and regulations of which newer immigrants may not be aware.<sup>190</sup> One woman said, “A welcome orientation would be very important for both

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<sup>182</sup> Interview 41.

<sup>183</sup> Interview 37.

<sup>184</sup> Conversation 22.

<sup>185</sup> Institute on Race and Poverty and Council on Crime and Justice, *Minnesota Statewide Racial Profiling Report: All Participating Jurisdictions. Report to the Minnesota Legislature*, (Sept. 22, 2003), <http://www.law.umn.edu/uploads/cb/94/cb94cf65dc50826424729d214a1f6b82/27-Racial-Profiling-Aggregate-Report.pdf>. (The Minnesota legislature, concerned with allegations of racial profiling, commissioned a statewide study to determine whether racial profiling exists in the context of traffic stops.)

<sup>186</sup> Interview 112; Interview 124; Interview 121; Interview 94.

<sup>187</sup> Interview 112; Interview 124; Interview 121; Interview 94.

<sup>188</sup> Interview 94.

<sup>189</sup> Interview 59.

<sup>190</sup> Conversation 16; Conversation 19; Conversation 21.

sides. I heard of a man who tried to cut his grass with a machete, which could be very scary for the host community.”<sup>191</sup> Another group noted: “Orientation is a main issue. People need to be educated and trained about things that matter such as driving records, credit cards, laws, etc.”<sup>192</sup> A parent educator explained that an important part of health and safety education was teaching parents about positive child discipline and what is not legally acceptable in the United States.<sup>193</sup> A community liaison explained, “A guy came to see me with a traffic ticket. I looked at it and explained to him what to do, what it means. We have to teach them they have rights, they can contest the ticket if they disagree.”<sup>194</sup>

“People thought they would have to pay for the police if they call 911, so we clarified that.”

Communities have responded to this need by coordinating training academies.<sup>195</sup> One community in greater Minnesota created an eight-week “citizen’s academy.”<sup>196</sup> The community education coordinator explained it this way: “We heard through the community connectors that people were getting

ordinance citations (for not mowing, etc.) and they did not understand. We talked to the police department and they said they were concerned about bigger issues like drunk driving, domestic abuse, and child discipline, so they created the citizens academy. We recruit participants from the people in the adult basic education classes and through the collaborative. These classes have also been offered in English for non-immigrants. Each time they change the content; a lot of it is about driving, traffic tickets, child abuse and neglect, noise ordinances, pets off-leash, the number of people in a rental dwelling, how to call 911, and emphasizing that 911 is not connected to immigration status. In one class, it came up that people thought they would have to pay for the police if they call 911, so we clarified that.”<sup>197</sup>

Another police department also hosts a similar New Americans’ Academy.<sup>198</sup> The current class of sixteen students includes fourteen Spanish speakers,<sup>199</sup> and is led by a bilingual Spanish-speaking

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<sup>191</sup> Conversation 19.

<sup>192</sup> Conversation 21.

<sup>193</sup> Interview 156.

<sup>194</sup> Interview 65.

<sup>195</sup> Interview 65; Interview 190.

<sup>196</sup> Interview 65.

<sup>197</sup> Interview 64.

<sup>198</sup> Joint Community Police Partnership, “New Americans’ Academy Curriculum Summary,” <http://www.vera.org/files/newamericanscurriculum.pdf>.

<sup>199</sup> Interview 190.

police cadet and a student from the law enforcement program at a local community college.<sup>200</sup> This community welcomes families in the New Americans' Academy to bring their children, recognizing that childcare might otherwise be a barrier to participation. The department has also recognized the value of engaging with youth, particularly to help those refugees who may have a bad impression of law enforcement from experiences in their home country.<sup>201</sup> The children convey information to their parents, making youth outreach an important entry point for educating the broader community.<sup>202</sup>

In addition to the value of educating immigrants about the laws and regulations in their community, orientations and trainings like the citizens academy build trust between new arrivals and their government. Communities around Minnesota have started building these connections, many through English language classes. One English language program brings police officers to the classroom to talk with the students about common legal issues.<sup>203</sup> This police department also developed videos they use to teach about car accidents, kids and gangs, and other common problems.<sup>204</sup> The school director expressed hope that she can also engage the police as volunteers in the classroom, so the police can “connect more fully and really see and understand the students.”<sup>205</sup>

In order for immigrants to really become part of their communities, they need to understand the laws that govern civic life. Without this, misunderstandings and frustrations build between immigrants and long-term residents and can create deeper divisions. The host community has an obligation and vested interest in providing education and information to all citizens about these laws. It is especially important for police and other government agencies to conduct outreach to immigrant communities, both to increase knowledge of and compliance with laws, but also to build trust and relationships with newer communities.

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<sup>200</sup> Interview 190.

<sup>201</sup> Interview 190.

<sup>202</sup> Interview 190.

<sup>203</sup> Interview 100.

<sup>204</sup> Interview 100.

<sup>205</sup> Interview 100.



## RECOMMENDATIONS

Finding: Undocumented immigrants and their family members fear that contacting law enforcement as a victim or witness will lead to deportation.

### Recommendations

- Law enforcement agencies and county attorneys should encourage crime reporting by undocumented crime victims by adopting policies that articulate clear standards for exercising charging or prosecutorial discretion when evidence of the victim's unlawful presence in the United States is uncovered during the course of the investigation or prosecution.
- Cities, counties, and the State of Minnesota should enact local separation ordinances, rules, or laws to provide clear guidance to public employees, including law enforcement officers, about when to inquire about immigration status.

Finding: Existing protections for undocumented crime victims are not effectively implemented.

### Recommendations

- Federal, state, and local law enforcement agencies should establish clear points of contact for U-visa certification. Points of contact should receive training on the U-visa certification's purpose and requirements on a regular basis.
- Minnesota should establish a single statewide point of contact at the Department of Public Safety who can make decisions on certification requests and who can provide training and support to other points of contact statewide.
- Minnesota should increase the capacity of local domestic violence and sexual assault programs to serve as points of contact, leveraging the relationships between Minnesota's robust Domestic Violence Coordinated Community Response (DV CCRs), Domestic Assault Response Teams (DARTs), Sexual Assault Multidisciplinary Response Teams/Sexual Assault Response Teams (SMARTs/SARTs), and key criminal justice personnel.
- Federal, state, and local agencies charged with enforcing civil anti-discrimination laws, labor and employment laws, worksite safety provisions, and housing codes should identify points of contact for U-visa certification and should establish protocols for reviewing certification requests to ensure that victims of

discrimination and exploitation who are also victims of serious crimes can be identified and certified for U-visas.

Finding: Undocumented immigrants cannot obtain Minnesota driver's licenses, undermining public safety and increasing opportunities for discriminatory targeting of people who appear to be immigrants by law enforcement officers.

#### **Recommendation**

- Minnesota should enact legislation or make regulatory changes to decouple driving privileges from immigration status.

Finding: Increased coordination between local law enforcement and federal immigration agencies creates conditions for constitutional violations with no effective remedy.

#### **Recommendations**

- Law enforcement agencies responsible for the enforcement of traffic laws, including municipal police departments, sheriff's offices, and the Minnesota State Patrol, should establish clear protocols for involving federal immigration agencies at the point of traffic stops. Federal immigration officers should never be called to provide interpretation assistance.
- To avoid practices by individual officers that result in racial profiling, law enforcement agencies should provide clear guidance about when patrol officers should ask passengers in vehicles to provide identification.
- Information should be available, in an accessible and understandable format, to everyone booked into county jails in Minnesota about their right to remain silent and the possible consequences of voluntary interviews with federal immigration officials.
- Free immigration legal services should be accessible to every person booked into county jails.
- Municipal and county jails should develop clear guidelines for when to honor ICE detainer requests.
- Prior to turning an individual who has not been criminally charged over to ICE pursuant to an informal detainer request, the case should be reviewed by the city or

county attorney to ensure that the initial stop or arrest meets the standards sufficient to justify criminal charges, including review to ensure that the stop was not based on race or national origin.

- Prior to turning an individual who has been criminally charged over to ICE pursuant to an informal detainer request, the case should be reviewed by the city or county attorney to ensure that deportation does not interfere either with the state's interest in pursuing criminal charges against the individual or with the individual's right to defend themselves against the charges. The city or county attorney should not authorize the individual's release to ICE without moving to dismiss the pending criminal charges against the individual.
- Minnesota should enact legislation that allows law enforcement to honor ICE detainer requests only in certain clearly defined circumstances to eliminate the opportunity to engage in immigration profiling through traffic stops.

Finding: Immigrant communities lack trust in local law enforcement.

### Recommendations

- Everyday encounters between immigrant and refugee community members and police officers affect the community's understanding of, and level of trust in, the public safety system. Police officers should use routine traffic stops and other low-level encounters as an opportunity to explain why a stop was made or the police were called, what laws were broken, and how to avoid future violations.
- Police departments should invest in community liaisons who can build relationships with community members. Outreach strategies might include: regular community orientation sessions that focus on frequent violations identified by police and on questions and problems identified by the community; citizen academies and cadet programs; and active participation in community events.



# CHAPTER 2: ACCESS TO JUSTICE



## INTRODUCTION

Immigrants and refugees in Minnesota face serious barriers to accessing justice that are compounded by lack of immigration status, language, and lack of familiarity with the U.S. legal system. People reported limited availability of free civil legal services, in general, and immigration legal services, in particular. In the criminal context, people noted that immigrants and refugees may face grossly disproportionate consequences for criminal convictions. People also noted perceptions of bias in the criminal justice system, lack of access to high quality interpreters in all aspects of proceedings, lack of understanding by immigrants and refugees of how the court system works, and significant delays in cases that cause hardship to immigrant plaintiffs. Finally, for people who have been victims of discrimination in housing, employment, public benefits, or other sectors, fear of deportation acts as a barrier to seeking an effective remedy.

## HUMAN RIGHTS AND ACCESS TO JUSTICE

The right to a fair and accessible justice system is enshrined in the Universal Declaration of Human Rights, the U.S. Constitution, and the Minnesota Constitution.<sup>206</sup> All three guarantee equal protection and due process to all persons.<sup>207</sup> Due process is fundamental, ensuring that the government follows fair procedures before depriving a person of their rights.<sup>208</sup> The justice system is comprised of two types of matters: civil and criminal. Common civil matters include immigration claims, deportation, marriage dissolution, child custody, eviction, foreclosure, and contractual disputes. Criminal matters are actions prohibited by statute that are punishable by incarceration.<sup>209</sup>

The Universal Declaration of Human Rights also echoes the U.S. and Minnesota Constitutions in providing protections for criminal defendants. These include the right not to be arbitrarily arrested or detained, the right to be apprised of any criminal charges, and the presumption of innocence until proven guilty.<sup>210</sup>

Effective access to justice means having a forum to seek a remedy for a violation of rights, such as an eviction from housing.<sup>211</sup> It also means fair treatment in that forum. The Minnesota Constitution states, “Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase,

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<sup>206</sup> Universal Declaration of Human Rights (UDHR) Arts. 7, 8, 10; U.S. Const. amends. V, VI, XIV; Minn. Const. Art.1 §§6-8.

<sup>207</sup> U.S. Const. amends. V, XIV; Minn. Const. Art. 1 §7.

<sup>208</sup> Cornell University Law School Legal Information Institute, “Due Process,” [http://www.law.cornell.edu/wex/due\\_process](http://www.law.cornell.edu/wex/due_process).

<sup>209</sup> Minn. Stat. §609.02 sub. 1.

<sup>210</sup> UDHR Arts. 9- 11; U.S. Const. amends. V, VI, VIII; Minn. Const. Art. 1, §§5–7.

<sup>211</sup> UDHR Art. 7.

completely and without denial, promptly and without delay, conformable to the laws.”<sup>212</sup> Particularly vital in the case of criminal proceedings, where the right to liberty is threatened, the accused has a right to understand the proceedings. The International Covenant on Civil and Political Rights (ICCPR) requires, “The free assistance of an interpreter should be provided if the person does not speak or understand the language used in court.”<sup>213</sup>

## LIMITED ACCESS TO CIVIL LEGAL SERVICES

Minnesota immigrants and refugees face serious barriers to civil legal services, primarily because the system lacks sufficient resources to meet the need for free or low-cost legal services. For some undocumented immigrants, legal assistance may be entirely unavailable due to federal Legal Services Corporation funding restrictions.<sup>214</sup>

“Every person is entitled to obtain justice freely and without purchase.”

In order to fully realize the right to access to justice, many individuals need counsel to represent their interests and navigate the system. Effective use of the justice system often depends on having an attorney. Having a legal advocate to navigate the system is particularly important for immigrants who may not speak English and are not familiar with the U.S. justice system. Unfortunately, the availability of free and low cost legal services is limited in Minnesota. As a result, many people are left to navigate the system on their own or face a long wait for assistance.

The importance of representation has been recognized in criminal cases, where access to free representation is guaranteed.<sup>215</sup> Despite the fundamental rights at issue in civil proceedings, such as housing, employment, immigration status, or family unity, there is no state obligation to provide representation free of cost.<sup>216</sup> Free legal representation in civil matters is currently provided by legal services organizations and other nonprofit legal organizations.

<sup>212</sup> Minn. Const., Art. I, § 8.

<sup>213</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 14(3)(f).

<sup>214</sup> 8 C.F.R. §§1626.1-1626.11.

<sup>215</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>216</sup> The American Bar Association has recognized this need by passing a resolution urging federal, state and territorial governments to “provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake.” The Minnesota State Bar Association co-sponsored the resolution and has recommended that the state explore implementing legislation guaranteeing free representation in civil proceedings. American Bar Association Resolution 112A, (Aug. 7, 2006), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_06A112A\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A_authcheckdam.pdf); Minnesota State Bar Association Civil Gideon Task Force, *Access to Justice: Assessing Implementation of Civil Gideon in Minnesota*, (Dec. 2, 2011).

Civil legal services funding is provided by the Minnesota Legislature and administered by the Legal Services Advisory Committee.<sup>217</sup> Eighty-five percent of this funding goes to the core legal aid programs recognized by the State of Minnesota, many of which are Legal Services Corporation (LSC) funded and therefore subject to federal funding restrictions that limit the services that can be provided to certain immigrants, primarily the undocumented.<sup>218</sup> This means that, for many immigrants residing in areas served by LSC programs, free legal services in matters such as housing, education, or family law may not be available. Budgetary issues at both the federal and state levels have had a significant impact on civil legal services in Minnesota over the past five years.<sup>219</sup> While there is statewide availability of free legal services,<sup>220</sup> the numbers of people seeking help as well as the types of matters they need help with outstrip the available resources.<sup>221</sup> Minnesota civil legal service providers served nearly 50,000 low-income clients during 2012.<sup>222</sup> Unfortunately providers estimated that they were only able to provide representation to one in three eligible clients who contacted their offices.<sup>223</sup> Although the justice system allows *pro se* representation in all proceedings,<sup>224</sup> for many, the lack of access to an attorney effectively bars pursuit of remedies. In particular, our civil legal system is not fulfilling the promise in the Minnesota Constitution that people may “obtain justice freely and *without purchase*” if they cannot obtain free counsel to assist in a case.

Challenges in finding legal help were the most consistently voiced complaint about the legal system in the project interviews. A legal service provider explained that clients frequently complain about a lack of services. “What they are saying [when people say there is not a good referral system] is there is not enough service. I called here and they could not take my case and I called there and they could not take it. There is not enough assistance.”<sup>225</sup> This was echoed throughout Minnesota, especially outside the Metro area.<sup>226</sup> Interview respondents were very aware that civil legal services

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<sup>217</sup> Minn. Stat. §§480.24, 480.242.

<sup>218</sup> Minn. Stat. §480.242; 42 U.S.C. §2996 et seq.

<sup>219</sup> Brandt Williams, *Uneven cuts stressing Minn. criminal justice system*, Nov. 7, 2011, Minnesota Public Radio, <http://www.mprnews.org/story/2011/11/07/minnesota-criminal-justice-system-cuts>; Minnesota Supreme Court Legal Services Advisory Committee, *FY13 Annual Report*, (Nov. 14, 2013) [http://www.mncourts.gov/Documents/0/Public/administration/LSAC\\_Annual\\_Report\\_FY13.pdf](http://www.mncourts.gov/Documents/0/Public/administration/LSAC_Annual_Report_FY13.pdf).

<sup>220</sup> Legal Services State Support, “Map of Legal Services Offices in Minnesota,” <http://www.mnlegalservices.org/RTF1.cfm?pagename=NewPageName1>.

<sup>221</sup> Legal Services Advisory Committee, *FY13 Annual Report*, (Nov. 14, 2013), 2 [http://www.mncourts.gov/Documents/0/Public/administration/LSAC\\_Annual\\_Report\\_FY13.pdf](http://www.mncourts.gov/Documents/0/Public/administration/LSAC_Annual_Report_FY13.pdf).

<sup>222</sup> Legal Services Advisory Committee, *FY13 Annual Report*, (Nov. 14, 2013), 2 [http://www.mncourts.gov/Documents/0/Public/administration/LSAC\\_Annual\\_Report\\_FY13.pdf](http://www.mncourts.gov/Documents/0/Public/administration/LSAC_Annual_Report_FY13.pdf).

<sup>223</sup> Legal Services Advisory Committee, *FY13 Annual Report*, (Nov. 14, 2013), 2 [http://www.mncourts.gov/Documents/0/Public/administration/LSAC\\_Annual\\_Report\\_FY13.pdf](http://www.mncourts.gov/Documents/0/Public/administration/LSAC_Annual_Report_FY13.pdf).

<sup>224</sup> Minnesota General Rules of Practice for the District Court 1.04; Minn. Stat. §611.19 (waiver of public defender).

<sup>225</sup> Interview 121.

<sup>226</sup> Interview 86; Interview 89; Interview 90; Interview 97; Conversation 20.



are limited in scope and availability.<sup>227</sup> One business leader explained the lack of access to attorneys: “It is very limited. Demand exceeds the supply. Lawyers have the luxury of choosing clients. Only one-third of our members can pay for their own legal services, the rest need subsidies.”<sup>228</sup> A community member observed, “There is only access to legal services if you have the money. That is a big issue; there is no low-cost or free legal service.”<sup>229</sup> Because of limited resources, civil legal providers must prioritize which types of cases receive services.

In addition to an overall lack of access, Minnesota’s legal services delivery system has not kept pace with cultural changes in Minnesota’s population. A recent survey of low income Minnesotans found that immigrants had lower levels of trust in civil legal services than long-term residents.<sup>230</sup> That survey cited a lack of bilingual and bicultural legal services staff as one barrier to representation.<sup>231</sup> A Muslim immigrant seeking culturally appropriate legal help expressed frustration that, “there just are not many Muslim attorneys.”<sup>232</sup>

“I called here and they could not take my case and I called there and they could not take it. There is not enough assistance.”

For those who do not qualify for free services because of case type, residence, or income level, paying for an attorney is the alternative. A community advocate said that the costs of private representation were a barrier for many.<sup>233</sup> While respondents stated a need for more family law and other legal services,<sup>234</sup> immigration legal help was identified as the greatest need.

## INSUFFICIENT IMMIGRATION LEGAL SERVICES

Immigrants seek legal help for two primary types of cases: applications for immigration benefits (such as citizenship, permanent resident status, or petitions for family members), and representation in deportation hearings. All of these matters are adjudicated by federal agencies.

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<sup>227</sup> Interview 111; Interview 113; Conversation 21.

<sup>228</sup> Interview 134.

<sup>229</sup> Interview 89.

<sup>230</sup> Minnesota State Bar Association, *Overcoming Barriers that Prevent Low-Income Persons from Resolving Civil Legal Problems: A Study Prepared for the Legal Assistance to the Disadvantaged Committee of the Minnesota State Bar Association*, Hannah Lieberman Consulting LLC/John A. Tull & Associates (Sept. 2011), 18, [http://www.mncourts.gov/Documents/0/Public/administration/Final\\_MN-CABS\\_Study\\_September\\_2011.pdf](http://www.mncourts.gov/Documents/0/Public/administration/Final_MN-CABS_Study_September_2011.pdf).

<sup>231</sup> Minnesota State Bar Association, *Overcoming Barriers that Prevent Low-Income Persons from Resolving Civil Legal Problems: A Study Prepared for the Legal Assistance to the Disadvantaged Committee of the Minnesota State Bar Association* (Sept. 2011), 47, [http://www.mncourts.gov/Documents/0/Public/administration/Final\\_MN-CABS\\_Study\\_September\\_2011.pdf](http://www.mncourts.gov/Documents/0/Public/administration/Final_MN-CABS_Study_September_2011.pdf).

<sup>232</sup> Interview 127.

<sup>233</sup> Interview 127.

<sup>234</sup> Interview 63; Conversation 21.

Although the benefits application process is not a court process, the complex nature of immigration law and the high stakes often necessitate representation by people familiar with immigration law. Demand for free legal services in immigration matters exceeds the available resources. As a result, even those providers who do represent immigrants must prioritize the types of cases that they believe merit assistance, excluding many noncitizens whose issues do not fall within that scope.

The free legal services list for the Bloomington Immigration Court lists only three providers in Minnesota.

Among the most commonly reported problems was getting free legal help with immigration matters.<sup>235</sup> One community advocate said “there is only one attorney in town and he is expensive. [The free legal service] will determine if they are low or high priority

and they have to wait a long time and people do not have time to wait.”<sup>236</sup> The problem is acute for immigrants in detention who are facing deportation; as one advocate observed, “most do not have attorneys.”<sup>237</sup> A service provider explained: “Basically, the demand has increased but our manpower and that of others has decreased.”<sup>238</sup> Additionally, the restrictions on types of services and populations served are not always clear or understood by the community. One advocate expressed frustration that the local legal service provider says they help with a particular type of case, but in reality do not accept most of those types of cases.<sup>239</sup> A provider said “There is a lot of confusion of why we cannot help with everything.”<sup>240</sup>

There is particularly inadequate free representation for immigrants facing deportation. Nationally only fifty-six percent of individuals in immigration court were represented during 2012, in proceedings where a common outcome is deportation.<sup>241</sup> Despite the high stakes of deportation, there is no right to free counsel in immigration proceedings. The statute only guarantees a right to an attorney “at no cost to the government.”<sup>242</sup> Compounding the problem, the majority of legal services organizations do not represent undocumented immigrants due to funding restrictions.<sup>243</sup> The free legal services list for the Bloomington Immigration Court lists only three providers in

<sup>235</sup> Interview 63; Interview 78; Interview 83; Interview 86; Interview 89; Interview 90; Interview 94; Interview 97; Interview 99; Interview 110; Interview 111; Interview 113; Interview 119; Interview 121; Interview 134.

<sup>236</sup> Interview 78.

<sup>237</sup> Interview 122.

<sup>238</sup> Interview 87.

<sup>239</sup> Interview 94.

<sup>240</sup> interview 87.

<sup>241</sup> Executive Office for Immigration Review, *FY2012 Statistical Year Book*, Feb. 2013, A1 (Statistics are for the United States as a whole; they are not broken out by state or jurisdiction).

<sup>242</sup> 8 C.F.R. §1003.16(b).

<sup>243</sup> 8 C.F.R. §§1626.1 – 1626.2.

Minnesota.<sup>244</sup> Only one of the three agencies has a satellite office outside the Twin Cities metro, although all three provide service to immigrants statewide. The need for more free or low cost assistance for immigration matters is particularly acute.

Despite the need for more free services, existing legal services were generally praised for the quality and value of their work. One service provider said “I believe immigrants have a better access in Minnesota because of the strong nonprofit and social services sectors that help with these issues.”<sup>245</sup> One immigrant reported that her pro bono lawyer “helped me a lot.”<sup>246</sup> Another reported feeling that the help from a legal services office was “very effective. They treat me nicely and are very helpful and I still have a connection with them.”<sup>247</sup> A client said “I sent an email to the [agency] and got a response within two hours, which is impressive.”<sup>248</sup> In one community, a women’s group hosted a luncheon for the legal services staff as a “thank you” and a way to further build a relationship.<sup>249</sup> The community organizer said “Our community gives the legal services an A+.”<sup>250</sup> Another small community also praised the legal service attorney and agency by name, saying that both were great.<sup>251</sup> An English language learner teacher reported that “we have always been able to get legal help for the people who need it.”<sup>252</sup> Legal services offer a tremendous value for those who can access them; the challenge for Minnesota is to ensure all low-income residents have access to counsel in civil legal matters.

Those who cannot get free representation must either hire an attorney or handle the matter themselves. In both cases, the most common barriers experienced by immigrants are the cost of private counsel and a lack of trust.<sup>253</sup> An organizer cited a perception among the immigrants in his community that the immigration attorneys are too expensive and do not put forth enough effort to justify this cost.<sup>254</sup> An immigrant reported consulting with an attorney but not having the money to pay for representation.<sup>255</sup> In response to the expense of hiring an attorney, some immigrants reported filling out their own application forms.<sup>256</sup> One immigrant said, “We did not know you could

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<sup>244</sup> United States Department of Justice, “Free Legal Services Providers List,” <http://www.justice.gov/eoir/probono/freelgchtMN.pdf>.

<sup>245</sup> Interview 106.

<sup>246</sup> Interview 23.

<sup>247</sup> Interview 32.

<sup>248</sup> Interview 7.

<sup>249</sup> Interview 74.

<sup>250</sup> Interview 74.

<sup>251</sup> Interview 65.

<sup>252</sup> Interview 55.

<sup>253</sup> Interview 96; Interview 110.

<sup>254</sup> Interview 94; Interview 119.

<sup>255</sup> Interview 45; Conversation 23.

<sup>256</sup> Interview 19; Interview 29; interview 51.

get a lawyer, so we did the process ourselves.”<sup>257</sup> Another reported that the application to immigrate through marriage was fairly easy so they did it without an attorney.<sup>258</sup> A woman reported consulting with an attorney about an application and feeling “like I knew more about what I needed than he did.”<sup>259</sup>

As a result of the lack of affordable immigration legal help, people report immigrants seeking legal help from *notarios* and other non-attorney community members. *Notarios* are individuals who hold themselves out as qualified legal representatives but who lack legal qualifications and often charge large fees for help they cannot and do not provide.<sup>260</sup> One community reported knowing of two people in town who “do help with legal stuff” without a law degree, but people believe “their heart is in the right place.”<sup>261</sup> A refugee resettlement agency reported that some of their clients had received incompetent or fraudulent legal help from *notarios*.<sup>262</sup> Another person reported, “The only incidence I can think of is someone doing immigration work who put up flyers in the public library. I tried to call the number but no one answered. No one has been charged (with unauthorized practice of law) here locally but I know someone was in another part of the state.”<sup>263</sup> A shelter worker in greater Minnesota believed there was a problem with people being “taken advantage of” in the Cities by *notarios*, but reported no problems in her community.<sup>264</sup> A police officer said there were not *notarios* as much as situations where “fellow community mates attempt to assist. Their intention may be good, but they are not properly qualified, we see that regularly.”<sup>265</sup> Clients who are undocumented are often reluctant to report problems with *notarios*,<sup>266</sup> and the bad experience may leave them less likely to trust a licensed attorney.<sup>267</sup>

## IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS

Minnesota noncitizens in the criminal justice system may face deportation in addition to a criminal conviction. The stressed public defender system must advise these clients about potential

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<sup>257</sup> Interview 35.

<sup>258</sup> Interview 29.

<sup>259</sup> Interview 44.

<sup>260</sup> American Bar Association, “Fight Notario Fraud,”

[http://www.americanbar.org/groups/public\\_services/immigration/projects\\_initiatives/fightnotariofraud.html](http://www.americanbar.org/groups/public_services/immigration/projects_initiatives/fightnotariofraud.html).

<sup>261</sup> Interview 78.

<sup>262</sup> Interview 115.

<sup>263</sup> Interview 87.

<sup>264</sup> Interview 99.

<sup>265</sup> Interview 83.

<sup>266</sup> G.M. Filisko, “Notoriety for Notarios: ABA project targets consultants who steer noncitizens afoul of U.S. immigration laws,” *ABA Journal*, Dec. 1, 2009,

[http://www.abajournal.com/magazine/article/notoriety\\_for\\_notarios/](http://www.abajournal.com/magazine/article/notoriety_for_notarios/).

<sup>267</sup> Interview 96.

immigration consequences, in addition to the usual work of negotiating the best outcome on the criminal charges, without additional resources or time.

Noncitizens of all statuses can be deported from the United States if they are convicted of certain crimes. The massive overhaul of immigration laws in 1996 expanded the types of criminal convictions which can lead to deportation.<sup>268</sup> Certain criminal offenses that are misdemeanors under Minnesota law, such as a violation of a protection order,<sup>269</sup> are considered deportable offenses under immigration law.<sup>270</sup> Determining whether a criminal offense is deportable can be complicated, requiring a detailed review of the criminal law statute and the immigration law statute. In 2010, the U.S. Supreme Court recognized that noncitizen criminal defendants must be informed about whether their guilty pleas will carry a risk of deportation.<sup>271</sup> The court acknowledged that “deportation is an integral part of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.”<sup>272</sup>

#### BEST PRACTICE

In order to help its attorneys comply with the obligation to advise clients about the possible immigration consequences of criminal convictions imposed by the Supreme Court’s decision in *Padilla v. Kentucky*,<sup>273</sup> the Office of the Hennepin County Public Defender brought on board an experienced immigration attorney who can meet with clients and advise other defenders about the immigration consequences of plea agreements and other convictions.<sup>274</sup>

The majority of criminal defendants in Minnesota qualify for free legal representation.<sup>275</sup> This representation is provided through the public defender system, which is administered by the Board of Public Defense.<sup>276</sup> A 2010 report showed that Minnesota public defenders carried average caseloads in excess of 700 cases per year, much higher than the recommended average of 400 cases per year.<sup>277</sup> Most cases are resolved with a plea, not a trial, and plea agreements are generally

<sup>268</sup> Illegal Immigration Reform and Immigrant Responsibility Act, Public Law Number 104-208, (2006). *See also* Appendix: Immigration.

<sup>269</sup> Minn. Stat. §518b.01 subd. 14(b).

<sup>270</sup> 8 U.S.C. §1227(a)(2)(E)(ii).

<sup>271</sup> *Padilla v. Kentucky*, 559 U.S. 356 (2010), 368-369.

<sup>272</sup> *Padilla v. Kentucky*, 559 U.S. 356 (2010), 356.

<sup>273</sup> *Padilla v. Kentucky*, 559 U.S. 356 (2010).

<sup>274</sup> Interview 124.

<sup>275</sup> Scott Russell, “Public Defenders: A Weakened But Indispensable Link,” *Bench & Bar of Minnesota*, Feb. 2009, [http://www2.mnbar.org/benchandbar/2009/feb09/public\\_defenders.html](http://www2.mnbar.org/benchandbar/2009/feb09/public_defenders.html).

<sup>276</sup> State of Minnesota Board of Public Defense, “About Us,” <http://www.pubdef.state.mn.us/aboutus>.

<sup>277</sup> Office of the Legislative Auditor, State of Minnesota, *Report: Public Defender System*, (Feb. 2010), xi, <http://www.auditor.leg.state.mn.us/ped/pedrep/pubdef.pdf>.

memorialized in a written document.<sup>278</sup> Public defenders representing noncitizens in criminal matters must consider the immigration consequences of a guilty plea or conviction in order to provide effective representation.<sup>279</sup> Given the constraints of the public defender system, this often means a quick conversation of ten minutes or less with a defendant.<sup>280</sup> Even in the criminal context, not every charge qualifies for public defender services.<sup>281</sup> Clients in these situations may decline counsel, or chose to represent themselves, without realizing the impact of that decision.<sup>282</sup>

“The judge was shocked that a theft of \$1.28 could lead to deportation.”

Public defenders expressed concern that clients do not really understand the legal terms of art in plea petitions.<sup>283</sup> Given the short amount of time indigent defendants have with their public defenders, attorneys sometimes later challenge plea deals because “people have not really understood the language in the agreement or had anyone go over it with them.”<sup>284</sup> Once a noncitizen is convicted, he frequently goes directly into immigration custody and deportation proceedings. Immigration judges only consider the immigration law, and cannot look into the facts underlying a conviction or claims that the noncitizen did not understand the terms of the plea agreement.

One criminal defense attorney described a case where a client narrowly avoided deportation. The client had been a permanent resident for years and his entire family had become U.S. citizens. He was convicted of what is considered a “crime involving moral turpitude”<sup>285</sup> and his criminal defense attorney failed to advise him that a second conviction would be a problem. The attorney says, “He was drunk and went into a convenience store where he grabbed a beer and drank it. As a result, he was charged with theft. Because it was such a small crime, he did not qualify for a public defender and he represented himself.”<sup>286</sup> The client ended up in immigration custody, facing deportation because he had been convicted of two “crimes involving moral turpitude.”<sup>287</sup> The attorney was

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<sup>278</sup> Office of the Legislative Auditor, State of Minnesota, *Report: Public Defender System*, (Feb. 2010), 15, <http://www.auditor.leg.state.mn.us/ped/pedrep/pubdef.pdf>.

<sup>279</sup> *Padilla v. Kentucky*, 559 U.S. 356 (2010).

<sup>280</sup> Office of the Legislative Auditor, State of Minnesota, *Evaluation Report: Public Defender System* (February 2010), 36, <http://www.auditor.leg.state.mn.us/ped/pedrep/pubdef.pdf>.

<sup>281</sup> Minn. Stat. §611.14.

<sup>282</sup> Interview 112.

<sup>283</sup> Interview 124.

<sup>284</sup> Interview 124.

<sup>285</sup> 8 U.S.C. §1227(a)(2)(A)(i).

<sup>286</sup> Interview 112.

<sup>287</sup> Interview 112.

ultimately able to get the conviction reversed. She recalls, “The judge was shocked that a theft of \$1.28 (the cost of the beer) could lead to deportation.”<sup>288</sup>

In many cases, however, attorneys report that “there is a callousness regarding immigration consequences. Some will just say ‘that is collateral; I’m not going to look at it.’”<sup>289</sup> This attitude was noted among court personnel and attorneys.<sup>290</sup> One attorney said “When I am talking to prosecutors, I often emphasize the cost to the state. If this person is deported, the family will become dependent on the government and that is a much greater cost than amending a plea agreement.”<sup>291</sup>

The timing of immigration hearings and deportations creates additional problems for immigrant defendants. Immigrants can be transferred to immigration custody for a deportation hearing while the criminal case is pending. Often in these cases the county does not issue a writ for the immigrant to be transferred from immigration custody back for a criminal hearing, resulting in delays in the criminal case or the case never being completed.<sup>292</sup> If the case is not completed, it may result in a warrant for the individual’s arrest for failing to appear at the hearing, through no fault of his own, but because he was in immigration custody or deported.

Similarly, probation requirements create problems for immigrants who are subsequently deported, because they cannot fulfill their probation obligations.<sup>293</sup> If the immigrant returns to the United States in the future, he faces an arrest warrant for having violated probation.<sup>294</sup> Unfortunately, not all attorneys are advising their noncitizen clients about these consequences, often because the attorneys also are unaware of the consequences.<sup>295</sup> One attorney explained how she addresses the problem: “I ask to have my clients placed on active probation until they leave the county [to immigration custody], and then administrative probation only. Once they document their departure from the country, the probation can be ended.”<sup>296</sup>

Attorneys interviewed recommended better training about immigrants and immigration consequences for court staff and attorneys.<sup>297</sup> Interviewees generally believed judges and attorneys would be open to training, but that the resources had not been made available.

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<sup>288</sup> Interview 112.

<sup>289</sup> Interview 124.

<sup>290</sup> Interview 70; Interview 124.

<sup>291</sup> Interview 112.

<sup>292</sup> Interview 116.

<sup>293</sup> Interview 112; Interview 116.

<sup>294</sup> Interview 112; Interview 116.

<sup>295</sup> Interview 112.

<sup>296</sup> Interview 112.

<sup>297</sup> Interview 70; Interview 124.

## PERCEPTIONS OF BIAS

Attorneys cited some problems with judges and other court personnel not having sufficient training about bias, diversity, and immigrant issues. A criminal defense attorney said it is challenging to get judges to understand the particular issues facing the refugee community, in addition to appreciating the broader issues facing communities in poverty.<sup>298</sup> Another attorney stated that the lack of diversity in the local bench and bar in her community was a problem, resulting in unacknowledged bias in how immigrants (and other minorities) were treated in court.<sup>299</sup> She cited two criminal cases which occurred a few months apart; one involving Hispanic and Native American juveniles and the other involving white juveniles, where the minority defendants received stricter sentences.<sup>300</sup>

A domestic violence advocate in greater Minnesota noted that her clients experience discrimination in the judicial system: “They are not treated the same as Caucasians. It really depends on the prosecutor and public defender. One woman called the police and she was the one arrested. The prosecutor said ‘I do not think they will clear the charges against her.’”<sup>301</sup> In another community a public defender observed that bond amounts tend to be higher for noncitizens: “You are considered a flight risk if you are from another country.”<sup>302</sup> That attorney also reported an “unspoken belief that you are not credible or are assumed to be undocumented (or both) if you are using an interpreter in court.”<sup>303</sup>

Some attorneys report that occasionally immigrants may be treated better than similarly situated low-income long-term residents within the system. One public defender explained, “People in the system (judges, prosecutors, probation, public defenders) sometimes are more sympathetic to immigrants because, but for their status, they would not be in this situation. In contrast, people in poverty in the same circumstances are seen as lazy and somehow to blame for their situation.”<sup>304</sup>

## INTERPRETERS

In The Advocates’ 2004 report, *The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report*, many of the recommendations centered around the need for better interpretation services at all

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<sup>298</sup> Interview 124.

<sup>299</sup> Interview 87.

<sup>300</sup> Interview 87.

<sup>301</sup> Interview 99.

<sup>302</sup> Interview 70.

<sup>303</sup> Interview 70.

<sup>304</sup> Interview 124.



levels of the justice system.<sup>305</sup> Based upon the interviews conducted for this report, access to language services and interpretation in the court system has greatly improved since 2004. Under Title VI of the Civil Rights Act of 1964, the courts are required to provide “timely and reasonable language assistance” for limited English Proficiency (“LEP”) individuals.<sup>306</sup> Minnesota law further provides that “the constitutional rights of persons disabled in communication cannot be fully protected unless qualified interpreters are available to assist them in legal proceedings.”<sup>307</sup> Each of the courts in Minnesota has a Language Access Plan which is publicly available and includes provisions for training.<sup>308</sup>

Overall, interviewees reported good access to interpreters in the court system.<sup>309</sup> A domestic violence advocate remarked, “Court interpreters are good. The majority of counties do have good ones.”<sup>310</sup> Another community agency noted that the immigrant families they work with really appreciate the translators at court, particularly since not all other agencies provide in-person interpreters of the same competence as the court interpreters.<sup>311</sup>

The most common problem reported was the quality of interpreters, especially with less common languages.<sup>312</sup> One attorney recounted “a three hour hearing where the interpreter was not very good. He basically admitted at the end that he had missed things.”<sup>313</sup> A legal services attorney had the impression that “there is only one court-certified Somali interpreter in the state,”<sup>314</sup> (although according to the state court website, there are actually two court-certified Somali interpreters.)<sup>315</sup> One court-certified interpreter speculated that the process of testing and accrediting interpreters hampers efforts to increase the interpreter pool for some languages.<sup>316</sup> Particularly where people were not literate in the language initially, the test creates an additional barrier to accreditation.<sup>317</sup>

Domestic violence cases often involve many different agencies within the justice system. Advocates report that while interpreters are available for court hearings, they are not always available at

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<sup>305</sup> The Advocates for Human Rights, *The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report*, (Dec. 10, 2004), 139-148.

<sup>306</sup> Minnesota Judicial Branch, “Language Access Plans,” <http://www.mncourts.gov/?page=444>.

<sup>307</sup> MN Stat. §611.30.

<sup>308</sup> Minnesota Judicial Branch, “Language Access Plans,” <http://www.mncourts.gov/?page=444>.

<sup>309</sup> Interview 82; Interview 116; Interview 124; Interview 126; Interview 173.

<sup>310</sup> Interview 99.

<sup>311</sup> Interview 97.

<sup>312</sup> Interview 116.

<sup>313</sup> Interview 124.

<sup>314</sup> Interview 75.

<sup>315</sup> Minnesota Judicial Branch, <http://www.mncourts.gov/FindInterpreters/Default.aspx> (database of interpreters).

<sup>316</sup> Interview 112.

<sup>317</sup> Interview 112.

meetings with victim witness advocates, child protection, or order for protection meetings.<sup>318</sup> Outside of the courtroom, it is not always clear when an interpreter must be provided to fulfill state and federal “meaningful access” requirements, which take into account the number and frequency of non-English speakers coming into contact with the agency.<sup>319</sup> As a result of the lack of interpreters, people with domestic violence cases may not always be informed of what is happening and why.

As a way to fulfill the requirement to provide interpreters, many jurisdictions rely on telephonic interpreters via a “language line.” Attorneys report that telephonic interpreters are used at some hearings as a cost-saving measure by courts, even for common languages such as Spanish.<sup>320</sup> One attorney explained, “It is hard to understand phone interpreters. People strongly prefer in-person interpreters.”<sup>321</sup> A public defender added, however, that because objecting to a telephonic interpreter can result in a hearing delay and continued custody, attorneys are reluctant to object to telephonic interpreters.<sup>322</sup>

Some respondents reported adjudicators who were insensitive to their requests for interpreters. One attorney cited a couple of SSI (Social Security Insurance) cases where judges would not allow an interpreter.<sup>323</sup> In at least one case the judge determined the client’s language proficiency, saying “I think you speak English well enough.”<sup>324</sup> In another case, the judge asked the client, “So you speak English,” the client replied “no” because he did not feel comfortable conducting a hearing in English.<sup>325</sup> The judge got mad and reprimanded the attorney for failing to correct the client’s statement, alleging it was a misrepresentation and an ethical breach.<sup>326</sup> Attorneys noted that, “Sometimes in conciliation court, the judge will do introductory stuff without the interpreter, which is a problem because that explains what is going to happen and the roles and clients need to understand that.”<sup>327</sup> Another attorney said that “sometimes judges let the back and forth between the interpreter and the client go on, without any of it being interpreted.”<sup>328</sup> It is important that judges enforce the standards for interpreters, which include not having conversations on the record that are not translated. Overall, problems with interpreters seem to be isolated and not systematic.

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<sup>318</sup> Interview 173.

<sup>319</sup> Interview 173; 28 C.F.R. §42.104 (1964); Minn. Stat. §15.441 (2012).

<sup>320</sup> Interview 112.

<sup>321</sup> Interview 75.

<sup>322</sup> Interview 112.

<sup>323</sup> Interview 126.

<sup>324</sup> Interview 126.

<sup>325</sup> Interview 126.

<sup>326</sup> Interview 126.

<sup>327</sup> Interview 126.

<sup>328</sup> Interview 112.

As one attorney pointed out, “there was a period of time where the judge was not having the interpreter translate everything. We seem to be past that.”<sup>329</sup>

## DIFFICULTIES UNDERSTANDING THE COURT SYSTEM

One of the common barriers immigrants face is not understanding how the legal system works.<sup>330</sup> A public defender said, “People have no idea how the system works. We spend a lot of time educating people about how the system works and what their rights are.”<sup>331</sup> One challenge is that many documents, including court orders and forms, are not always available in languages other than English. Additionally, attorneys report that court forms are written in a language that is not always accessible to people with low-literacy or limited English, even if they are translated.<sup>332</sup> Another attorney said “We need to do a lot of explanation of the legal system to people. It is important to have informed consent. We ask people ‘what are your concerns’ and ‘what do you want to happen from this process?’”<sup>333</sup> A community advocate in greater Minnesota said “I recommend to people, ‘If you think your rights are violated, go to the legal system.’”<sup>334</sup> Part of the problem he highlighted is that “people do not know their rights. I think it would help to have a civil rights/human rights office more accessible here.”<sup>335</sup> One legal services attorney conducts training at English language classes about housing rights and responsibilities. She reports “it was really useful, there were lots of questions. The room was probably about one-third recent refugees.”<sup>336</sup>

A county attorney in one region convened Community Conversation Circles in an effort to build relationships between community groups and the county attorney’s office.<sup>337</sup> It helped the county attorney’s office be aware of the issues in the community, but also connected the community more strongly to the office. The county attorney’s underlying philosophy is to focus on the front end and build a good relationship.<sup>338</sup> “We have a role to be the conscience of the community; we decide whether to charge a crime and what should be done – to do this, we need to find out the needs of the community.”<sup>339</sup> The same office also conducted training for members of the media, in an effort

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<sup>329</sup> Interview 126.

<sup>330</sup> Conversation 2.

<sup>331</sup> Interview 124.

<sup>332</sup> Interview 124.

<sup>333</sup> Interview 60.

<sup>334</sup> Interview 74.

<sup>335</sup> Interview 74.

<sup>336</sup> Interview 126.

<sup>337</sup> Interview 59.

<sup>338</sup> Interview 59; St. Louis County Attorney, *Annual Report*, (2012), <http://www.stlouiscountymn.gov/Portals/0/Departments/Attorney/flipbook/index.html>.

<sup>339</sup> Interview 59.

to better educate the public about the court system.<sup>340</sup> Better education “helps to increase public confidence in the system.”<sup>341</sup>

There are also resources available from the Minnesota Judicial Branch and legal services, including videos, to help orient immigrants to the system.<sup>342</sup> A recent production, “Going to Court in Minnesota” is available in Somali, Spanish and Hmong, and uses interviews with court system personnel and a description of how court works to orient immigrants.<sup>343</sup> Fact sheets are available which describe different civil legal processes, also translated into Spanish, Somali, and Hmong.<sup>344</sup> The court system in Minnesota is continuing to work at educating immigrant communities, an on-going process which is vital to ensuring all Minnesotans can recognize their rights to freely access justice.

## DELAYS

One complaint about the justice system was the length of time to receive a decision. The delay may cause people to opt out of seeking recourse. A labor advocate related a case against a construction contractor where there were “lots of court findings against him but they went uncollected; he dragged out cases beyond the capacity of low-wage workers to wait.”<sup>345</sup> In other cases, there are multiple steps people must go through to seek recourse, which delays the outcome. One labor activist reported that people seeking pay from an employer can sue but that does not actually force payment. “The court cannot actually force the employer to pay; the employee must get repeated court filings and find bank accounts on their own.”<sup>346</sup> An attorney working with sexual assault victims noted, “The speed of the system is hard. Any evidence from a sexual assault or a murder case has to go to the BCA and it takes about a year to process. So there is an eighteen month to two year delay on actually getting a court hearing and resolution.”<sup>347</sup> One agency employee noted, “Case processing is too long and drawn out. For example, I had a case for a woman who was pregnant and had complications. Her supervisor required 72-hour notice for medical emergency. That case took two years to resolve!”<sup>348</sup> For the employee, whose condition had ended well before the case was resolved, the delay created a feeling that the system was not working.

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<sup>340</sup> St. Louis County Attorney, *Annual Report*, (2012), 11, <http://www.stlouiscountymn.gov/Portals/0/Departments/Attorney/flipbook/index.html>.

<sup>341</sup> Interview 59.

<sup>342</sup> Minnesota Judicial Branch, YouTube channel, <https://www.youtube.com/user/MNJudicialBranch>.

<sup>343</sup> Minnesota Judicial Branch, “ECHO: Going to Court in Minnesota (English),” Online video clip, YouTube, July 17, 2013, <http://www.youtube.com/watch?v=SL9g2WD3r6I>.

<sup>344</sup> Pro Bono Net, “LawHelpMN.org,” <http://www.lawhelpmn.org/>.

<sup>345</sup> Interview 107.

<sup>346</sup> Interview 107.

<sup>347</sup> Interview 60.

<sup>348</sup> Interview 101.

## INEFFECTIVE CIVIL REMEDIES FOR DISCRIMINATION CLAIMS

Immigrants and refugees in Minnesota are not able to access effective remedies for claims of discrimination. People reported that noncitizens did not seek recourse because they feared deportation if they reported the violation or because they were, in fact, deported and therefore could not pursue the remedy.

The legal structure for addressing discrimination requires an individual to bring a legal claim for a remedy. An adjudicator noted that his agency sees a comparatively lower number of complaints from immigrants than they would expect, based on overall complaints.<sup>349</sup> He speculated that immigrants fear deportation, and so do not bring complaints forward.<sup>350</sup> Agencies responsible for handling discrimination claims, including the Minnesota Department of Human Rights and the Equal Employment Opportunity Commission, have engaged in outreach to help encourage foreign nationals to file complaints when necessary.<sup>351</sup> However, resources to enforce discrimination claims have decreased over the past fifteen years, resulting in longer waits for resolution and fewer resources to investigate violations.<sup>352</sup> Advocates noted that people do not necessarily want to wait through a long process to get the case resolved.<sup>353</sup> Many immigrants are unaware of their rights, particularly to be free from discrimination, which is another barrier to seeking remedies.<sup>354</sup> Additionally, people who have been deported are unable to seek redress; since they are not in Minnesota, they cannot bring a claim in the courts in Minnesota. Unfortunately, due to this confluence of factors, civil remedies for discrimination claims often are not effective for immigrants.

## RECOMMENDATIONS

Finding: Immigrants and refugees do not have sufficient access to free legal counsel for civil cases or immigration procedures.

### Recommendations

- Increase funding for legal services to ensure access to counsel for all who need representation in civil and immigration matters.

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<sup>349</sup> Interview 125.

<sup>350</sup> Interview 125.

<sup>351</sup> Interview 125.

<sup>352</sup> Interview 101; Interview 125.

<sup>353</sup> Interview 101; Interview 107; Interview 125.

<sup>354</sup> Interview 118; Interview 119; Interview 139; Interview 146.

- Implement a guarantee of free counsel in civil cases to ensure free legal representation for those who cannot afford it and who are facing loss of a fundamental human right, such as housing, employment, or family unity.
- Remove funding restrictions tied to immigration status from legal aid money to enable undocumented immigrants to qualify for all free legal services.
- The federal government should provide free legal counsel for those facing deportation, given the deprivation of rights that comes with effective exile.

Finding: Criminal convictions have disproportionate consequences in the immigration system.

#### **Recommendations**

- Increase funding for public defender offices to ensure quality representation.
- Public defender offices should have an on-staff immigration attorney dedicated to screening cases for immigration consequences and advising public defenders in the office on consequences of pleas and convictions for immigrant clients. Funding for this position should be provided as a new item and not drawn from existing staff.
- Congress should revise and narrow the definitions and types of crimes that qualify as aggravated felonies and deportable offenses under immigration law.

Finding: Immigrants perceive bias in the justice system based on language, culture, and national origin.

#### **Recommendations**

- Provide training for judges, prosecutors, probation officers, and other staff about immigrant groups in Minnesota, the refugee experience, cross-cultural communication, and other topics as needed to ensure quality service delivery to all.
- Consider creating a refugee court, similar to the existing Veterans Court, to address the special needs of refugees who are often survivors of trauma and torture.

Finding: The court system does not have sufficient high quality interpreters in all languages to meet demand.

#### Recommendations

- Minnesota courts should continue to recruit and train additional interpreters in less common languages, including ongoing monitoring of the quality of interpretation.
- Continue to support training for judges and other court staff on effective use of interpreters.

Finding: Immigrants and refugees do not fully understand the legal system.

#### Recommendations

- Expand promotion and dissemination of existing educational resources, including videos by ECHO Minnesota and *pro se* guides by LawHelpMN.org.
- Continue to develop a wide range of *pro se* materials in all relevant languages that are effective for low-literacy populations, including videos and picture-based resources.

Finding: Delays in resolving cases makes immigrants feel that the justice system is not working for them.

#### Recommendations

- Increase funding for the court system to ensure timely adjudication of civil cases.

Finding: Undocumented immigrants face barriers to filing discrimination claims, especially if they are deported before they can file their case.

**Recommendations**

- Permit discrimination claims to be filed from outside Minnesota to allow immigrants who have been deported and who may have suffered discrimination to pursue a remedy and bring to light illegal conduct.



# CHAPTER 3: ECONOMIC OPPORTUNITY



### INTRODUCTION

Many individual immigrants reported feeling that economic opportunity for immigrants in Minnesota is similar to the opportunities available to the U.S.-born population. Immigrants and refugees did report barriers to employment, including lack of employment authorization, limited opportunities due to language proficiency, lack of recognition of foreign training and credentials, and limited access to education and technology. Other barriers include the limited availability of living wage jobs, benefits, and paid time off. Despite these barriers, many immigrants and refugees report optimism about their economic opportunities due to hard work.

While immigrants and refugees often viewed their economic opportunities with optimism, service providers and advocates reported patterns that indicate a more sobering situation. Some immigrant workers face exploitation by employers who prey on fear of deportation or job loss. Serious workplace abuses including wage and hour violations and wage theft, lack of training and access to safety equipment, physical and sexual assault, false imprisonment, and human trafficking were reported in a variety of industries.

Immigrant and refugee workers in Minnesota have widely divergent experiences based on their race, religion, country of origin, education level, and immigration status. Some face employment discrimination based on these circumstances. While most individuals interviewed did not report being the victim of illegal discrimination, organizations and advocates who serve immigrant workers uniformly reported incidents of discrimination in the workplace. At the same time, some people reported willingness by their employers to remedy problems.

### HUMAN RIGHTS AND ECONOMIC OPPORTUNITY

Freedom from discrimination is a core human rights standard and the foundation of worker protection. It entitles everyone to equality of treatment and opportunity in employment without distinction on the basis of race, sex, religion, politics, nationality, or social origin.<sup>355</sup> Human rights law also prohibits exploitation, providing that everyone has the right to be free from slavery, servitude, and other forms of involuntary work.<sup>356</sup> It also includes the right to earn wages that ensure the worker and his or her family an existence worthy of human dignity,<sup>357</sup> including reasonable limits of working hours and periodic holidays with pay,<sup>358</sup> and to decent working conditions once employed.<sup>359</sup> Additionally, everyone has the right to form and join trade unions, to

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<sup>355</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 7(a)(i).

<sup>356</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 8.

<sup>357</sup> Universal Declaration of Human Rights (UDHR), Art. 23(3); ICESCR, Art. 7(a)(ii).

<sup>358</sup> ICESCR, Art. 7(d); UDHR, Art. 24.

<sup>359</sup> ICESCR, Art. 7.

bargain collectively with employers, and to strike in defense of their interests.<sup>360</sup> Everyone has the right to access the employment of one's choice<sup>361</sup> and the right not to be unfairly deprived of employment.<sup>362</sup>

## BARRIERS TO ECONOMIC OPPORTUNITY

Immigrants, refugees, and organizations working with those individuals reported barriers to employment and leaving poverty similar to those of the U.S.-born population. One career counselor described how immigrants and refugees lose their jobs as a result of general difficulties dealing with leaving home and adjusting to life in a new country.<sup>363</sup> Others face barriers because they lack employment authorization, have limited English language ability, possess foreign credentials not recognized in Minnesota, or lack access to education or technology needed for employment. At the same time, immigrants and refugees reported positive experiences relating to economic opportunities in Minnesota and often viewed these opportunities in comparison to the lives they left in their home countries.

### LACK OF EMPLOYMENT AUTHORIZATION

The most commonly reported barrier to economic opportunity for immigrants, both documented and undocumented, was the lack of employment authorization. "Without work authorization, it was hard to move around or get connected with services because I didn't have any identification," explained one man. "When I got my work authorization, I felt free. I could apply for work, a driver's license, a Social Security card. Everywhere I went, they asked for an ID. Before, I could not get a library card because I did not have anything with an address on it. When I had my work authorization card, I could feel attached to my community."<sup>364</sup> Another asylee stated, "I was unable to work at first because my immigration status did not permit employment. Nobody would rent to me because I did not have a job, even though I had some money saved up. My ambiguous immigration status made it difficult for people to help me. There are so many barriers when you're in that gap."<sup>365</sup>

When individuals do finally receive authorization to work in the United States, some reported difficulties related to a gap in their work history, or problems related to the frequency with which the work authorization must be renewed (often yearly). "I've had my work permit for one month,"

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<sup>360</sup> ICCPR, Art. 22; ICESCR, Art. 8; UDHR, Art. 23(4); International Labor Organization (ILO), Conventions 87, 98.

<sup>361</sup> ICESCR, Art. 7; UDHR, Art. 23.

<sup>362</sup> UDHR, Art. 23; Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994), <http://www1.umn.edu/humanrts/gencomm/hrcom18.htm>.

<sup>363</sup> Interview 81.

<sup>364</sup> Interview 6.

<sup>365</sup> Interview 9.

one man explained. “The problem is that I didn’t work for a year. I’m living with people, they are God-sent people, but no one can share bread with you if you can’t contribute flour.”<sup>366</sup> A staff member at a social service agency explained how repeated delays in renewal of employment authorization documents resulted in hardship for a client: “She got work permission and then it wouldn’t be renewed in a timely fashion, and she would lose her job, so her work history was short and spotty. She couldn’t advocate for herself to stop the firings.”<sup>367</sup>

Another reported problem, especially for Latino workers, is the assumption that the workers are undocumented, or that the employment authorization documents provided to the employer are fraudulent. These assumptions, particularly when based on ethnicity or country of origin, sometimes benefit one immigrant group at the expense of others. One advocate reported that, “The largest employers switched to hiring Karen refugees because they have papers. They hire fewer Latinos because they worry about whether their papers are legitimate.”<sup>368</sup>

Other social service providers reported that some employers misunderstand the rules about what documents employees must show to establish eligibility for employment. One service provider described how some employers improperly ask for specific immigration documents in violation of federal law, which requires the employer to allow the employee to choose from a list of acceptable documents to present.<sup>369</sup> As a result, the agency now conducts “a series of orientations where we tell clients that people do not need to see their immigration documents. We try to do education with employers too. It is difficult because you want the employer on our side, but also want to advocate for our clients. Employment is where we see discrimination and/or confusion about immigrants and refugees.”<sup>370</sup>

Not surprisingly, undocumented workers felt that they did not have adequate economic opportunities in the United States. “Pay is low and there are no health benefits. No, I do not have the same opportunities because I do not have a green card.”<sup>371</sup> Another individual, when asked if she had access to economic opportunities in the United States, responded, “At the moment, no, because I can’t legally work here. The higher paid jobs ask you for documents, and the lower paying jobs do not. So, at the time no, but hopefully soon.”<sup>372</sup>

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<sup>366</sup> Interview 8.

<sup>367</sup> Interview 109.

<sup>368</sup> Interview 64.

<sup>369</sup> U.S. Citizenship and Immigration Services, “I-9,” <http://www.uscis.gov/sites/default/files/files/form/i-9.pdf>.

<sup>370</sup> Interview 145.

<sup>371</sup> Interview 45.

<sup>372</sup> Interview 44.

## ENGLISH-LANGUAGE ABILITY AND FOREIGN ACCENTS

People reported that the stereotype that foreign-born individuals do not speak English hinders economic opportunity. One man blamed his accent for his difficulties at work. “The problem started now when I’m trying to find a job. My accent is different than yours. I can speak English, but I have this accent.”<sup>373</sup> Another person said, “My past experience is like other people. At work they talk to me like I do not know anything, and I can understand clearly. They don’t have to yell in my ear.”<sup>374</sup> One woman described problems with customers. “At work, the lady at the other end of the phone line said, ‘I need to talk to your supervisor because I don’t understand you.’ When people hear accents, they start to shut down.”<sup>375</sup>

An advocate reported that some employers use poor English skills as a pretext for refusing to hire immigrant workers. “Sometimes employers cite ‘not enough English for the job’ even when the job doesn’t require it or the person’s English is actually fine.”<sup>376</sup>

Individuals and service agencies agree that low-level English skills sometimes do create an actual barrier to employment. “The biggest barrier to employment still has to be the language,” said one

“At work they talk to me like I don’t know anything, and I can understand clearly. They don’t have to yell in my ear.”

chamber of commerce member. One person living in St. Paul said, “No, I do not think I have the same economic opportunities because I am not proficient at English.”<sup>377</sup> One woman reported working for an insurance company for seventeen years. She believes that she has not received a promotion due

to her accent. “Because of my language I don’t get promoted. I don’t blame them because maybe sometimes they don’t understand me.”<sup>378</sup>

Several immigrants know that their English language abilities could hinder their job prospects and want to improve their English skills. One woman living in St. Paul said, “I want to study because my English is very, very bad. How can I find a job with this capacity?”<sup>379</sup> A community reported that sometimes immigrants have all of the skills to perform a particular job, except for the ability to speak English. However, because the jobs they can perform without English-language skills are

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<sup>373</sup> Interview 8.

<sup>374</sup> Interview 45.

<sup>375</sup> Interview 36.

<sup>376</sup> Interview 97.

<sup>377</sup> Interview 54.

<sup>378</sup> Interview 30.

<sup>379</sup> Interview 23.

generally low paying, they often work more than one job, leaving them little or no time to take English classes.<sup>380</sup>

Lengthy English-language job applications are an additional barrier to employment, according to some agency representatives. According to one career counselor, “Language is a barrier for people to get jobs. They need to be able to do the basics. If they can demonstrate physical skill, they can get factory jobs. For anything beyond ‘floor’ jobs, they need the language. A major local employer requires people to fill out their own job applications. If they are not literate or don’t have enough English, they can’t do it.”<sup>381</sup> Staff at a social service agency agreed that job applications are a frequent barrier to employment: “In addition to the problem of skills and language, city-sponsored job corps programs have a complicated, lengthy application process that keeps our students out.”<sup>382</sup>

### FOREIGN CREDENTIALS

While many immigrants and refugees come to the United States with education, experience, and credentials in a variety of fields, local and state licensing boards and individual employers often fail to recognize these credentials. In some cases, employers simply assume that immigrants and refugees are uneducated. Foreign-trained professionals described difficulty with recognition of credentials and recertification and other barriers that prevented them from working in their chosen professions. They also described the feeling of loss of status and identity that resulted from the failure to recognize their expertise.

“When I first came, people said my education wasn’t worth anything. I thought uncouth things.”

According to a health care provider, “There is a certain stereotype and tendency to believe that immigrants are uneducated, therefore not intelligent or deficient in some ways, until they prove otherwise.”<sup>383</sup> A social service provider said, “Here there is a tendency to see refugees only as refugees, not as educated professionals.”<sup>384</sup> A police cultural liaison officer in the area agreed, “The biggest problem regarding employment is the assumption that immigrants and refugees are uneducated.”<sup>385</sup>

One immigrant expressed frustration that her home education was not recognized in the United States. “When I first came, people said my education wasn’t worth anything. I thought uncouth things. In my old job I would have been your boss and now you say my education isn’t worth it. I’m blond and blue-eyed, I fit in the Upper Midwest, it’s not like I’m obviously sticking out, and my

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<sup>380</sup> Interview 137.

<sup>381</sup> Interview 81.

<sup>382</sup> Interview 144.

<sup>383</sup> Interview 133.

<sup>384</sup> Interview 85.

<sup>385</sup> Interview 83.

English is good, so I wasn't having issues there. But still it was really disorienting."<sup>386</sup> A pastor at a predominantly immigrant congregation said, "You need to know that many people are highly educated, but their degrees just aren't recognized."<sup>387</sup>

Not only is it emotionally difficult to not have their education and expertise recognized, it also hinders the ability of immigrants to earn a living. A labor organizer said that it is "amazing to talk to union members. Many used to be doctors, accountants in their country of origin but now are paid minimum wage."<sup>388</sup> "It's hard for educated people," said a social worker. "Many end up being Personal Care Assistants or Certified Nursing Assistants, working two or three jobs to get by. This becomes cyclical: because they are always working and tired, they can't get further education or obtain recertification to move up and get out of the cycle. They can't really transition to bigger or better jobs."<sup>389</sup> According to a police cultural liaison officer, "The real problem is recertification. It is difficult and costly to get businesses and schools to recognize their previous education and training. Sometime this is a result of low English skills."<sup>390</sup>

One social service provider recognizes this problem and is taking steps to assist immigrant workers with re-certification. "It also helps immigrant workers find employment in their fields when our clients participate in our classes and programming. We have a lot of other classes on site. We have a medical career training program and a college readiness course that provides school credits. We also have a medical career counseling program. If the client is certified in their home country, we can help them get trained and verified in the United States without starting over."<sup>391</sup>

### AVAILABILITY OF LIVING WAGE JOBS

Agencies in some geographic areas of the state reported the availability of employment opportunities. Staff at a community college indicated that, in general, jobs are available for residents in their region. "It's not too bad. We are surrounded by lots of job opportunities. Families come in and they want to stay."<sup>392</sup> A community liaison worker from another region reported, "We are seeing good living wages."<sup>393</sup>

In other area, community members indicated that there is simply a lack of jobs for any worker, not just immigrants. Individuals across the state also reported difficulties finding work. One asylee said, "I went to a lot of organizations to find a job. I found someone from church who got me a job at a

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<sup>386</sup> Interview 93.

<sup>387</sup> Interview 5.

<sup>388</sup> Interview 118.

<sup>389</sup> Interview 105.

<sup>390</sup> Interview 83.

<sup>391</sup> Interview 145.

<sup>392</sup> Interview 65.

<sup>393</sup> Interview 83.

school to teach French, but now I'm unemployed again."<sup>394</sup> Another asylee said, "It was not easy to find a job once I got my work permit. It was the winter season and I don't think anyone was hiring. It took a long time to get a job."<sup>395</sup> Another asylee reported being unable to find work in spite of a year-long job search. "So after one year preparing a resume, posting to a website, I have no experience working in this country. The problem is if you do not know what to do or where to go. I am currently living with friends. I want to regain my independence. This is the most important thing, but I need a dependable job."<sup>396</sup>

Sometimes, jobs are available, but they do not pay enough for the worker to rise out of poverty. One social service provider said, "There are a lot of people fighting for entry-level positions."<sup>397</sup> In another region, a retired English language teacher reported, "Often people would come in initially, get a driver's license, learn the system, and then move. There was lots of secondary migration out. Some employers were always good, but they were low-wage and didn't give benefits."<sup>398</sup> A career counselor at a local workforce center reported poor prospects for unskilled labor. "One grocery store is really good employer but they get around two hundred applications every time there's an open position. Another popular employer does data entry for mail donations. It is day-shift work, includes all federal holidays, and is easy seated work, but it pays minimum wage only."<sup>399</sup>

Another asylee described the difficulties both finding a job and earning an adequate wage: "It took me two months to get a job. I just sent in applications everywhere, ten or fifteen applications a day. Then I applied for a job at a delivery company, but buses do not go there. It was a night job, but I told the manager I could not make it because coming back in morning there were no buses. At a department store I did pretty well, but I worked for them for two years with only a \$0.15 raise."<sup>400</sup>

Employers often go to great lengths to keep wages low. A number of people reported a practice of employers avoiding pay raises by terminating employees for minor infractions, often immediately re-hiring the employee at a lower, entry-level pay grade.<sup>401</sup> Staff at a community-based organization reported instances of termination due to minor infractions, perhaps not understood by immigrant workers. "They are one, two minutes late and people get a 'point' off, which can lead to being fired."<sup>402</sup> Another service provider reported how employees were terminated when they took time

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<sup>394</sup> Interview 4.

<sup>395</sup> Interview 9.

<sup>396</sup> Interview 8.

<sup>397</sup> Interview 97.

<sup>398</sup> Interview 55.

<sup>399</sup> Interview 81.

<sup>400</sup> Interview 6.

<sup>401</sup> Interview 64.

<sup>402</sup> Interview 146.



off to attend to their families: “Immigrants often have larger families – more doctor visits, school conferences – but the system was designed for smaller families.”<sup>403</sup>

### ACCESS TO NETWORKS, EDUCATION, AND TECHNOLOGY

Many immigrants view education as the way out of poverty. Some individuals and agencies, however, reported that jobs that would allow workers to get ahead require a college degree, which often seems out of reach due to lack of financial resources or of time, particularly for those working multiple jobs.<sup>404</sup>

Even when people have recognized credentials, lack of deep networks in the community hinder job searches. One man expressed the combination of hope and frustration similar to that experienced by many first-generation college students looking for employment: “Initially it will take time to get the right connections because in an industry it is not what you know, but who you know. So, if you do not have the right network it will take you a while. But once I have the right qualifications and network then I should be employed. It is hard to get the right networks when your parents are immigrants.”<sup>405</sup>

A community advocate reported that in his region college degrees often do not improve an immigrant’s chances of obtaining better paying jobs. “I have seen a good number of immigrants graduating from colleges around here and when these people graduate, one of two things happen,” he explained. “They either keep their old jobs; if they were working at Wal-Mart, they continue doing that job because there are no opportunities. Or, they move out of the area to find jobs. There are people with bachelors, associates, graduate degrees, all levels. I see this in the private sector and in government jobs. If you look at the public libraries, environmental departments, city hall, there are no immigrants. People have tried to apply and have given up.”<sup>406</sup>

Even immigrants who have significant levels of education are reportedly sometimes unable to apply for jobs due to their lack of access to technology. Many employers now only advertise and accept employment applications online. A career counselor said, “Lots of people come here to use computers to look for jobs. People often have smartphones, but for many people the phone is their only internet access. They can’t really do a job search or application from a smartphone. We can let them use our computers here at the workforce center. It’s a huge help, because there’s no time limit on usage and we let them print for free.”<sup>407</sup>

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<sup>403</sup> Interview 64.

<sup>404</sup> See The Advocates for Human Rights, *A House with Two Rooms*, chapter 13.

<sup>405</sup> Interview 21.

<sup>406</sup> Interview 84.

<sup>407</sup> Interview 81.

## ENJOYING ECONOMIC OPPORTUNITY

Immigrants and advocacy organizations also reported positive experiences and examples of healthy, productive workplaces. One immigrant said “work is excellent. If you have the experience and you are knowledgeable then you can get a job. Opportunity is right there, it is all up to the person.”<sup>408</sup>

An asylee explained that what he “loves about America: nobody cares who you are, it’s just ‘can you do the work?’ Then ‘okay.’”<sup>409</sup> Another immigrant, a woman who works with people with disabilities, said, “I am treated fairly at work because our jobs are based on education and experience, so promotions have come easily and on a steady basis.”<sup>410</sup>

Some people were confident they were receiving the same opportunities and pay as their co-workers. “I am treated just as fairly, if not more fair than others,” said one man.<sup>411</sup> “I have been with my company for three plus years and I have excelled in promotions and raises through hard work. I feel like I have the same opportunities as everyone else.”

Some individuals attributed their successful employment to strong English language skills or a high level of education. An immigrant who moved to Minnesota at age four reported “no problems on the job. I work at a fast food restaurant and my boss gave me a raise after two months and then after six months. I am now a manager. I believe that is because my English is good.”<sup>412</sup> A refugee man with a large employer said, “I know a few other refugees, maybe six or seven, who work at [a large poultry company] in human resources or in the office. These are people who have English and a degree. A few people wait a long time to get a job but most of them get jobs quickly.” Another immigrant explained that because he is bilingual, he is an asset to his employer, “especially working with international companies. Pay, benefits, anything like that has never been an issue.”<sup>413</sup>

For one immigrant interviewee, the simple comparison between the danger and lack of opportunity he escaped in his home country and the safety of life in the United States prevents him from complaining about his work. A refugee man who, prior to civil war in his home country, led an upper-class life and who now works as a parking attendant said, “I have no complaints. When I work, I am working towards my daughter's future. There is nothing that can make me complain about it. There are a lot of kids out there who don’t have fathers to feed them or access to health care. My job gives us that so we can’t complain.”<sup>414</sup>

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<sup>408</sup> Interview 16.

<sup>409</sup> Interview 1.

<sup>410</sup> Interview 38.

<sup>411</sup> Interview 40.

<sup>412</sup> Interview 10.

<sup>413</sup> Interview 46.

<sup>414</sup> Interview 34.

## IMMIGRANT ENTREPRENEURSHIP

Self-employment allows immigrant workers to avoid many of the barriers to employment. Individual business owners reported successfully opening a variety of small-businesses throughout Minnesota and receiving support for their businesses and careers.

One man reported, “I am self-employed. I do not have any problem in getting paid by my clients. They appreciate my services. I have not applied yet for a job, but through my contacts with my friends, I feel very confident of equality of opportunity and equality of protection.”<sup>415</sup> Another man was able to open a barbershop in a friend's old business space when the friend opened a new business. He said that he has a business partner, advertises his business through flyers in the community, and hopes to hire more barbers. Still, opening a small business is not without barriers. The barber reported that although he had experience as a barber in his home country, the state of Minnesota required him to become licensed. He did receive some credit toward his licensure for his experience, and ultimately received the highest score on the licensing exam.<sup>416</sup>

Most reports of barriers to starting an immigrant-owned business were relayed by organizations that assist immigrant entrepreneurs. “It’s tough to start a business,” said one advocate. “There’s red tape that people don’t know about. The chamber of commerce is trying to help. The number of immigrant-owned businesses [in our city] is low.”<sup>417</sup> Another advocate also discussed “red-tape”: “Licenses vary according to the field and services; they all have their own rules and regulations at the municipal, state, and federal level. The food service sector tends to be highly scrutinized.”<sup>418</sup> According to a legal service provider, “in [our city] it’s so difficult to open up a minority owned business – the health department is very restrictive. I had a friend who opened a restaurant but the Health Department kept dropping in. It was very restrictive and very unfair.”<sup>419</sup>

Community institutions help immigrant entrepreneurs overcome these barriers. One chamber of commerce official described the type of assistance her organization provides to immigrant entrepreneurs: “Our economic development director does a lot of business counseling with them. We had a small business counselor here who would help with creating a business plan and understanding how to start a business. You often have to take a client's hand and lead them through the process of how to get permits and register with the state for sales tax. We haven’t had any issues with people not understanding regulations.”<sup>420</sup>

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<sup>415</sup> Interview 24.

<sup>416</sup> Interview 2.

<sup>417</sup> Interview 97.

<sup>418</sup> Interview 134.

<sup>419</sup> Interview 87.

<sup>420</sup> Interview 62.

Other problems reportedly experienced by immigrant entrepreneurs include cultural and language barriers, hesitancy by the native-born Minnesota population to engage with the business, and concerns about the entrepreneur's immigration status. A person from a local chamber of commerce discussed navigating language barriers related to immigrant businesses:

*One of the biggest barriers in our community is still language. A lot of Caucasians would be interested in going in the stores and buying something but they feel timid because they do not speak the language. The signs are not in English, so people do not know what things are. Immigrants are opening up some really good clothing and home furnishing stores here, and we are seeing more people patronizing them. But if I go in and they do not have their children in there to speak English, it can be hard. I am not intimidated but some people are.*<sup>421</sup>

## EMPLOYER EXPLOITATION

Advocates and service providers offered many reports of poor treatment and workplace violations against a wide variety of immigrants, primarily in positions requiring unskilled labor. By far the most egregious reports related to the treatment of undocumented workers. “Undocumented people face much bigger obstacles. Lawfully present immigrants and refugees have less fear, less overt discrimination, and less social isolation,” said a local professor.<sup>422</sup> Organizations and attorneys who work with or assist immigrants reported unscrupulous employers taking advantage of undocumented immigrants’ fear of deportation by engaging in various levels of exploitation, including everything from low wages and wage theft, to sexual assault, to outright imprisonment.<sup>423</sup>

The U.S. Department of Labor and the Minnesota Department of Labor and Industry hold primary responsibility for ensuring that workplaces are equitable, healthy, and safe, while other agencies, including the federal Occupational Safety and Health Administration (OSHA), provide oversight of workplace safety conditions. The U.S. Department of Labor enforces the Migrant and Seasonal Worker Protection Act. The U.S. Department of Agriculture holds certain enforcement authority over various aspects of farm and food production workplaces.

An official responsible for enforcing discrimination claims agreed with this assessment. According to this official, his department does see immigrants coming forward in *quid pro quo* sex harassment complaints, but very few of these compared to what they would expect, and he sees few differential wage claims. He attributes the low number of complaints directly to the fear of

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<sup>421</sup> Interview 66.

<sup>422</sup> Interview 96.

<sup>423</sup> Interview 188.

deportation. In his assessment, immigrant workers are more likely to “find a new job, not file a discrimination claim.”<sup>424</sup>

Even when deportation is not a threat, immigrant workers are still vulnerable to exploitation. “What keeps this attitude of poor treatment toward immigrant workers going,” opined a health care worker, “is that immigrant workers do not want ‘to rock the boat’ and fight. They will say, ‘Well, I have a job, and I can still send some money home,’ and they will settle for the unfair treatment.”<sup>425</sup> “For a lot of immigrant workers, the concept of assimilation is extremely important,” said one labor organizer. “They often feel afraid fighting the employer.”<sup>426</sup>

A community organizer reported that many immigrants and refugees with whom he interacts do not know about their rights, and at the same time are afraid to lose their jobs if they do complain of unfair treatment.<sup>427</sup> The threat of job loss is a potent one. Attorneys at one legal service provider reported an increase in people coming in for employment issues: “Employers are taking advantage of the economic situation. People are accepting bad working conditions because they don't want to lose their jobs in this job market.”<sup>428</sup>

Another advocate pointed to a climate that disregards immigrant workers’ humanity and views them as not deserving of basic rights.<sup>429</sup> One community leader explained that employers will think, “This is better than what they had in their country,”<sup>430</sup> rather than thinking of them as equals deserving of good treatment.

### WAGE THEFT

Advocates pointed to wage theft, or the failure to pay wages that are owed to an employee, as a problem for immigrant workers in Minnesota. In describing the types of discrimination and exploitation he hears from clients, one legal service provider reported “wage theft is probably the most common.”<sup>431</sup>

Wage theft reportedly occurred in a variety of industries. One community organizer described a restaurant in which people were working twelve hours, seven days a week, but were paid a fixed bimonthly paycheck that worked out to \$4 an hour. “Workers were threatened with a frying pan

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<sup>424</sup> Interview 125.

<sup>425</sup> Interview 133.

<sup>426</sup> Interview 118.

<sup>427</sup> Interview 113.

<sup>428</sup> Interview 110.

<sup>429</sup> Interview 188.

<sup>430</sup> Interview 106.

<sup>431</sup> Interview 121.

and a knife. We organized and got back wages,” he said.<sup>432</sup> A labor leader described a common restaurant industry practice in which waiters receive paychecks, while cleaning staff is paid in cash.

The commercial cleaning industry has worked to become more organized in recent years, and as a result more complaints are surfacing. “At one maintenance company, workers had to work seven days a week but to avoid overtime pay they were forced to punch in as a ghost employee on the seventh day and get paid in cash.” said one organizer. “Another company cleaned grocery stores and would take breakages out of paychecks.”<sup>433</sup> The same organizer also described the exploitation of hotel cleaning staff: “A hotel made cleaners come early to fill their cleaning cart off the clock, and then they assigned them more rooms than could be completed and made them finish their rooms off the clock every day. People would be fired if they did not.”<sup>434</sup>

In other cases, migrant workers and seasonal workers reportedly did not receive payment at all. A community leader explained that workers were told they would be sent their check when the job was finished and then never received payment. In other cases, after the job was complete the employer paid less than promised, telling the workers that they “didn't do a good job.”<sup>435</sup>

### **AVOIDING EMPLOYMENT PROTECTIONS: SUBCONTRACTORS AND TEMPORARY AGENCIES**

While some organizations described situations in which immigrant workers are required to complete more work in the same amount of time and for the same amount of pay as U.S. workers,<sup>436</sup> others pointed to instances of contractors working alongside employees on the same job sites receiving different wages, benefits, hours, and training.<sup>437</sup>

The federal Internal Revenue Service classifies workers as “employees” or “independent contractors” for federal payroll tax reporting purposes. The Minnesota Department of Labor and Industry, together with the Minnesota Department of Employment and Economic Development and the Minnesota Department of Revenue, determine specific classification of workers in the construction, trucking, courier/messenger, and other industries as employees or independent contractors for workers’ compensation purposes. The National Labor Relations Board establishes collective bargaining rights for U.S. employees.

Despite these attempts at regulation, the use of contractors in low-skilled occupations has proliferated. An advocate described a typical scenario in the construction industry: “a good Minnesota employer subcontracts with an LLC, who is basically a guy with a pickup, a ladder, and

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<sup>432</sup> Interview 107.

<sup>433</sup> Interview 107.

<sup>434</sup> Interview 107.

<sup>435</sup> Interview 137.

<sup>436</sup> Interview 94, Interview 99.

<sup>437</sup> Interview 188.

contacts in community. That guy goes out and recruits his crew. He pays them cash, with no regard to minimum wage, benefits, or breaks. Sometimes the contractor screws the crew, and sometimes he gets screwed by the employer, but this is a total cash business.”<sup>438</sup>

While not unique to immigrant workers, immigrant assistance organizations identified problems associated with an employers’ decision to hire workers through temporary employment agencies rather than making direct hires.<sup>439</sup> They reported instances of temporary workers being paid less per hour than regular company employees or working without benefits.<sup>440</sup>

A labor leader gave an example of a temporary agency who attempted to conduct an audit of employment authorization records, but only for Latino workers. The employees had been working for the agency for ten years without a raise. The agency also made immigrant workers wait off the clock when machines were broken. As a result of a concerted effort by the workers to organize around the lack of a time clock, stolen hours, and a lack of raises, the company replaced the supervisor, installed a time clock, and gave three years of back pay and a dollar per hour wage increase across the board.<sup>441</sup>

### UNSAFE WORKING CONDITIONS

In several cases, immigrants reportedly faced working conditions so poor that they endangered the health and safety of immigrant workers. One community advocate described the poor working conditions provided by a food-packaging manufacturer who frequently hires members of the immigrant community. In addition to frequent firing of workers and discriminatory actions against immigrant workers, the factory is very hot and employees are required to be on their feet for long hours. Although she encourages workers to complain to the Department of Labor, they fear losing their jobs.<sup>442</sup>

“One worker did complain and got deported. No one else at the plant complained after that.”

Working conditions are a problem at many dairy and hog farms, according to a legal service provider. “There are many undocumented workers at dairy farms and hog farms. Many live in fear of immigration officials showing up. They will not complain because they do not want to lose their jobs. They get no breaks and work long hours. One worker did complain and got deported. No one else at the plant complained after that. When people call me with these complaints I give them the number for the Department of Labor, but I don’t know if people follow up on that.”<sup>443</sup>

<sup>438</sup> Interview 188.

<sup>439</sup> Interview 84.

<sup>440</sup> Interview 146, Interview 81.

<sup>441</sup> Interview 107.

<sup>442</sup> Interview 86.

<sup>443</sup> Interview 87.

A community organizer reported a case of an employee who was required to work 24 hours straight. The worker fell asleep on a skid loader, causing damages, which the employer then illegally deducted from the worker's paycheck. The organizer described another incident in which a worker administering injections to pigs accidentally shot himself in the arm. The worker was not told that he could go to the doctor and that worker's compensation would cover the cost.<sup>444</sup>

A labor organizer described the problems experienced by undocumented workers who are injured on the job and file workers' compensation claims. According to the organizer, if an injured employee files a claim, the employer will suddenly "discover" that the worker is undocumented, and will refuse to make workers' compensation payments.<sup>445</sup>

In some cases poor working conditions include sexual assault or physical assault. One community organizer reported an instance in which a supervisor at one of the largest hog farms in Minnesota physically assaulted an immigrant worker. The worker had gone to the supervisor to ask why his employment had been terminated. In response, the supervisor punched the worker, knocking him to the ground.<sup>446</sup> A legal service provider reported one client's experience of sexual assault in the workplace. She "was undocumented, and her boss had tremendous power and leverage over her. She was extremely courageous to come forward."<sup>447</sup>

“People get locked in overnight while working at some big-box retailers.”

One attorney described particular frustration when it came to protecting his clients from deportation after they reported their employers: "I have had no success on getting EEOC or the Department of Labor to sign off on U-visas (protecting crime victims from removal). In one case, the employee was raped multiple times by her supervisor. When the victim asked for U-visa certification, the EEOC refused to sign."<sup>448</sup>

Advocates also reported cases of false imprisonment of immigrant workers. "People get locked in overnight while working at some big-box retailers," said one community organizer.<sup>449</sup> Another organizer gave an example of false imprisonment at a large dairy. The employer has a dormitory on the farm where workers live. The workers are not allowed to go into town more than two at a time.<sup>450</sup>

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<sup>444</sup> Interview 91.

<sup>445</sup> Interview 117.

<sup>446</sup> Interview 91.

<sup>447</sup> Interview 121.

<sup>448</sup> Interview 188 .

<sup>449</sup> Interview 94.

<sup>450</sup> Interview 91.



## HUMAN TRAFFICKING

Federal and state laws criminalize human trafficking.<sup>451</sup> Federal law enforcement agencies including the U.S. Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security investigate human trafficking cases.<sup>452</sup> Minnesota's eighty-seven county attorneys are charged with enforcing state laws prohibiting human trafficking, slavery, forced labor, and sex trafficking.<sup>453</sup>

While Minnesota law prohibits labor trafficking, no cases have been prosecuted since the law's enactment in 2005.<sup>454</sup> A small number of labor trafficking cases have been prosecuted by the U.S. Attorney's Office for the District of Minnesota.<sup>455</sup> Despite this lack of prosecution, advocates have identified human trafficking victims who have been granted protection from deportation under the T-visa program.<sup>456</sup>

One attorney, describing traveling work crews where the employees are taken to different sites around the region and are dependent on the crew leader, observed that "It's a situation of 'take it or leave it – this is what you get.' There's not a gun to their heads, but there is coercion."<sup>457</sup>

Another attorney described a case involving an undocumented worker who was employed by a small Minnesota landscaper.<sup>458</sup> The employer variously failed to pay him, pay him on time, or pay overtime. The housing the employer provided for workers was a retrofitted barn with limited access to water. The worker had trouble getting food because he depended on the employer for transportation to town to buy groceries. The employer became increasingly threatening, displaying guns and threatening to beat him up if he continued to demand the wages he was owed. After the employer found out that the worker was stopped by the police while driving and told the police

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<sup>451</sup> 18 U.S.C. § 1591(a) (2012); MN Stat. 609.321, subd. 7a (2012).

<sup>452</sup> U.S. Department of Homeland Security, "Human Trafficking," <http://www.dhs.gov/topic/human-trafficking>, (accessed Mar. 20, 2014).

<sup>453</sup> Minn. Stat. §§609.281 - 609.284, 609.321-609.322 (2013).

<sup>454</sup> Minnesota Office of Justice Programs and Minnesota Statistical Analysis Center, *Human Trafficking in Minnesota: A Report to the Minnesota Legislature*, (Sept. 2010), <https://dps.mn.gov/divisions/ojp/forms-documents/documents/2010%20human%20trafficking%20report-%20final.pdf>, p. 5-6 (indicating that there was one charge brought under Minn. Stat. 609.282 in 2006, but to date no convictions). As of March 2014, a search of Minnesota filings indicates that one case, *Nugra v. Lewis*, 27-CV-14-32, District Court, Hennepin County (Filed: Jan. 2, 2014) (complaint available at 2014 WL 30190), involving both sex and labor trafficking has been filed in Minnesota courts.

<sup>455</sup> *United States v. Chappell*, CRIM09-139 JNE/JJK, 2010 WL 1131474 (D. Minn. Jan. 12, 2010) report and recommendation adopted, CRIM09-139 JNE/JJK, 2010 WL 1131473 (D. Minn. Mar. 22, 2010); *United States v. Rivera-Miranda*, CRIM.07-166(2)JNE/AJB, 2009 WL 605812 (D. Minn. Mar. 9, 2009).

<sup>456</sup> 8 U.S.C. §1101(a)(15)(T) (T-visas provide temporary relief from deportation to victims of severe forms of human trafficking).

<sup>457</sup> Interview 188.

<sup>458</sup> Interview 140.

where he was living, the employer threatened to kill the employee. The employee attempted to make a complaint with the federal Department of Labor and subsequently sought help from a worker center. Federal immigration officials determined that the worker was a victim of labor trafficking and issued a T-visa protecting him from deportation and permitting him to work lawfully in the United States.<sup>459</sup>

Another attorney pointed out the particular vulnerability of domestic workers to trafficking. “Nine out of ten cases we handle involve domestic servitude.”<sup>460</sup> Another attorney cited one example where the employer of a live-in nanny took the employee’s documents, effectively imprisoning her in her employ.<sup>461</sup> While that case remains ongoing, it illustrates one of the employment sectors cited by service providers as particularly vulnerable to exploitation.<sup>462</sup>

People interviewed agreed that the benefits of seeking redress from exploitative conditions often are outweighed by fear of deportation.<sup>463</sup> One advocate noted that enforcement mechanisms do not adequately account for the risk of deportation the employee faces when weighing the possibility of seeking assistance and bringing a case.<sup>464</sup>

One attorney described the barriers to prosecution: “Trafficking is inherently a hidden type of crime. The person is scared and isolated and is being threatened.”<sup>465</sup> Labor trafficking victims may not come forward because of threats or because the victims may see the situation as one in which they voluntarily placed themselves, so they do not self-identify as crime victims.<sup>466</sup> “Some are not aware that there is help out there for them.”<sup>467</sup>

## EMPLOYMENT DISCRIMINATION

Immigrants and service providers reported a wide variety of perceived employment discrimination. While some individuals and organizations reported outright refusal to hire, differential treatment, or employment termination on account of race, religion, national origin, or citizenship, others reported that discrimination, or perceived discrimination, was a result of language and cultural barriers. Some subjects reported that even though differential treatment had occurred at some point, the employers were willing to remedy the unfair treatment.

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<sup>459</sup> Interview 140.

<sup>460</sup> Interview 145.

<sup>461</sup> Interview 140.

<sup>462</sup> Notes on file with author.

<sup>463</sup> Interview 125; Interview 133.

<sup>464</sup> Interview 140.

<sup>465</sup> Interview 145.

<sup>466</sup> Interview 145.

<sup>467</sup> Interview 145.

State, federal, and international law prohibit discrimination in employment. Agencies including the federal Equal Employment Opportunity Commission, the Minnesota Department of Human Rights, municipal civil rights enforcement agencies in Minneapolis and Saint Paul, and various federal offices including the U.S. Department of Justice Civil Rights Division's Office of Special Counsel for Immigration-Related Unfair Employment Practices, protect against prohibited discrimination. While mechanisms are available, immigrants who experience discrimination often do not complain, either because they are unaware of their rights under the law, because it is easier to leave the employer than to pursue a complaint, or for undocumented workers, because fear of deportation keeps them silent.<sup>468</sup>

Employment discrimination cases in Minnesota in recent years frequently have involved religious discrimination, some of which have garnered significant media attention.<sup>469</sup> According to the U.S. Department of Justice, "people should be hired or not hired because of their skills and merit, not because of their faith. And people should not be forced to choose between their faiths and their jobs."<sup>470</sup> Title VII of the Civil Rights Act of 1964 requires employers to make reasonable accommodation of employees' religious observances and practices, unless doing so would cause the employer undue hardship.<sup>471</sup> Determining what constituted undue hardship in the face of religious accommodation can be further complicated by issues of workplace safety.<sup>472</sup>

### INSTITUTIONAL DISCRIMINATION

While few individuals reported egregious discriminatory treatment by employers, many people reporting feeling discriminated against in more subtle ways.

One immigrant reported that she worked as a department manager at a big-box retailer. She believes she was treated poorly by subordinates because she was a Latina in a "white male environment." She also reported that her supervisor told her, "no one wants you here. You're going to have to find another department." After seeking support from supervisors without success, she

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<sup>468</sup> Interview 125.

<sup>469</sup> Roger Yu, *Airport Check-in: Fare refusals in Minnesota*, USA Today, Sept. 18, 2006 (noting the decision of some Muslim taxi drivers from Somalia, citing religious beliefs, to refuse to transport customers carrying or suspected of carrying alcohol), [http://usatoday30.usatoday.com/money/biztravel/2006-09-17-airport-check-in-usat\\_x.htm](http://usatoday30.usatoday.com/money/biztravel/2006-09-17-airport-check-in-usat_x.htm).

<sup>470</sup> U.S. Department of Justice, "Religious Discrimination in Employment," [http://www.justice.gov/crt/spec\\_topics/religiousdiscrimination/ff\\_employment.php](http://www.justice.gov/crt/spec_topics/religiousdiscrimination/ff_employment.php).

<sup>471</sup> U.S. Department of Justice, "Religious Discrimination in Employment," [http://www.justice.gov/crt/spec\\_topics/religiousdiscrimination/ff\\_employment.php](http://www.justice.gov/crt/spec_topics/religiousdiscrimination/ff_employment.php).

<sup>472</sup> Rebecca Rodenburg, *Somali workers, Dianne's Fine Desserts argue over unemployment eligibility in Le Center*, Fairbault Daily News, Aug. 1, 2012 (reporting that nearly 40 Somali employees were terminated when they refused to comply with a new dress code that was implemented following an incident when an employee's long skirts became entangled in factory equipment and resulted in minor injury to the employee), [http://www.southernminn.com/fairbault\\_daily\\_news/news/local/article\\_2d1c701c-bd8c-50d8-b367-fce105e0223f.html](http://www.southernminn.com/fairbault_daily_news/news/local/article_2d1c701c-bd8c-50d8-b367-fce105e0223f.html).

claims she was forced to take a position in a different department with a dollar-per-hour cut in pay.<sup>473</sup> Another immigrant reported that he was fired from his job at a gas-station chain after three months, allegedly for failing to write down the license plate numbers from three vehicles when the drivers left without paying for gasoline. One manager told him that many employees had similar incidents, but were not disciplined as a result. The man was awarded unemployment compensation, and won his case after the company appealed the decision.<sup>474</sup>

Several individuals reported more general feelings of discrimination, which they attributed to their citizenship, or lack of lawful permanent resident status. According to one woman, “if I have the same qualifications as the other candidate, then they will most likely hire the U.S. citizen. It’s just the way it is.”<sup>475</sup> Another woman reported that her ability to find employment changed once she became a U.S. citizen, and that immigrants who do not have at least permanent residency in the United States are treated differently. “I think I’m treated the same way as U.S. citizens, mainly because I am an American now. Before I became a permanent resident, things were very touchy.”<sup>476</sup>

“A Karen teacher applied for a school position. They said she was qualified, but that they didn’t have any Karen students for her to work with – they couldn’t envision that she could teach anyone else.”

While two other women interviewed felt they were being treated fairly at their current jobs, one described feeling discriminated against because of her race or ethnicity at previous jobs. One of the women said, “It felt as if I wasn’t an equal to my peers because of my ethnicity.”<sup>477</sup> The other woman did not believe that her good fortune would necessarily continue. “If we lived in an ideal world, then yes, I would have the same opportunities to be hired and succeed at my job, but I am clearly aware of the blunt racism, prejudice, and stereotypes that will affect me.”<sup>478</sup>

During a conversation with several refugee community leaders, one leader expressed a common view: “It seems like refugees are either under- or over-qualified for every job. The town is not retaining its skilled immigrant workforce. They are going to the Cities for jobs because they can’t be hired in positions here that they have degrees for.”<sup>479</sup> The group further reported that the local

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<sup>473</sup> Interview 17.

<sup>474</sup> Interview 6.

<sup>475</sup> Interview 31.

<sup>476</sup> Interview 50.

<sup>477</sup> Interview 37.

<sup>478</sup> Interview 43.

<sup>479</sup> Interview 98.

public school district has hired no teachers from the predominant refugee group, and that when the district wanted to hire a cultural navigator, the position paid a very low wage.<sup>480</sup> They also described their perception that refugees with graduate degrees are placed in positions with the least educational requirements, while U.S.-born workers without degrees are promoted into positions that do require a degree.<sup>481</sup>

Some immigrants reported their belief that, although they had found employment, they did not receive raises or promotions at work due to their status as immigrants. One man reported that he had not received a single raise in ten years.<sup>482</sup> Another man reported the following: “My employer did not give me that opportunity to be promoted. Maybe because of my accent but they did not give me that opportunity.”<sup>483</sup>

Individuals of different backgrounds and ethnic groups believed that they had to work harder than their co-workers as a result of their status as immigrants. One man confided, “My workplace can do better, but I feel like we have to work much harder to even get a decent pay increase, which will only be a ten cent raise.”<sup>484</sup> On the other hand, at least one refugee expressed her concern that as a woman and minority, she may have gotten an opportunity for a certain position to make the board or office appear more “diverse.”<sup>485</sup>

Organizations that work with immigrant communities also reported that the immigrants they serve face discrimination in the workplace. A service provider offered a specific example of how refugees are often considered only for positions related to their refugee status or language skills, rather than for their expertise or training: “A Karen teacher applied for a school position. They said she was qualified, but that they did not have any Karen students for her to work with – they could not envision that she could teach anyone else.”<sup>486</sup>

Immigrant workers often do not understand their legal rights in the workplace, a problem exacerbated by immigrants’ distrust of the legal system. “If you are hurt at work, there is legal help with workers compensation, but immigrants don’t know who to talk to, who to trust. They say ‘I think the lawyer is corrupt or bought by the company.’”<sup>487</sup>

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<sup>480</sup> Interview 98.

<sup>481</sup> Interview 98.

<sup>482</sup> Interview 20.

<sup>483</sup> Interview 30.

<sup>484</sup> Interview 47.

<sup>485</sup> Interview 51.

<sup>486</sup> Interview 85.

<sup>487</sup> Interview 64.

One attorney reported that, in his experience litigating employment discrimination claims, defense counsel acts more aggressively in cases where the worker is undocumented than in cases of U.S. workers. “Employers go after immigration status in discovery even though the law is really clear that it is irrelevant and even though presumably the employer had checked the employee’s immigration status, in a deliberate effort to scare the plaintiffs.”<sup>488</sup>

Relying on private enforcement of discrimination claims can serve as a barrier to low-wage workers’ ability to enforce their rights. An attorney described improper defense tactics, such as exaggerating the time needed for a deposition with interpretation, that create unnecessary costs for low-wage employees. Employers often use other tactics, such as bringing in additional parties to complicate the litigation, driving up costs and making it less likely that individual workers pursue complaints.<sup>489</sup>

### DISCRIMINATION BY INDIVIDUAL MANAGERS, CO-WORKERS, AND PATIENTS

Some workers reported fair treatment by employer institutions, but discriminatory actions and comments by individual managers or co-workers. Staff at a legal service provider reported that while a large employer in the area allowed for prayer breaks for Muslim workers, “sometimes there are supervisors who don’t allow it – they say some people have to stay on the line to keep it running.”<sup>490</sup>

According to a labor organizer, unions have been helpful in combating discrimination against immigrants by co-workers, individual supervisors, and patients. The organizer recounted an incident involving a group of refugee women who “were very expressive with their hands.” The women’s direct supervisor told them to stop “talking with” their hands because, “This is not your country. There are no bugs around here.” The women felt he was suggesting that their hand movements were the result of swatting flies. When the women complained to human resources, the employer conducted an investigation that resulted in a warning to the supervisor. Not satisfied with that result, the workers started a petition against the supervisor, which ultimately led to the termination of that supervisor’s employment.<sup>491</sup>

This organizer also reported cases of hospital patients who claim they “don’t want to be touched” by immigrant personal care and nursing staff. The patients tell immigrant workers to “go back to your country,” or say “I can’t understand a word she’s saying. I don’t want her to touch me.” The organizer said that initially, hospitals would comply with patient requests, saying that compliance was needed to ensure employees’ “personal safety.” When the union intervened, the hospitals

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<sup>488</sup> Interview 188.

<sup>489</sup> Interview 188.

<sup>490</sup> Interview 75.

<sup>491</sup> Interview 118.

“The women's direct supervisor told them to stop “talking with” their hands because, “This is not your country. There are no bugs around here to swat.”

changed their position. Now, if a patient complaint is based on the race or national origin of the worker, the hospital does not honor the patient's request for care from a different employee.<sup>492</sup>

While generalized complaints of differential treatment were reported by organizations working

on behalf of individuals from a variety of countries, those organizations assisting Somali and Muslim workers reported higher numbers of specific incidents of discrimination. A large number of those complaints came from organizations in greater Minnesota. One social service provider reported a story about a Somali woman who speaks with an U.S. accent being enthusiastically received during a phone job interview, “but when she showed up in person everything changed.”<sup>493</sup>

Other agencies also report overt discrimination against refugees and immigrants. Several employers are reported to have initially discriminated against Muslim women, but were open to making changes to accommodate the workers when confronted by outside agencies. An advocate described a case in which a Muslim woman was fired because she wore a headscarf for religious reasons. The employer claimed that because the headscarf created a safety hazard, it was not required to accommodate the woman's religious need to wear the scarf. The advocate was able to negotiate with the employer to allow the woman to continue working by wearing a lab coat with her clothing tucked in.<sup>494</sup> In another case, the advocate worked with an employer to accommodate a Muslim woman by allowing her to wear a required hair net over her headscarf.

There were also a higher number of specific complaints by organizations working largely with Latino populations. One community leader expressed his view that negative ethnic stereotypes are the biggest barrier to employment for Hispanic immigrants. He reported on a presentation he made to a group of tourism sector employers where he hoped that once these experts learned about the strong emphasis on hospitality in Mexican culture, they would understand the benefit to the hospitality industry of hiring Mexican immigrants. In response to his presentation, one of the tourism experts said, “Oh, you want us to take siestas.” In relaying his story, he said, “this stereotypical, ignorant understanding of immigrants is the biggest problem in employment. People try to change the program and not the mindset, and it doesn't work.”<sup>495</sup>

A Latino man who has worked as a cook at a major chain restaurant since 2008 said that he does not feel that he has the same opportunities at his job because he is Latino, and “stereotypes and

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<sup>492</sup> Interview 118.

<sup>493</sup> Interview 97.

<sup>494</sup> Interview 127.

<sup>495</sup> Interview 114.

## ECONOMIC OPPORTUNITY

judgmental people will create issues and formulate wrongful opinions.”<sup>496</sup> He blames this largely on the media, which “has not done a good job at squashing the stereotypes, instead it just reiterates them.”<sup>497</sup>

### POSITIVE REPOSSES

Some advocates did report that, when an employer was made aware of the discriminatory behavior, the employer promptly took action to remedy the problem. One refugee reported a positive experience. “At the beginning the pay range was not correct, but I told them to change it and they changed it because they did not know the scope and responsibility of the position.”<sup>498</sup>

In a few cases, individuals reported cases of employers stepping up to fix differential treatment on an employee's behalf without request. One man said, “I made less money than other people with education like me, with an engineering degree. I noticed that. My employer noticed himself; my boss apologized and said he was paying me less money. Then they promoted me and paid more money.”<sup>499</sup> Similarly, a refugee woman said that she “feels no discrimination.” She reported that when she was working as an “account clerk class one” at a bank, she was doing more work than she was being paid for. Her supervisor then approached her, saying that she wanted to reclassify the woman as “account clerk two” so that she would be paid for the level of work she was actually performing. The woman told us that her supervisor then wrote the promotion application on behalf of the woman.<sup>500</sup>

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<sup>496</sup> Interview 49.

<sup>497</sup> Interview 49.

<sup>498</sup> Interview 36.

<sup>499</sup> Interview 30.

<sup>500</sup> Interview 22.



## RECOMMENDATIONS

Finding: Immigrant and refugee workers face barriers to economic opportunity, due to lack of employment authorization, limited English language ability, lack of recognition of foreign credentials, and lack of access to education or technology needed for employment.

### Recommendations

- Municipal and state licensing boards should review policies regarding acceptance of foreign credentials and ensure that foreign training is licensed when appropriate.
- Employers should review recruitment and hiring practices that rely on lengthy applications or require applicants to apply online to ensure that these practices do not unnecessarily create barriers to immigrant and refugee workers.
- The minimum wage should be raised to ensure that all full-time workers earn a sufficient income to move out of poverty.
- Local chambers of commerce, community economic development initiatives, and local governments should actively engage immigrant business owners.

Finding: Immigrant workers face exploitation in the workplace, such as low wages and wage theft, sexual assault, and outright imprisonment.

### Recommendations

- Increase resources devoted to enforcement of workplace exploitation, including resources for training, investigation, and prosecution under state and federal laws.
- Ensure that victims of exploitative employment practices are protected from retaliation and deportation when they come forward.
- The IRS and Minnesota Department of Revenue should increase oversight of subcontractors in construction, retail cleaning, and other industries to ensure that their workers are not misclassified as contractors to avoid wage, hour, and other workplace protections.
- In light of increasing reliance on temporary workers to fill permanent positions, Minnesota should consider whether standards for employee protections need to be expanded.
- OSHA and the Minnesota Department of Labor and Industry should increase oversight of subcontractors in construction, retail cleaning, and other industries to

ensure that workers receive health and safety information, equipment, and training, and are not subject to unsafe working conditions.

- Recognizing that workers are often isolated, government agencies and labor rights organizations should take creative measures to ensure that agricultural and horticultural workers have access to information about their rights under U.S. and Minnesota civil rights and workplace safety laws.

Finding: Immigrant and refugee workers face employment discrimination based on race, religion, national origin, and citizenship.

### **Recommendations**

- Expand anti-discrimination enforcement mechanisms to decrease the reliance on individual complaints.
- Ensure that low-wage workers who experience discrimination in the workplace are not effectively barred from prosecuting complaints because of litigation costs.
- Ensure that newcomers to the workforce have clear, accessible information about non-discrimination standards and means of enforcement.

# CHAPTER 4: EDUCATION



### INTRODUCTION

Minnesota, which has a unique immigrant demographic and accompanying challenges, has seen overall improvements in academic outcomes that are shared by immigrant and refugee populations. Nonetheless, persisting disparities highlight inequities within the system. Interviewees pointed to systemic root causes, such as poverty and segregation, that require community commitment to school integration to remedy. Additionally, interviewees identified the need for state-level policy changes in order to reduce bullying and mitigate disparate negative effects of school discipline policies on immigrant and refugee students. They also noted state-, community-, and school-level policies that could be changed to alleviate barriers related to school readiness, preparedness of content staff to work with immigrant students, insufficient funding and staffing levels, and hiring and retention of staff of color.

Participants also identified the need for increased attention and resources accorded to English learner (EL) services, including more staffing, improved curricula and pedagogy, and better placement procedures of immigrants and refugees in both EL and special education classes.

Community members and interviewees cited several ways in which schools could create a more welcoming environment that included providing human rights and multicultural education, encouraging positive staff treatment and intervention, and enhancing the facility's physical environment. They also noted the importance of reducing barriers that limit family involvement, including perceptions of unwelcome, a range of communication issues linked to language and culture, and a lack of resources.

Many of the same issues extend themselves into postsecondary systems, resulting in unequal access manifested in student expectations, college readiness and support, available options, and discrimination. Finally, interviewees articulated the need for all systems to be routinely and systematically monitored.

#### DEFINITIONS

Throughout this section, “immigrant and refugee students” refers broadly to first- and second-generation students. “EL” is used to describe students who are English learners, because this is the term currently used in Minnesota Statutes.<sup>501</sup> Some now prefer “Multilingual Learner” (MLL), and other commonly used terms include English Language Learner (ELL), English as a Second Language (ESL), and Limited English Proficiency (LEP). Not all immigrant or refugee students require or receive EL services.

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<sup>501</sup> Minn. Stat. § 124D.58 (2013).

## HUMAN RIGHTS AND EDUCATION

Education is a fundamental human right<sup>502</sup> and the responsibility of government. In the United States, basic access to education is granted to all, regardless of immigration status.<sup>503</sup> Education holds the promise of personal development and social progress. Its promotion or deficiency can determine whether an individual realizes an entire range of other human rights, and “lack of educational opportunities for children often reinforces their subjection to various other...violations.”<sup>504</sup>

Multiple international human rights treaties recognize the importance of education<sup>505</sup> and afford every child the right to an education that is to be “available, accessible, acceptable, and adaptable.”<sup>506</sup> Article 13 of the International Covenant on Economic, Social and Cultural Rights states that “education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms” and “shall enable all persons to participate effectively in a free society” and “promote understanding, tolerance and friendship among all nations...”<sup>507</sup>

Access to education is to be provided without discrimination.<sup>508</sup> Article 1 of the Convention against Discrimination in Education, referenced in the preamble of the Convention on the Elimination of Racial Discrimination, considers “discrimination” to be: “any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular...of limiting any person or group of persons to education of an inferior standard.”<sup>509</sup>

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<sup>502</sup> Universal Declaration of Human Rights (UDHR), 1948, Art. 26(1); International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Art. 13; Convention of the Rights of the Child (CRC), 1989, Art. 28.

<sup>503</sup> *Plyler v. Doe*, 457 U.S. 202, 230 (1982).

<sup>504</sup> UN Committee on Economic, Social, and Cultural Rights, General Comment No. 11, Plans of Action for Primary Education ¶ 4, UN Doc. E/C.12/1999/4 (May 1999).

<sup>505</sup> UDHR, Art. 26(1); ICESCR, Art. 13; CRC, Art. 28.

<sup>506</sup> UN Special Rapporteur on the Right to Education and UNESCO Asia and Pacific Regional Bureau for Education, Manual on Rights-Based Education: Global Human Rights Requirements Made Simple, by Katarina Tomasevski (2004), <http://unesdoc.unesco.org/images/0013/001351/135168e.pdf>.

<sup>507</sup> ICESCR, Art. 13.

<sup>508</sup> CRC, Arts. 28-29; ICESCR, Art. 13; International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, Art. 10; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965, Arts. 5, 7; UNESCO General Conference, Convention against Discrimination in Education (CDE), 1960, Arts. 1-5; *Brown v. Board of Education* 349 U.S. 294 (1955); *Castañeda v. Pickard* 648 F.2d 989 (5<sup>th</sup> Cir. 1981); *Lau v. Nichols*, 414 U.S. 563 (1974); *Plyler v. Doe*, 457 U.S. 202 (1982); 20 U.S.C. §6301 et seq.; 42 U.S.C. §2000d et seq.; 20 U.S.C. §§1701-1758 (1974); 20 U.S.C. §1232g.

<sup>509</sup> CDE, Art. 1.

The Convention clarifies that this right “includes access to education, the standard and quality of education, and the conditions under which it is given.”<sup>510</sup>

### THE ROLE OF GOVERNMENT

International human rights laws and standards dictate that it is the responsibility of government to fulfill the right to an education. Some recent critiques of public education and subsequent changes have had the effect of weakening the system. In order to address many underlying root causes of educational disparities, we must take collective responsibility for the laws and policies that have created inequities and strengthen the role of government such that it is able to fulfill this basic human right. There are many steps that administrators, teachers, parents, and students can take to improve school environment, pedagogy, and family engagement. Systemic change and the fortification of public education, however, is the responsibility of government.

## PRE-K TO GRADE 12

### EDUCATION IN MINNESOTA: A REPUTATION TO UPHOLD

Minnesota has long enjoyed a reputation of having an overall excellent educational system. Nationally, it ranks among the top ten states in several standardized tests<sup>511</sup> and among the highest for the ACT college entrance exam.<sup>512</sup> Many immigrants reported a sense of security in their belief that their children would receive a good education, and like some U.S.-born Minnesotans, moved to the state or a particular district based on its reputation.<sup>513</sup> A Liberian mother said confidently, “My son is only 18 months old and certainly he will get a good education.”<sup>514</sup> Another interviewee explained, “Minnesota is viewed as a good place for kids to grow. Education-wise, Minnesota is a good state to have your kids.”<sup>515</sup> A refugee in the metro area even reported finding Minnesota in a book he was given while imprisoned in his home country: “When I was in prison...I read a book showing communities around the world. I saw Minnesota...they have a lot of opportunities to teach their children. They encourage their community, especially in education...I wanted to visit

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<sup>510</sup> CDE, Art. 1.

<sup>511</sup> U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, “NAEP State Comparisons,” <http://nces.ed.gov/nationsreportcard/statecomparisons/>.

<sup>512</sup> Minnesota Office of Higher Education, “ACT & SAT Test Scores,” (accessed Mar. 21, 2014), <http://www.ohe.state.mn.us/mPg.cfm?pageID=792>.

<sup>513</sup> Interview 12; Interview 21; Interview 23; Interview 24; Interview 37; Interview 50.

<sup>514</sup> Interview 12.

<sup>515</sup> Interview 21.

Minnesota; this was my dream. That book – I brought it, I have it. From the prison to our native small town, then Thailand and now here.”<sup>516</sup>

## SPECIAL POPULATIONS, SPECIAL CHALLENGES

### REFUGEES

Minnesota’s immigrant population is unique in its makeup. A large percentage is comprised of diverse refugees, heralding from Bhutan, Bosnia, Burma, Cambodia, Ethiopia, Iraq, Laos, Liberia, Somalia, the former Soviet Union, Vietnam, and other countries.<sup>517</sup>

Refugees are not a monolithic population; however, there are some commonalities of fleeing one’s home country due to conflict or persecution that create vulnerabilities for students. Refugees and other displaced persons are subjected to potential trauma in the country of origin, during their flight, and in the country of refuge, leading to what has been termed “the triple trauma paradigm.”<sup>518</sup> As one interviewee put it, “[the schools] have to be sensitive to that situation, too.”<sup>519</sup>

Some refugee students may simply need additional assistance because their parents are contending with the difficulties of coping, adjusting, and trying to begin a new life. Others may need mental health services to treat a range of issues, from depression to post-traumatic stress disorder.

Educators help refugee students acclimate to a new culture while helping them learn. Interviewees identified a range of needs to this end – from “helping them figure out technology without them being on Facebook all day,”<sup>520</sup> to helping parents understand the educational system. Some refugees and immigrant groups do not have considerable experience with formal education systems. Some may not “read or write in their first language.”<sup>521</sup> For these groups, “there is a lot of catching up to do,” as one EL teacher of refugee students explained. “When you come to a country like this where everything is really dependent on literacy...it's not just about teaching language, it’s about teaching a culture of literacy.”<sup>522</sup>

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<sup>516</sup> Interview 23.

<sup>517</sup> World Relief Minnesota, “Refugee Populations in Minnesota,” (accessed Mar. 21, 2014), <http://www.worldreliefmn.org/about-refugees/refugee-populations-in-minnesota/#sthash.iZSCXq1W.dpuf>.

<sup>518</sup> R. Baker, “Psychological Consequences for Tortured Refugees Seeking Asylum and Refugee Status in Europe,” in *Torture and Its Consequences: Current Treatment Approaches* (New York: Cambridge University Press, 1992), 83–106.

<sup>519</sup> Interview 18.

<sup>520</sup> Interview 177.

<sup>521</sup> Interview 177.

<sup>522</sup> Interview 177.

## EDUCATION

Academically, the U.S. educational system is not well equipped to meet the needs of older children of refugees who missed several years of education while surviving or fleeing conflict or living in a refugee camp. A cultural liaison remarked, “Kids are placed by age here, and I think that’s wrong. Some kid with a second-grade education who was in a refugee camp until age 14 is placed in high school. That kid will probably drop out.”<sup>523</sup>

Minnesota law provides for free high school<sup>524</sup> or adult basic education<sup>525</sup> classes until age 21. While there are some alternative high schools<sup>526</sup> that tailor services to newly arrived refugee students, several interviewees recommended that the state “increase [the] maximum age for attending schools.”<sup>527</sup> An administrator in southern Minnesota reported that what is needed is “a statewide education plan for the 16- to 22-year-old immigrants lacking a connection to life in America,” saying, “this should not be the responsibility of local districts.”<sup>528</sup>

### UNDOCUMENTED STUDENTS

Undocumented students and families are another population that needs special consideration to reduce their fear and increase their opportunities to engage with schools. Interviewees noted the strong sense of fear with which undocumented students and families live.<sup>529</sup> One of the primary sources of anxiety is around deportation of themselves or a family member. “Many students deal with fear of deportation,”<sup>530</sup> and thus are “probably fearful of making themselves too ‘seen.’”<sup>531</sup> This can mean that “schools try to involve parents, but undocumented parents are afraid to go out – it is too risky.”<sup>532</sup> It can also lead to families moving frequently, leading to high student mobility,<sup>533</sup> which puts them at a serious disadvantage academically.<sup>534</sup>

Students and families may also have a “fear of speaking up and asking for what they need,”<sup>535</sup> which prevents children from receiving services that might be available to them. Education professionals

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<sup>523</sup> Interview 130.

<sup>524</sup> Minn. Stat. § 120A.20 (2013).

<sup>525</sup> Minn. Stat. § 124D.52, subd. 1(b) (2013).

<sup>526</sup> See, for example: LEAP High School in Saint Paul, Minnesota: <http://leap.spps.org/home.html>.

<sup>527</sup> Conversation 24; Interview 73; Interview 169; Interview 178.

<sup>528</sup> Interview 73.

<sup>529</sup> Conversation 17; Interview 144; Interview 160; Interview 168.

<sup>530</sup> Conversation 17.

<sup>531</sup> Interview 168.

<sup>532</sup> Interview 137.

<sup>533</sup> Conversation 17.

<sup>534</sup> Institute for Children and Poverty, “Miles to Go: The Flip Side of the McKinney-Vento Homeless Assistance Act,” Jan. 2003, [http://www.citylimits.org/images\\_pdfs/pdfs/Homeless%20students%20study.pdf](http://www.citylimits.org/images_pdfs/pdfs/Homeless%20students%20study.pdf).

<sup>535</sup> Interview 160.



expressed a parallel concern: they want to provide referrals for help, but fear that they may be exposing the student or family to risk of deportation in doing so. They expressed the need for assistance in finding safe referrals and in understanding the implications of presenting such referrals to students and families.

“Many students deal with fear of deportation.”

Many undocumented families live at or near poverty.<sup>536</sup> In addition to inherent hardships, the situation can also mean that U.S.-citizen children whose parents are undocumented need to get jobs to help support the family. One administrator said, “We have students who work at Kohl’s or Burger King and are the highest wage earners in their families.”<sup>537</sup> If students spend a considerable amount of time working, they have less time to spend on homework, extracurricular activities, and other social events that might strengthen their connections with school.

To address some of the fear and logistical difficulties around documentation, one district reported changing the parent volunteer form so that they did not ask for Social Security numbers, which are not required to run background checks.<sup>538</sup> A service provider noted that schools can also issue photo IDs so that undocumented students have some form of identification.<sup>539</sup>

### UPWARD TRENDS, PERSISTING DISPARITIES

Minnesota has seen marked overall gains in mathematics and modest gains in reading in the last decade.<sup>540</sup> Indicators show many significant improvements among minority groups, as well. For example, during the same time frame, graduation rates improved for all students of color, with Hispanics’ rate increasing by 20 percentage points.<sup>541</sup> Moreover, in 2013, “African American students in Minnesota posted big gains in math, performing fourth-highest among all African American students in the country, compared to 22nd in 2011.”<sup>542</sup> The increased, focused attention on ethnic minorities, including immigrants and refugees, should be acknowledged, and the gains celebrated.

<sup>536</sup> Migration Policy Institute, “State Immigration Data Profiles: Minnesota,” (2012 Income and Poverty Table), <http://migrationpolicy.org/data/state-profiles/state/income/mn>.

<sup>537</sup> Interview 158.

<sup>538</sup> Interview 79.

<sup>539</sup> Interview 75.

<sup>540</sup> U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, “State Profiles,” (accessed Mar. 21, 2014), <http://nces.ed.gov/nationsreportcard/states/>.

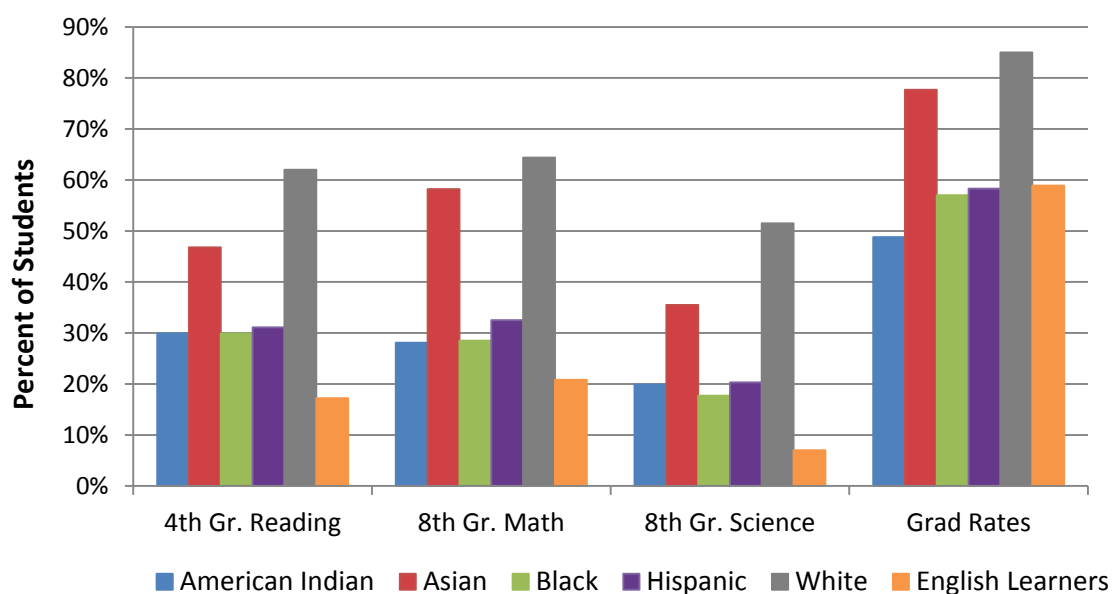
<sup>541</sup> Minnesota Compass, “High School Students Graduating on Time by Racial and Ethnic Group: Minnesota, 2003–2013,” <http://www.mncompass.org/education/high-school-graduation#1-6085-d>.

<sup>542</sup> State of Minnesota, Office of Governor Mark Dayton, “Minnesota Makes Significant Gains in Narrowing Achievement Gap,” Nov. 7, 2013, <http://mn.gov/governor/newsroom/pressreleasedetail.jsp?id=102-93335>.

## EDUCATION

Where trend data shows improvement, however, white students also improve. Thus, alarming disparities between white students and students of color persist.<sup>543</sup> As seen in Table 1, the rate of fourth grade reading proficiency for Black and Hispanic children is approximately half that of their white peers. English learners (ELs) (not a mutually exclusive category) experience the lowest proficiencies in reading, math, and science.<sup>544</sup> Black, Hispanic, and EL students graduate at a rate of 57, 58, and 59 percent respectively, while white students graduate at a rate of 85 percent.

**TABLE 1: MINNESOTA ACHIEVEMENT INDICATORS FOR 2012-2013**<sup>545</sup>



### Racial, Ethnic, and Special Population Groups

<sup>543</sup> U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, "Achievement Gaps," July 2009, <http://nces.ed.gov/nationsreportcard/pdf/studies/2009455.pdf>; The Minneapolis Foundation, "2013 Community Indicators Report," [http://www.minneapolisfoundation.org/Libraries/Documents\\_for\\_Website/2013OneMinneapolisReport.sflb.ashx](http://www.minneapolisfoundation.org/Libraries/Documents_for_Website/2013OneMinneapolisReport.sflb.ashx); Wilder Research, Minnesota Compass, "Overview," <http://www.mncompass.org/education/overview>.

<sup>544</sup> Wilder Research, Minnesota Compass, "High School Students Graduating on Time by Racial and Ethnic Group: Minnesota, 2003–2013," <http://www.mncompass.org/education/high-school-graduation#1-6085-d>; Wilder Research, Minnesota Compass, "High School Students Graduating on Time by Special Population: Minnesota, 2003–2013," <http://www.mncompass.org/education/high-school-graduation#1-6088-d>.

<sup>545</sup> Data from Minnesota Department of Education, "Minnesota Report Card," <http://rc.education.state.mn.us/>. The exact categories are American Indian/Alaskan Native; Asian/Pacific Islander; Black, not of Hispanic Origin; Hispanic; and White, not of Hispanic Origin.

## POVERTY AND SEGREGATION

In response to growing attention to educational disparities,<sup>546</sup> people pointed to poverty and segregation as contributing factors and cited a need for “fairness and equal quality of education.”<sup>547</sup> The varying degrees of quality among Minnesota schools are often determined by the level of wealth within the neighborhood or district in which the school is located, especially in metropolitan areas. A Latino community leader believes that quality “varies from community to community,” with some “doing a good job of tailoring programs for recent immigrants,” and others “not [doing well] at adapting to the ever-changing needs of students.”<sup>548</sup> One social worker observed: “Certain zip codes will get better funding for their children’s education. All across, not a lot of equity in quality of education...there are no surprises there.”<sup>549</sup>

### RISK FACTORS

Research indicates that the pre-migratory educational status of parents and their post-migratory employment status (see Chapter 3: Economic Opportunity) make a significant difference in academic outcomes of immigrant youth.<sup>550</sup>

Inequities have widened with the rise of segregation over the last two decades. A policymaker noted: “We have a significant problem with segregation in Minnesota.”<sup>551</sup> Immigrants pointed out these divisions and their impact on them. A Somali woman expressed the acute impact of such divides on her personally: “I love this country,” she said. “But it isn’t easy to live here.” When asked to explain, she responded: “I’ve lived here for almost 21 years, and I still feel like a foreigner. I am still a Somali woman. I am not an American Somali woman...because everywhere you look, there is separation. There are white schools, and black schools, and Somali schools, and Muslim schools. But the only ones that ever seem to do well are the white schools.”<sup>552</sup>

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<sup>546</sup> Reducing the achievement gap is included in Minnesota’s waiver for requirements in the Elementary and Secondary Education Act. Minnesota Department of Education, “ESEA Waiver,” (2013), <http://education.state.mn.us/MDE/JustParent/ESEA/>.

<sup>547</sup> Conversation 21.

<sup>548</sup> Interview 106.

<sup>549</sup> Interview 115.

<sup>550</sup> Suet-Ling Pong, Nancy S. Landale, *Academic Achievement of Legal Immigrants’ Children: The Roles of Parents’ Pre- and Postmigration Characteristics in Origin-Group Differences*, 85(5) *Child Development* 1543–59 (Sept. 2012).

<sup>551</sup> Interview 162.

<sup>552</sup> Interview 41.

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A cultural liaison reporting on a local geographical division said, “One side has more Caucasians. [The other] is more black and brown.”<sup>553</sup> When asked if she knew why, she replied, softly: “It is too deep to talk about it.”<sup>554</sup>

Immigrants and refugees in Minnesota are more likely to be people of color, more likely to have limited English proficiency, and more likely to be poor than U.S.-born residents.<sup>555</sup> This intersection means that immigrant students are more vulnerable to experiences of racial isolation and the effects of concentrated poverty.

### CURRENT TRENDS IN MINNESOTA

A paper released by the Institute on Metropolitan Opportunity asserts that: “Public-school segregation, after dramatically improving in the era of civil rights enforcement (1968-90), has significantly eroded. Blacks are now almost as racially isolated from whites as they were at the time of the passage of the 1964 Civil Rights Act. For Latino students, segregation is worse than ever. Like housing segregation, school segregation is most pronounced in the Northeast and Midwest.”<sup>556</sup>

The impact of this segregation in Minnesota and other areas of the country is decreased student achievement in minority schools.<sup>557</sup> A 2002 North Carolina study “found that attending a segregated black elementary school has direct negative effects on achievement...even after controlling for a host of individual and family background factors.”<sup>558</sup>

*cont. on next page*

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<sup>553</sup> Some schools have different names for this position, such as Equity or Outreach Specialist or Family Liaison. The role of the staff member is to act as a liaison between students, faculty, and families.

<sup>554</sup> Interview 150.

<sup>555</sup> Migration Policy Institute, “State Immigration Data Profiles: Minnesota,” (2012 Income and Poverty Table), <http://migrationpolicy.org/data/state-profiles/state/income/mn>.

<sup>556</sup> University of Minnesota Law School, Institute on Metropolitan Opportunity, *America’s Racially Diverse Suburbs: Opportunities and Challenges*, by Myron Orfield and Thomas Luce (July 2012), 4, [http://www.law.umn.edu/uploads/e0/65/e065d82a1c1da0bfef7d86172ec5391e/Diverse\\_Suburbs\\_FINAL.pdf](http://www.law.umn.edu/uploads/e0/65/e065d82a1c1da0bfef7d86172ec5391e/Diverse_Suburbs_FINAL.pdf).

<sup>557</sup> Stephen B. Billings, David J. Deming, and Jonah E. Rockoff, National Bureau of Economic Research Working Paper No. 18487, “School Segregation, Educational Attainment and Crime: Evidence from the End of Busing in Charlotte-Mecklenburg,” (Cambridge, Massachusetts: National Bureau of Economic Research, Oct. 2012), <http://www.nber.org/papers/w18487>.

<sup>558</sup> Roslyn Arlin Mickelson, University of North Carolina at Charlotte, Department of Sociology, “The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools,” Aug. 2002, <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/the-academic-consequences-of-desegregation-and-segregation-evidence-from-the-charlotte-mecklenburg-schools/mickelson-academic-consequences-desegregation.pdf>.

Nationally, the “greatest progress in closing the gap coincided with the historic push for school desegregation in the 1960s and 1970s. Stagnation came after efforts to integrate schools slowed down. Today, the test score gap is nearly 50 percent larger in states with the highest levels of school segregation.”<sup>559</sup>

This is largely because these racially isolated schools tend to be “high-poverty, low-performing schools.”<sup>560</sup> High-poverty schools present punishing barriers for any student. A summary of research reveals that “parents know what ...fifty years of sociological data have made clear: being born into a poor family places students at risk, but to be assigned then to a school with a high concentration of poverty poses a second, independent disadvantage that poor children attending middle-class schools do not face. Taken together, being poor and attending schools with classmates who are poor constitutes a clear ‘double handicap.’”<sup>561</sup>

These students have “classmates who are generally less prepared, have lower aspirations and graduation rates and have greater absences; parents who are less involved, with less political and financial clout; and teachers who tend to be less experienced and more commonly teach outside their fields of concentration.”<sup>562</sup>

This is a grave concern in Minnesota, where “elementary students of color in the Twin Cities metro are more than five times as likely to attend schools with high concentrations of poverty” and “more than thirty times as likely as white students to find themselves in very high poverty schools.”<sup>563</sup>

## MOVING FORWARD

International human rights standards require governments to “particularly condemn racial segregation,”<sup>564</sup> and “avoid segregated schooling.”<sup>565</sup> Minnesota law is out of step with these

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<sup>559</sup> Russell Sage Foundation, “Steady Gains and Stalled Progress: Inequality and the Black-White Test Score Gap,” <https://www.russellsage.org/publications/steady-gains-and-stalled-progress>.

<sup>560</sup> Margaret C. Hobday, Geneva Finn, and Myron Orfield, *A Missed Opportunity: Minnesota’s Failed Experiment with Choice-Based Integration*, 35 William Mitchell Law Review, 936, 940 (2009).

<sup>561</sup> Poverty & Race Research Action Council, “Annotated Bibliography: The Impact of School-Based Poverty Concentration on Academic Achievement & Student Outcomes,” Washington, DC, [http://www.prrac.org/pdf/annotated\\_bibliography\\_on\\_school\\_poverty\\_concentration.pdf](http://www.prrac.org/pdf/annotated_bibliography_on_school_poverty_concentration.pdf).

<sup>562</sup> Diversitydata.org, *Segregation and Exposure to High-Poverty Schools in Large Metropolitan Areas: 2008–09*, by Nancy McArdle, Theresa Osypuk, and Dolores Acevedo-Garcia (Sept. 2010), 1, [http://diversitydata.sph.harvard.edu/Publications/school\\_seggregation\\_report.pdf](http://diversitydata.sph.harvard.edu/Publications/school_seggregation_report.pdf).

<sup>563</sup> University of Minnesota Law School, Institute on Race & Poverty, *A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods*, by Myron Orfield, Thomas Luce, Baris Gumus-Dawes, Geneva Finn, and Eric Myott (July 2009), 3, <https://www.law.umn.edu/uploads/ec/fd/ecfdc6101486f404170847f46b03a083/1-Comprehensive-Strategy-to-Integrate-Twin-Cities-Schools-and-Neighborhoods.pdf>.

<sup>564</sup> CERD, Art. 3.

norms, making integration difficult. The state’s current law requires proof of intent to segregate,<sup>566</sup> does not cover open enrollment policies, and is the only state in the United States<sup>567</sup> that exempts charter schools from its anti-segregation rule.<sup>568</sup> Yet, violations of the right to education “include...the failure to take measures which address de facto educational discrimination.”<sup>569</sup> In other words, the effect is the same, regardless of intent, and must be addressed by the government. “States parties must closely monitor education – including all relevant policies, institutions, programmes, spending patterns, and other practices – so as to identify and take measures to redress any de facto discrimination.”<sup>570</sup>

#### A RECENT HISTORY OF SEGREGATION

Contemporary segregation is not the result of the type of policies in place before the Civil Rights Act, which intentionally separated children of color from their white peers. Rather, it has its roots in neighborhood and community segregation.<sup>571</sup> These patterns have been exacerbated by recent school choice policies without protections against segregation.

Designed to give parents choices through open enrollment within and between districts and to “promote innovation, quality, choice and accountability in public education”<sup>572</sup> through charter schools, these policies have accelerated existing segregation among Minnesota schools. The rationale of open enrollment is that parents can choose to send their child to whichever school they deem best, which would provide choice to families and promote competition that improves all schools.

*cont. on next page*

<sup>565</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, Discrimination Against Non-Citizens ¶ 31, UN Doc. CERD/C/64/Misc.11/rev.3 (Feb.–Mar. 2004), <http://www.errc.org/cms/upload/media/03/CE/m000003CE.pdf>.

<sup>566</sup> Minn. Rules 3535.0110, subp. 9 (defining “segregation” as “the intentional act or acts by a school district that has the discriminatory purpose of causing a student to attend or not attend particular programs or schools within the district on the basis of the student’s race and that causes a concentration of protected students at a particular school”).

<sup>567</sup> The Civil Rights Project, *Equity Overlooked: Charter Schools and Civil Rights Policy*, by Erica Frankenberg and Genevieve Siegel-Hawley (Nov. 2009), 14, <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/equity-overlooked-charter-schools-and-civil-rights-policy/frankenber-equity-overlooked-report-2009.pdf>.

<sup>568</sup> Minn. Rules 3535.0110, subp. 8.

<sup>569</sup> CESCR, GC No. 13, The Right to Education ¶ 59, UN Doc. E/C.12/1999/10 (Dec. 1999).

<sup>570</sup> CESCR, GC No. 13, The Right to Education ¶ 37, UN Doc. E/C.12/1999/10 (Dec. 1999).

<sup>571</sup> Housing policy and education policy are closely related. See Housing chapter, “Residential Segregation.”

<sup>572</sup> MN Association of Charter Schools’ website, <http://www.mncharterschools.org>.

The reality, however, is that selective schools in affluent areas often have limited space and most immigrant families do not have access to good information about their options, nor the time and transportation needed to get their child to a district with a higher-performing school. Moreover, many white families tend to move their children out of schools as they become more diverse. Sometimes this is to a neighboring district, and increasingly in diverse suburbs, it is to newly created charter schools that are “predominantly white.”<sup>573</sup>

The majority of students served by charter schools, however, are still low-income students and students of color.<sup>574</sup> Many immigrant and refugee parents decide to send their children to charter schools. Charters can offer an environment where a particular immigrant population is often the supermajority, and as such, reduce cultural and language barriers. They often hire staff members from that immigrant group and offer specialized services, such as traditional foods in the cafeteria. One interviewee said she felt her children’s charter school “is more culturally rich.”<sup>575</sup> Another interviewee reported, however, that immigrant families in one suburban community fought to have their children stay in the integrated public school when they were offered a Somali charter alternative, saying that immigrant families do not always know their options – and sometimes their only other real option is a low-performing neighborhood school.<sup>576</sup>

It is noteworthy that many charter schools – “created to address significant problems relating to achievement”<sup>577</sup> – have drawn considerable resources away from traditional schools, yet perform below them academically, even “after controlling for student poverty, race, special education needs, limited language abilities, student mobility rates, and school size.”<sup>578</sup>

“Integration is essential,” said one policymaker.<sup>579</sup> Minnesota has taken steps toward integration, and several programs aimed at achieving integration, such as integration districts, are in place.

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<sup>573</sup> University of Minnesota Law School, Institute on Metropolitan Diversity, *Charter Schools in the Twin Cities: 2013 Update* (Oct. 2013), 6, <http://www.law.umn.edu/uploads/16/65/1665940a907fdb31337271af733353d/Charter-School-Update-2013-final.pdf>.

<sup>574</sup> University of Minnesota Law School, Institute on Metropolitan Diversity, *Charter Schools in the Twin Cities: 2013 Update*, 2.

<sup>575</sup> Interview 135.

<sup>576</sup> Interview 182.

<sup>577</sup> Interview 162.

<sup>578</sup> University of Minnesota Law School, Institute on Metropolitan Diversity, *Charter Schools in the Twin Cities: 2013 Update*, 8. There are exceptions to this rule; a handful of charter schools outperform traditional public schools in at least one standardized test.

<sup>579</sup> Interview 162.

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These integration programs, however, are voluntary, not mandatory, and thus have had limited results to date.<sup>580</sup>

Integration has conversely positive effects to segregation's ill effects. According to one article, "Attending racially integrated schools and classrooms improves the academic achievement of minority students, whether measured by test scores, attendance rates, graduation rates, or the likelihood of attending college."<sup>581</sup> This is, in part, because "minority students who attend integrated schools are connected to higher-status social networks, which improve their chances of attending more selective colleges and getting higher-status jobs."<sup>582</sup> Moreover, in fulfillment of other human rights aims, "racially integrated schools are associated with a reduction in racial stereotypes and greater cross-racial understanding among all students."<sup>583</sup>

## FUNDING

Minnesota ranks 16<sup>th</sup> nationwide in per pupil revenue,<sup>584</sup> and education accounts for the largest percent of the state's budget.<sup>585</sup> Across the state, however, individuals reported that budgetary stress is one reason immigrant and refugee students are

“Nothing short of a massive national effort will be required to get all children off to a strong start in school.”

not always served as well as they could be. Among other issues, cuts have increased staff-to-student ratios and class size; decreased or completely cut professional development for teachers;

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<sup>580</sup> Margaret C. Hobday, Geneva Finn, and Myron Orfield, *A Missed Opportunity: Minnesota's Failed Experiment with Choice-Based Integration*, 35 William Mitchell Law Review, (2009), 938-39.

<sup>581</sup> University of Minnesota Law School, Institute on Race & Poverty, *A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods*, by Myron Orfield, Thomas Luce, Baris Gumus-Dawes, Geneva Finn, and Eric Myott (July 2009), 1, <https://www.law.umn.edu/uploads/ec/fd/ecfdc6101486f404170847f46b03a083/1-Comprehensive-Strategy-to-Integrate-Twin-Cities-Schools-and-Neighborhoods.pdf>.

<sup>582</sup> The Civil Rights Project, *Integrating Suburban Schools: How to Benefit from Growing Diversity and Avoid Segregation*, by Adai Tefera, Erica Frankenberg, Genevieve Siegel-Hawley, and Gina Chirichigno (2011), 63. Also available online at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/integrating-suburban-schools-how-to-benefit-from-growing-diversity-and-avoid-segregation/tefera-suburban-manual-2011.pdf>.

<sup>583</sup> The Civil Rights Project, *Integrating Suburban Schools: How to Benefit from Growing Diversity and Avoid Segregation*, by Adai Tefera, Erica Frankenberg, Genevieve Siegel-Hawley, and Gina Chirichigno (2011), 4. Also available online at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/integrating-suburban-schools-how-to-benefit-from-growing-diversity-and-avoid-segregation/tefera-suburban-manual-2011.pdf>.

<sup>584</sup> National Education Association, *Rankings of the States 2012 and Estimates of School Statistics 2013* (Dec. 2012), 39-40, [http://www.nea.org/assets/img/content/NEA\\_Rankings\\_And\\_Estimates-2013\\_\(2\).pdf](http://www.nea.org/assets/img/content/NEA_Rankings_And_Estimates-2013_(2).pdf). Ranking varies slightly based on year, term, and methods of measurement.

<sup>585</sup> Minnesota Department of Education, *K-12 Education Finance Overview 2011-2012* (Feb. 2012), 6, [http://education.state.mn.us/mdeprod/idcplg?IdcService=GET\\_FILE&dDocName=042213&RevisionSelectionMethod=latestReleased&Rendition=primary](http://education.state.mn.us/mdeprod/idcplg?IdcService=GET_FILE&dDocName=042213&RevisionSelectionMethod=latestReleased&Rendition=primary).



diminished funding of EL programs, cultural liaisons, and ombudsmen; limited state- and district-level staff who monitor spending and performance; and prevented or decreased early childhood opportunities.

“Education has been neglected,” said a state-level expert. “Not just for immigrants. Immigrants are at the bottom, so [they] feel it with greater strength, but the negative impact of defunding and eliminating systems of support has been developed over many years, and we’re now seeing it.”<sup>586</sup>

A district-level employee in a suburb sighed and said, “Everyone in education is stretched so thin that it’s easy for some groups to fall off the radar.”<sup>587</sup> A teacher in the metro agreed: “The public schools have been consistently defunded; a lot of money has been taken away. We aren’t able to offer the kinds of programs that these students need.”<sup>588</sup>

As much as the state is spending, there is widespread agreement that there are not enough resources allocated to meet the needs of many students, including immigrant and refugee students. This is perhaps not only a Minnesota experience; a publication on disparities by the Foundation for Child Development calls for increased investment in education, going so far as to say that “nothing short of a massive national effort will be required to get all children off to a strong start in school.”<sup>589</sup>

### SAFETY AND SECURITY IN SCHOOLS

In order to realize their right to an education, all children must be afforded safety and security in school. Currently, many immigrant and refugee youth fall victim to bullying and experience disparate effects of harsh school discipline policies. Federal and state laws and policies can help provide a better framework for district-level policies and practices in these areas.

#### BULLYING

Some immigrant students reported bullying on account of their immigration status. As most people know, “kids can be quite cruel...there are some big issues with bullying.”<sup>590</sup> Community members and other interviewees reported multiple accounts of teasing and bullying based on race, skin color,

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<sup>586</sup> Interview 162.

<sup>587</sup> Interview 153.

<sup>588</sup> Interview 179.

<sup>589</sup> Donald J. Hernandez and Jeffrey S. Napierala, *Disparities Among America’s Children No. 1, “Diverse Children: Race, Ethnicity, and Immigration in America’s New Non-Majority Generation”* (Foundation for Child Development, July 2013), 3, <http://fcd-us.org/sites/default/files/DiverseChildren%20-%20Full%20Report.pdf>.

<sup>590</sup> Interview 119.

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accent, ethnic background,<sup>591</sup> and perhaps reflecting contemporary national biases, a significant number based on real or perceived religious affiliation or national origin.<sup>592</sup>

A mother in a northern suburb pointed to the oft-cited issue of students targeting Muslim girls who cover: “In public schools, when girls wear head scarves, they are made fun of a lot. Some people say ‘Aren’t you hot in there?’ or ‘How can you dress like that?’”<sup>593</sup>

Evidence of such bullying is also borne out in the 2013 Minnesota Student Survey, which reveals race, ethnicity, and national origin (one category) and religion (another category) are two main reasons that students are bullied across the state.<sup>594</sup>

When posed the question of whether students felt safe in school, more than one interviewee stated that physical safety is upheld, but emotional safety, which also affects academic and social outcomes,<sup>595</sup> is not.<sup>596</sup> A district-level employee said: “The most important thing is that it feels safe for students and their families. What does safety mean? There are different kinds of safety – there is physical safety, which I think our schools do a good job with. In terms of emotional safety, we have more work to do, especially for immigrant students.”<sup>597</sup>

While some interviewees reported their children were treated well,<sup>598</sup> and one reflected that today’s students “are in a generation of youth that accepts different races and cultures more willingly,”<sup>599</sup> many stories from immigrants and refugees across the state suggest there is a need for improvement.

Fortunately, much attention is now being paid to the issue of bullying, and new proposed legislation seeks to remedy Minnesota’s current law,<sup>600</sup> which was found to be the weakest in the nation in a

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<sup>591</sup> Interview 38; Interview 48; Interview 84.

<sup>592</sup> Interview 18; Interview 24; Interview 35; Interview 73; Interview 101; Interview 127; Interview 157; Interview 161; Interview 167.

<sup>593</sup> Interview 18.

<sup>594</sup> Minnesota Department of Health, *2013 Minnesota Student Survey Statewide Tables*, Table 7 (2013), 7, <http://www.health.state.mn.us/divs/chs/mss/statewidetables/statetablesbygender13.pdf>.

<sup>595</sup> See, for example: Sarah D. Sparks, *Social-Emotional Needs Entwined with Students’ Learning, Security*, Education Week, Jan. 4, 2013, <http://www.edweek.org/ew/articles/2013/01/10/16environment.h32.html>.

<sup>596</sup> Interview 153; Interview 157.

<sup>597</sup> Interview 153.

<sup>598</sup> Interview 29; Interview 49.

<sup>599</sup> Interview 49.

<sup>600</sup> Minn. Stat. § 121A.0695 (2013).

U.S. Department of Education analysis.<sup>601</sup> The Safe and Supportive Schools Act enumerates, among others, race, ethnicity, religion, and national origin as bases of bullying.<sup>602</sup> Its passage would help to bring Minnesota closer to a place of compliance with human rights standards.<sup>603</sup>

#### SCHOOL DISCIPLINE POLICIES

Another contributing factor to insecurity in schools is the escalating national problem of punitive and exclusionary school discipline policies in response to non-violent acts committed in schools by minors. Such policies fuel the “school-to-prison pipeline” – a phrase used to describe the phenomenon of high percentages of young men of color ending up in the juvenile (and then criminal) justice system.

Multiple community members and interviewees flagged the problem of disparate rates of discipline among certain racial or ethnic groups

Students of color, including some immigrant and refugee students, are disproportionately affected by such policies.<sup>604</sup> Multiple community members and interviewees flagged the problem of disparate rates of discipline among certain racial or ethnic groups.<sup>605</sup> A Latino community member remarked that the community is “seeing disciplinary action – tracking children’s behavior and poor class performance, instead of helping them.”<sup>606</sup> An interviewee in greater Minnesota remarked, “There are also inequities in the school system. For example, a kid may be taunted in school because he is Mexican. Eventually this builds up and he throws the first punch. Then he gets suspended and the other kids do not receive any punishment.”<sup>607</sup>

<sup>601</sup> U.S. Department of Education, *Analysis of State Bullying Laws and Policies*, Exhibit 17, by Victoria Stuart-Cassel, Ariana Bell and J. Fred Springer (2011), 43-44, <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.

<sup>602</sup> Minnesota House of Representatives, Research Department, *House Research Bill Summary: H.F. 826* (May 2013), <http://www.house.leg.state.mn.us/hrd/bs/88/HF0826.pdf>.

<sup>603</sup> The Advocates for Human Rights is part of a coalition supporting The Safe and Supportive Minnesota Schools Act, led by OutFront Minnesota. OutFront Minnesota, “The Minnesota Safe Schools for All Coalition,” <http://www.outfront.org/safeschools/coalition>. At the time of publication, the bill, HF 826/SF 783, was being considered by the Minnesota legislature.

<sup>604</sup> See, for example: Ivory A. Toldson, Tyne McGee and Brianna P. Lemmons, “Reducing Suspension Among Academically Disengaged Black Males,” [http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy3\\_of\\_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline/toldson-reducing-suspension-crr-conf-2013.pdf](http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy3_of_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline/toldson-reducing-suspension-crr-conf-2013.pdf).

<sup>605</sup> Conversation 6; Conversation 9; Interview 87; Interview 152; Interview 154; Interview 157; Interview 177.

<sup>606</sup> Conversation 6.

<sup>607</sup> Interview 87.

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While juvenile delinquency adjudications generally do not make a person deportable,<sup>608</sup> contact with the juvenile justice system can result in an undocumented child being turned over to Immigration and Customs Enforcement for deportation.<sup>609</sup>

In January, 2014, the Departments of Education and Justice released new guiding principles for schools to try to curb these disturbing trends.<sup>610</sup> While helpful, the principles lack legal teeth on their own. Minnesota law stipulates that, in consultation with a range of stakeholders, each school board must adopt a discipline policy, to include “minimum consequences”<sup>611</sup> and “procedures for removal of a student from a class,”<sup>612</sup> and that this policy should be reviewed annually.<sup>613</sup>

The discipline policy<sup>614</sup> is to include “procedures determined appropriate for encouraging early detection of behavioral problems.”<sup>615</sup> This is in keeping with a “focus on prevention” called for by the federal guiding principles. However, referral provisions in the discipline policy are limited to chemical abuse issues<sup>616</sup> and special education<sup>617</sup> and provide no mechanism for students to receive other preventative services, such as assessments and other mental health referrals and resources.

In considering an appropriate school discipline policy, authoring committees should first conduct an audit to find out which groups are most likely to be affected and whether any disparities exist. The list of committee stakeholders in Minnesota statute includes pupils,<sup>618</sup> which affords schools the important opportunity to promote meaningful participation from students, particularly those from populations disproportionately affected.

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<sup>608</sup> Conviction for immigration purposes is defined at 8 U.S.C. § 1101(a)(48). It does not include delinquency adjudication.

<sup>609</sup> Interview 124.

<sup>610</sup> U.S. Department of Education, *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* (Jan. 2014), <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

<sup>611</sup> Minn. Stat. § 121A.61, subd. 3(n) (2013).

<sup>612</sup> Minn. Stat. § 121A.61, subd. 3(d) (2013).

<sup>613</sup> Minn. Stat. § 121A.65, (2013).

<sup>614</sup> The law also provides alternatives to suspension, allowing administrative discretion to allow a parent to attend school with the student or have the pupil attend school on a Saturday, supervised by the principal or “the principal’s designee.” Minn. Stat. § 121A.575 (2013). It is worth noting the absence of requisite student learning in the statute, as well as the permission to allow a child to be left alone with a single adult in a school setting for an entire day without stipulating a background check and other parameters, leaving minors vulnerable to abuse.

<sup>615</sup> Minn. Stat. § 121A.61, subd. 3(j) (2013).

<sup>616</sup> Minn. Stat. § 121A.61, subd. 3(m) (2013).

<sup>617</sup> Minn. Stat. § 121A.61, subd. 3(k) (2013).

<sup>618</sup> Minn. Stat. § 121A.61, subd. 1 (2013).

### INSTITUTIONAL RACISM

Looking at root causes and unpacking barriers can help schools and communities better understand, and take steps to address, the complex notion of “institutional racism” that underlies issues such as disparities in academic outcomes, disparate effects of school discipline policies, and lack of engagement among immigrant families.

### EARLY CHILDHOOD: PREPAREDNESS TO LEARN

Early childhood and preschool programs have a significant impact on any child’s future academic success, but can be particularly important for children of immigrant parents who lack familiarity with the U.S. educational system. Interviewees cited the importance of giving immigrant and refugee children “time to acculturate and get used to the learning environment.”<sup>619</sup> To address these needs, many Early Childhood Family Education (ECFE) programs conduct outreach and offer services free of charge to native-born and foreign-born families alike. Some schools provide parents’ kits, which “include colors, letters, numbers...and tips for parents” so that “they can be part of the team.”<sup>620</sup>

Those who have witnessed or participated in early childhood programs reported many successes. A school employee who works with young families said that their program “is having a huge impact in terms of academic socialization. The teachers definitely notice a difference in the students who come into kindergarten from the program versus those who have been at home with grandma as the babysitter.”<sup>621</sup> “We’re trying to be intentional and close the gap at the beginning,” said a Hmong cultural liaison. “It is hard to fix later on – for teachers and the whole educational system. If you can close the gap in K-3, there is less to deal with later.”<sup>622</sup> A wealth of scholarship demonstrates the need for early childhood programs for all students, including students of color<sup>623</sup> and low-income students,<sup>624</sup> and a particular need to have children reading by grade three.<sup>625</sup> There are waiting lists for early childhood programs, however, as there is not enough funding or space in some areas to

<sup>619</sup> Interview 150.

<sup>620</sup> Interview 150.

<sup>621</sup> Interview 156.

<sup>622</sup> Interview 150.

<sup>623</sup> See, for example: Katherine A. Magnuson and Jane Waldfogel, *Early Childhood Care and Education: Effects on Ethnic and Racial Gaps in School Readiness*, 15(1) *The Future of Children*, 169–96 (2005).

<sup>624</sup> See, for example: Greg J. Duncan and Aaron J. Sojourner, *Can Intensive Early Childhood Intervention Programs Eliminate Income-Based Cognitive and Achievement Gaps?*, 48(4) *Journal of Human Resources*, 945–68 (2013).

<sup>625</sup> See, for example: The Annie E. Casey Foundation, *Early Warning Confirmed: A Research Update on Third-Grade Reading*, by Leila Fiester (2013), <http://www.aecf.org/~media/Pubs/Topics/Education/Other/EarlyWarningConfirmed/EarlyWarningConfirmed.pdf>

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keep up with demand.<sup>626</sup> Nonetheless, in a positive step towards expanding access to early childhood, Minnesota will fund universal, all-day kindergarten next year.<sup>627</sup>

### STAFFING

When immigrant and refugee students do enter the educational system, there is not always proper staffing to best serve their needs. Many content area teachers are not fully prepared to meet the needs of English learners (ELs); there are insufficient numbers of staff who reflect the student population to bridge language and cultural divides; and there is insufficient staffing for holistic support, such as mental health professionals.

#### PREPAREDNESS TO WORK WITH IMMIGRANT STUDENTS

Many educational professionals reported that pre-service training programs have not historically prepared teachers for the students that now comprise their classrooms. Many teachers did not receive adequate training in providing remedial assistance and scaffolding for those well below grade level, nor in teaching to a variety of different cultures. With relatively rapid demographic change in certain areas of Minnesota, it stands to reason that pre-service programs did not previously include such emphases. Today, while the situation has improved, multiple interviewees called for advances in teacher preparation and professional development opportunities,<sup>628</sup> including specific pedagogical strategies to reach English learners (ELs) and “one to two [college-level] courses of diversity training.”<sup>629</sup> (See also “English Learner Services” on page 144.)

Many districts do currently require staff members to participate in cultural competency courses, however, and interviewees reported that they have invested significant resources in doing so.<sup>630</sup> There was a wide range of experiences around such professional development, based largely on the starting point of participants. An EL specialist in a predominately white district said many colleagues were still only receiving information on a surface level during these trainings. “I heard things like, ‘I had a great cultural experience with someone the other day; it was with my house cleaner from Russia.’”<sup>631</sup> Interviewees also pointed out that diversity trainings have limitations where hardline, ingrained racism is present. One staff person in a segregated suburb reported: “My white colleague had someone say to her, ‘I don’t know what the fuss is about – if we hadn’t brought them here as

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<sup>626</sup> Interview 168.

<sup>627</sup> Minn. Stat. § 126C.12 (2013).

<sup>628</sup> Interview 149; Interview 157; Interview 166; Interview 171.

<sup>629</sup> Interview 171.

<sup>630</sup> Interview 152; Interview 153; Interview 154; Interview 170.

<sup>631</sup> Interview 153.

slaves, they wouldn't be doing as well today."<sup>632</sup> "You can't professionally develop someone not to be a bigot,"<sup>633</sup> rationalized the specialist.

The charge of those training staff, however, is to take individuals where they are at and move them to a place of understanding so they can more effectively reach all of their students. And for the vast majority, professional development can be a valuable tool in adapting systems to best serve immigrant and refugee youth. Interviewees recommended that such training be high quality and "tailored to specific jobs to provide relevance."<sup>634</sup> A Hmong liaison involved in professional development encourages teachers to simply immerse themselves in the culture of their students, if even for an afternoon at an outdoor marketplace. "One day lasts for the whole year...and even year after year," as trust and relationships are established between staff and families and communities.<sup>635</sup> She encourages administration to give teachers an afternoon to step out of their comfort zones and experience another's "authentic culture," which can help them build this rapport.<sup>636</sup>

#### INSUFFICIENT LEVELS AND REPRESENTATION

Most schools and districts reported a desire for more educational staff, in general. A current expectation within the educational system is that every student receives individualized attention and instruction in each class. Teachers and administrators reported, however, that class sizes were such that individualized attention was not truly possible. "What does 'differentiate' mean when you have 36 students in your class?" asked one teacher. "It's impossible."<sup>637</sup> Another teacher said, "I have a parent who wants a note sent home every day with details of what her son did in class. What people don't understand is I have 167 students every day."<sup>638</sup>

In addition, interviewees called for more staff who represent the ethnic, cultural, and linguistic background of students in all professions within the school. This is an issue of numbers, but also of proportions, and was one of the major issues reported by both community and systems interviewees.<sup>639</sup> Without these professionals, schools expose themselves to a wide range of

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<sup>632</sup> Interview 152.

<sup>633</sup> Interview 153.

<sup>634</sup> Interview 153.

<sup>635</sup> Interview 150.

<sup>636</sup> Interview 150.

<sup>637</sup> Interview 169.

<sup>638</sup> Interview 186.

<sup>639</sup> Conversation 12; Conversation 17; Interview 97; Interview 135; Interview 150; Interview 152; Interview 158; Interview 160; Interview 164; Interview 171; Interview 177; Interview 178; Interview 179 (need for representative staff); Conversation 2, Conversation 9; Conversation 13; Interview 71; Interview 153 (need for bilingual and bicultural staff).

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problems and misunderstandings related to language and culture. Moreover, it is important for students to have role models and see professionals from their background. One staff member said that when she first arrived at one school, a child shouted from across the room, “Look! A Hmong!” demonstrating how uncommon it was for him to see a staff member that shared his ethnic background.<sup>640</sup>

Community members also cited a need for “more hiring of bilingual support staff”<sup>641</sup> who are able to provide translation services, provide interpretation for phone calls and meetings with family members, and communicate with ELs in their native language. Interviewees pointed to a need for staff who can additionally bridge cultural divides – which can sometimes be as important as language in communicating.<sup>642</sup> Other educational professionals and community members agreed, saying, “We *need* cultural liaisons in schools”<sup>643</sup> and bemoaning the small number: “[There are] not enough liaisons between parents and teachers.”<sup>644</sup> The importance of representative leadership can be summarized with this quote from a community member: “I think there are benefits to the whole community...when minorities are in these kinds of positions.”<sup>645</sup> One outstate interviewee reported: “They hired family liaisons at those two elementary schools, they can really communicate with the minority parents – it’s a night and day difference. They are bilingual and bicultural and there has been a huge increase in parent involvement. They’re telling them how to do homework, how to help their kids in school.”<sup>646</sup>

## RECRUITMENT, HIRING, AND RETENTION

Funding is not entirely responsible for this gap in staffing. Interviewees reported issues with recruitment, hiring, and retention practices and policies. Some schools, particularly in greater Minnesota, do actually have a dearth of qualified candidates. In many other areas around the state, however, interviewees said that districts are reporting too few applicants or citing lack of connections within minority communities when they simply lack an effective plan to recruit and retain these employees.<sup>647</sup> After an audit revealed the need for more bilingual staff in one district, an employee said: “What happened is what usually happens.” Instead of a proactive strategy, she heard things like, “‘nobody applies,’ ‘we can’t create positions with so many cuts being made,’ and

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<sup>640</sup> Interview 171.

<sup>641</sup> Conversation 17.

<sup>642</sup> Conversation 22; Interview 71; Interview 152; Interview 153; Interview 156; Interview 166.

<sup>643</sup> Interview 152.

<sup>644</sup> Conversation 22.

<sup>645</sup> Conversation 17.

<sup>646</sup> Interview 71.

<sup>647</sup> Interview 111; Interview 152; Interview 158.



‘we can’t get them to work here anyway.’”<sup>648</sup> A staff member in another district reported that she saw a practice of hiring friends or acquaintances, and not necessarily the most qualified candidate.<sup>649</sup> One interviewee stated simply: “People tend to hire [others] who look like them or are like them, and it creates disparities.”<sup>650</sup>

Keeping staff on site can also become problematic. “We want role models in the classroom, but retaining people of color is a problem because there is not a lot of affinity, especially when they are up against a situation where they are the only teacher of color.”<sup>651</sup> In addition to feeling isolated, immigrant staff members can also face hostility or discriminatory treatment by white staff members.<sup>652</sup> Furthermore, most staff members who are people of color are ending up in lesser positions and not in positions of leadership.<sup>653</sup> A community leader recommended the following: “The most important thing is to really begin a serious recruitment of education professionals that have to be included at all levels of education administration and education delivery and education policy-shaping. It is at all levels that you need diverse perspectives. Our approach is incredibly white, middle-class. Our curriculum, our testing system, is based on that narrow perspective of the world. That is the most significant challenge that we face. We have a student population that is totally disconnected.”<sup>654</sup>

#### ADDITIONAL STAFFING NEED: MENTAL HEALTH PROFESSIONALS

In addition to a lack of diversity in teaching staff, another “barrier is a shortage of psychiatrists – especially ones who can work with children.”<sup>655</sup> In Minnesota, there is a severe lack of mental health professionals and guidance counselors available to immigrant and refugee youth, particularly therapists or pediatric psychiatrists who are from different cultural backgrounds or who understand the unique challenges of some of these students. This was cited by multiple interviewees in different communities as being a barrier to student health and success.<sup>656</sup> This need is in addition to guidance counselors whose primary statutory charge is to assist students in postsecondary planning.<sup>657</sup>

<sup>648</sup> Interview 153.

<sup>649</sup> Interview 152.

<sup>650</sup> Interview 111.

<sup>651</sup> Interview 166.

<sup>652</sup> Interview 152.

<sup>653</sup> Interview 157.

<sup>654</sup> Interview 162.

<sup>655</sup> Interview 136.

<sup>656</sup> Conversation 13; Interview 96; Interview 129; Interview 130; Interview 136; Interview 144; Interview 148; Interview 150; Interview 163; Interview 167.

<sup>657</sup> Minn. Stat. § 121A.39 (2013).

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### ENGLISH LEARNER (EL) SERVICES

According to the Minnesota Department of Education, there were more than 65,000 English learners (ELs) in 2012-2013, which is 7.8 percent of all K-12 students.<sup>658</sup> This is up from 6.1 percent a decade ago.<sup>659</sup> While not all immigrant and refugee students require EL services, the majority of those receiving services are first- or second-generation immigrants or refugees. EL services can play a vital role in their success. Interviewees reported that overall, most schools did make accommodations for ELs<sup>660</sup> and teachers were trying to work with the resources they had to best meet their needs. The overarching theme for reported problems was a lack of focused energy, interest, and concern by the broader school and community for EL services. One district-level staff member said, “ESL used to be generously funded. Those days are gone.”<sup>661</sup> Specific issues delineated by interviewees revolved around EL staffing levels and support; training of general education staff; EL curriculum, pedagogy, and testing; and EL and special education placement processes.

### SUPPORTIVE STAFFING

Levels of EL teachers are generally insufficient. A ratio of 50 students per EL teacher was considered ideal at the elementary level – an improvement over the 100:1 ratio in years past.<sup>662</sup> Interviewees also expressed a need for additional support by having others within the school focused on the needs of ELs,<sup>663</sup> as well as improved administrative support, training of general education staff, and coordination between content and EL teachers.

Increasing EL instruction is most effective when bolstered by “an active and committed principal who (a) hires qualified teachers, (b) plans collaboratively with teachers and staff who are involved in [ELs’] education...and (c) provides ongoing staff development and planning time.”<sup>664</sup> One recommendation to ensure proper support, monitoring, and consistency is to hire a district-level EL coordinator who is both a language expert and is “licensed as an administrator and has the credibility of that role.”<sup>665</sup> This coordinator can help bring issues to the district level and can provide

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<sup>658</sup> Minnesota Department of Education, Division of Student Support, *English learner Education in Minnesota: 2013*, 10.

<sup>659</sup> U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, “Table 47: Number and Percentage of Public School Students Participating in Programs for English Language Learners, by State: Selected Years, 2002–03 through 2010–11,” [https://nces.ed.gov/programs/digest/d12/tables/dt12\\_047.asp](https://nces.ed.gov/programs/digest/d12/tables/dt12_047.asp).

<sup>660</sup> One interviewee did report that a charter school refused enrollment because the child was “too low” in English proficiency. Interview 161.

<sup>661</sup> Interview 171.

<sup>662</sup> Interview 148; Interview 171.

<sup>663</sup> Interview 153; Interview 178.

<sup>664</sup> Wen-Jui Han, *Bilingualism and Academic Achievement*, 83(1) *Child Development* 300–32 (Feb. 2012).

<sup>665</sup> Interview 166.

training on the appropriate role of an EL teacher and assistance when EL teachers end up teaching other subjects – a commonly cited issue.<sup>666</sup>

#### EL CURRICULA AND PEDAGOGY

International human rights guidelines instruct that “a State must...fulfill (provide) the adaptability of education by designing and providing resources for curricula which reflect the contemporary needs of students in a changing world...”<sup>667</sup> English Learner Education Program Guidelines from the Minnesota Department of Education call for research-based instruction for ELs, and in order to move the state closer to this goal, adopted the World-Class Instructional Design and Assessment (WIDA) standards in 2012.<sup>668</sup>

While beyond the scope of this report to detail all research-based practices in delivery models, curricula, and pedagogy, “Research-based Recommendations for Effective EL Instruction” on page 146 provides corroborating recommendations that respond to some of the concerns raised by interviewees. These generally detailed a serious need for increased attention and resources due to lacking best practices;<sup>669</sup> issues with too much,<sup>670</sup> too little,<sup>671</sup> or varied quality<sup>672</sup> of sheltered instruction; too little first-language literacy;<sup>673</sup> too much testing or using tests that are not culturally relevant;<sup>674</sup> and too few services for upper-level ELs<sup>675</sup> – whose “social language is wonderful and they seem to be okay, but it is hardest to make progress.”<sup>676</sup>

#### EL AND SPECIAL EDUCATION PLACEMENT

Interviewees and community members expressed concerns over student placement in EL and special education services.<sup>677</sup> As one outreach employee put it: “When it comes to ELs or disability, there is conflict and misdiagnosis.”<sup>678</sup>

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<sup>666</sup> Interview 153; Interview 169; Interview 171.

<sup>667</sup> CESCR, GC No. 13, The Right to Education ¶ 50, UN Doc. E/C.12/1999/10 (Dec. 1999).

<sup>668</sup> Minnesota Department of Education, Division of Student Support, *English learner Education in Minnesota: 2013*, 6.

<sup>669</sup> Interview 157.

<sup>670</sup> Interview 153.

<sup>671</sup> Interview 169.

<sup>672</sup> Interview 171.

<sup>673</sup> Interview 169; Interview 177.

<sup>674</sup> Interview 163; Interview 179.

<sup>675</sup> Interview 170.

<sup>676</sup> Interview 171.

<sup>677</sup> Conversation 6; Conversation 19; Interview 84; Interview 94; Interview 99; Interview 127; Interview 130; Interview 133; Interview 147; Interview 156.

<sup>678</sup> Interview 130.

With regard to EL services, a member of an immigrant-led advocacy group expressed a common sentiment: “Some students in [EL classes] shouldn’t be...and some students who should be...are not.”<sup>679</sup> Several interviewees blamed this misplacement on decisions based merely on a child’s last name,<sup>680</sup> a second language spoken by the family,<sup>681</sup> or an assumption constructed on status as an immigrant or refugee.<sup>682</sup> Some interviewees felt there was a tendency to over-identify students as needing EL services so that schools would receive more money.<sup>683</sup> In addition, individuals felt that “it is hard to get them out once they are placed.”<sup>684</sup> A related concern was that if misplaced, “students get trapped...and they are not challenged enough.”<sup>685</sup> “They aren’t getting the same education as other students.”<sup>686</sup>

**NATIONAL COUNCIL OF TEACHERS OF ENGLISH: “RESEARCH-BASED RECOMMENDATIONS FOR EFFECTIVE EL INSTRUCTION”<sup>687</sup>**

*For Schools and Policymakers:* Delineate explicit expectations for ELs; provide research-based professional development for teachers of ELs; and attend to processes and consequences of assessment of ELs (i.e., recognize ELs heterogeneity; avoid testing in English exclusively; use multiple assessments for varying purposes; and adhere to ethical principles of testing.)

*For Teachers:* Present ELs with challenging curricular content; set high expectations for ELs; use technology effectively; recognize socio-cultural factors; position native languages and home environments as resources; teach ELs in grades K-8 the basics of academic literacy; teach ELs in secondary school to simultaneously develop their skill with academic English and learn content in a variety of disciplines; and recognize the difference between ELs and under-prepared students in higher education.

Similarly with special education, individuals reported misplacement of immigrant and refugee students into special education services. “In [one town], all of the Latino kids that are going to

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<sup>679</sup> Interview 94.

<sup>680</sup> Interview 94; Interview 127; Interview 133; Interview 147.

<sup>681</sup> Conversation 19.

<sup>682</sup> Conversation 6.

<sup>683</sup> Interview 94; Interview 127. These interviewees are referring to Minnesota’s per student funding formula that grants additional dollars for a student if EL services are required in order to cover associated costs to provide such services.

<sup>684</sup> Interview 147 (quote); Interview 87; Interview 147; Interview 157 (sentiment expressed).

<sup>685</sup> Interview 87.

<sup>686</sup> Interview 127.

<sup>687</sup> National Council of Teachers of English, English Language Learners (2008), <http://www.ncte.org/library/NCTEFiles/Resources/PolicyResearch/ELLResearchBrief.pdf>.

kindergarten...are in special education,”<sup>688</sup> said an advocate in greater Minnesota. Another interviewee in a different region of the state said, “They are leveling children with disabilities that are not diagnosed.”<sup>689</sup> Another interviewee pointed out, however, that “many ELs qualify for speech therapy through a special education process.”<sup>690</sup>

There is also the basic issue of stigmatization of services and misunderstandings about what children need and can receive from these services. A suburban interviewee reported: “ESL was controversial here for a while. A lot of parents were opting out of it because they felt, my kid was born here, he/she speaks English, and they objected to the kids being pulled out of class, and they really felt it was a stigma.”<sup>691</sup> Minnesota law does allow parents to opt out of services,<sup>692</sup> and some immigrant and refugee students who could benefit from services do not receive them because their parent or guardian selects this option.

Conversations suggested that some of the issues were real and others were misperceptions. Both, however, result in children either not receiving necessary services or children not being challenged enough because the proper supports are not in place. In order to overcome misunderstandings, education professionals recommended improved communication with parents, and where possible, having a staff member from the cultural background of the family convey the information or having the staff member interacting with the parent be trained by such an individual.<sup>693</sup>

One elementary school teacher said she tries to communicate very directly: “I set up an appointment to talk through and explain the program to parents. I want to make sure that they know what the program is and how exactly it will benefit their child.”<sup>694</sup>

“A lot of parents were opting out of English learner programs because they really felt it was a stigma”

With regard to misplacement, an employee in a suburban district reported: “Our district has done a good job of bringing in communication specialists – it probably helps reduce special education referrals.”<sup>695</sup> A national 2010 journal article trying to unpack the disproportionate representation of ELs in special education corroborates this, demonstrating the importance of accurate referral

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<sup>688</sup> Interview 99.

<sup>689</sup> Interview 84.

<sup>690</sup> Conversation 24; Minnesota Administrative Rule 3525.1343.

<sup>691</sup> Interview 156.

<sup>692</sup> Minn. Stat. § 124D.60 (2013).

<sup>693</sup> Conversation 20; Interview 71; Interview 147; Interview 152; Interview 156; Interview 163.

<sup>694</sup> Interview 176.

<sup>695</sup> Interview 156.

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mechanisms.<sup>696</sup> The new World-Class Instructional Design and Assessment English language development standards and assessments offer guidance to this end. Educators and administrators can also access resources on the Minnesota Department of Education’s website to assist with evaluation and placement.<sup>697</sup>

### CREATING A WELCOMING ENVIRONMENT

Article 7 of Convention on the Elimination of Racial Disparities asserts that “States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups...”<sup>698</sup> In order to effect such results at a school level, administrators and staff must together create a welcoming environment for all students.

### HUMAN RIGHTS AND MULTICULTURAL EDUCATION

At the root of xenophobia and racism is lack of understanding and empathy. Numerous individuals recommended educating students about human rights principles and about others’ perspectives and experiences, including immigration, to help provide emotional security and create a welcoming environment for all students.<sup>699</sup>

“We often do role-plays with the children, freezing and then talking about what you could say. Children walk around saying: ‘Don’t be a bystander, intervene.’”

The importance of teaching such lessons is reflected in various international documents, such as the UN Declaration on Human Rights Education and Training<sup>700</sup> and UNESCO’s Guidelines for Curriculum and Textbook Development in International Education.<sup>701</sup> Minnesota requires knowledge of human

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<sup>696</sup> Dara Shifrer, Chandra Muller and Rebecca Callahan, *Disproportionality and Learning Disabilities: Parsing Apart Race, Socioeconomic Status, and Language*, Journal of Learning Disabilities (June 2010), <http://ldx.sagepub.com/content/early/2010/06/24/0022219410374236>.

<sup>697</sup> Minnesota Department of Education, *The ELL Companion to Reducing Bias in Special Education Evaluation*; Minnesota Department of Education, “English learner Disability Resources,” <http://education.state.mn.us/MDE/SchSup/SpecEdComp/EngLearnDisabiRes/index.html>.

<sup>698</sup> CERD, Art. 7.

<sup>699</sup> Conversation 12; Interview 110; Interview 119; Interview 19; Interview 6; Interview 49; Interview 162; Interview 160; Interview 157; Interview 162; Interview 150.

<sup>700</sup> UN Human Rights Council Advisory Committee, Declaration on Human Rights Education and Training (2011), <http://www.ohchr.org/EN/Issues/Education/Training/Pages/UNDHREducationTraining.aspx>.

<sup>701</sup> UNESCO, *Guidelines and Criteria for the Development, Evaluation and Revision of Curricula, Textbooks and Other Educational Materials in International Education in Order to Promote and International Dimension in Education*; UNESCO, *Guidelines for Intercultural Education*.

rights principles,<sup>702</sup> immigration, and cultural diversity insofar as “the wide range of contributions by and roles open to Americans of all races and cultures,” is to be included in the curriculum, with special emphasis on “American Indians/Alaskan natives, Asian Americans/Pacific Islanders, Black Americans, and Hispanic Americans.”<sup>703</sup>

At the school and district level, it is important that administrators and other school staff continue to expand anti-bullying programs and integrate expectations of respect for every person’s human rights into all aspects of the educational experience. One teacher said, “We often do role-plays with the children, freezing and then talking about what you could say. Children walk around saying: ‘Don’t be a bystander, intervene.’”<sup>704</sup> Schools can also promote a sense of pride and dignity among students in their ethnic identity, which has been associated with improved academic outcomes for some immigrant students.<sup>705</sup>

Interviews across the state also suggested that different perspectives and histories, including those of other countries, could be woven in more comprehensively. A Latino man in greater Minnesota put it this way: “In schools, [they] should teach about different cultures...explain why an immigrant comes here. A lot of people don’t know about different countries; don’t know anything about where the person is from.”<sup>706</sup>

Special attention should be paid to the backgrounds of students in a given school. A Hmong liaison articulated the connection to student wellbeing by saying:

*To feel a sense of belonging and the emotional/identity part, it needs to be included in the curriculum. That has not been visible in the school. The curriculum has maybe not been inclusive, where students feel valued. It does impact the students. ... [You] have to be able to relate to the curriculum and the school to believe you are a part of it...Encourage them to*

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<sup>702</sup> Minnesota Department of Education, *Minnesota K–12 Academic Standards in Social Studies*(2011), 6.1.3.5.1, 8.4.3.14.1, 8.4.3.14.5, 9.4.3.12.4, 9.4.3.13.4 (human rights), 6.4.4.23.1, 6.4.4.20.2, 7.1.3.6.2, 7.4.4.20.2, 8.4.3.14.2, 9.4.4.16.3, 9.4.4.23.3, 9.1.3.5.2, 9.4.4.20.2 (immigration), [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&ved=0CDoQFjAD&url=http%3A%2F%2Feducation.state.mn.us%2Fmdeprod%2Fidcplg%3FidcService%3DGET\\_FILE%26dDocName%3D042018%26RevisionSelectionMethod%3DlatestReleased%26Rendition%3Dprimary&ei=-nMGU87xCKvf4wTlrYGoCA&usq=AFQjCNG\\_PkWKf1mwhFtvdfow5fCkTMemQ&sig2=UGTuh0QsGb2G8lew88MFGg&bvm=bv.61725948,d.bGE](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&ved=0CDoQFjAD&url=http%3A%2F%2Feducation.state.mn.us%2Fmdeprod%2Fidcplg%3FidcService%3DGET_FILE%26dDocName%3D042018%26RevisionSelectionMethod%3DlatestReleased%26Rendition%3Dprimary&ei=-nMGU87xCKvf4wTlrYGoCA&usq=AFQjCNG_PkWKf1mwhFtvdfow5fCkTMemQ&sig2=UGTuh0QsGb2G8lew88MFGg&bvm=bv.61725948,d.bGE).

<sup>703</sup> Minnesota Administrative Rule 3500.0550, subp. 1A.

<sup>704</sup> Interview 148.

<sup>705</sup> Christina Spears Brown and Hui Chu, *Discrimination, Ethnic Identity, and Academic Outcomes of Mexican Immigrant Children: The Importance of School Context*, 83(5) Child Development 1477–85 (Feb. 2012).

<sup>706</sup> Interview 6.

*bring [customs] into the school and educate other kids. There has to be a time for kids to express who they are and where they are coming from.*<sup>707</sup>

Additional steps can be taken to intentionally facilitate integration of students at the interpersonal level and promote intercultural understandings. While children often self-segregate as a means of building and understanding identity,<sup>708</sup> there are numerous ways in which educators at all levels can proactively encourage and assist students in developing cultural competencies so they learn to work and play together.<sup>709</sup>

While overhauling curriculum, assessments, and pedagogy may seem a daunting task, even simple changes at a classroom level, such as having students present histories or current events through different countries' perspectives, can begin to help students feel included and welcome. For district- and state-level personnel, the need for including not only diversity but also human rights education to help students empathize and know how to take action on behalf of others is critical to bringing up future generations who support their communities and are engaged, responsible citizens.<sup>710</sup>

### SETTING THE TONE: STAFF TREATMENT AND INTERVENTION

A classroom and school environment are also influenced and impacted by the adults who work with students. These adults become important role models and examples of how to behave in a diverse setting. Community members and school staff reported both positive and negative experiences of adult behavior in schools. In the case of student mistreatment, if immediate action was taken by a responsible adult following the mistreatment, it provided significant assurance. For example, a young Latino man recalled the following: "A student was being mean to me and I was not able to handle it without reacting. (I started crying.) My teacher came over to see what was going on and I explained that it was my peer that was calling me a racial slur towards Mexicans. The teacher took immediate action in sending the boy to the principal's office...I felt like I was able to be where I wanted regardless of race. This gave me a huge boost in confidence."<sup>711</sup>

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<sup>707</sup> Interview 150.

<sup>708</sup> Beverly Daniel Tatum, *Why Are All the Black Kids Sitting Together in the Cafeteria: And Other Conversations About Race*, (Jan. 17, 2003).

<sup>709</sup> See, for example: Early Childhood: Patricia Ramsey, *Teaching and Learning In A Diverse World*, (Nov. 1, 2004); K-12: Ladson-Billings, G. "But that's just good teaching! The case for culturally relevant pedagogy." *Theory into practice* 34:3, 159-165 (1995); Postsecondary: Lee, A., Poch, B., Shaw, M., & Williams, R, *Engaging Diversity in Undergraduate Classrooms: A Pedagogy for Developing Intercultural Competence*, 38(2) ASHE Higher Education Report (2012).

<sup>710</sup> "Citizen" is meant here as a member of a community, not "citizen" in its legal sense.

<sup>711</sup> Interview 40.



Several interviewees recalled EL and other teachers going “above and beyond,” and interviews with EL teachers themselves demonstrated consistent advocacy on behalf of their students.<sup>712</sup> In one example in greater Minnesota, an EL teacher used her lunch period to tutor students and even interceded when a teacher believed that two young Latino girls “were being defiant and just acting like teenagers,” when in fact, they simply did not understand the instructions.<sup>713</sup>

Not all students found an advocate when they felt treated unfairly by school staff, however, and negative attitudes and treatment were reported.

There were accounts of a school in southern Minnesota asking about immigration status,<sup>714</sup> immigrant students receiving poor grades that

were perceived to be misaligned with academic performance,<sup>715</sup> and some teachers in a suburban school making it “more difficult” than necessary for Muslim students to pray during the school day.<sup>716</sup>

“I felt like I was able to be where I wanted regardless of race. This gave me a huge boost in confidence.”

Adults who work with immigrant and refugee students should be aware of the special challenges they face, as well as the perceptions they hold about how they are treated not only by other students, but by staff, as well. A welcoming environment can only be created with the willing participation of staff and students alike.

#### PHYSICAL ENVIRONMENT

At its most basic level, interviewees identified a welcoming environment as one that is conducive to learning and personal growth. Interviewees noted the importance of surroundings that reflect the student populations within the school, including signs in multiple languages, student artwork, or objects or artifacts from countries and cultures representative of the student body.<sup>717</sup> As one teacher put it: “To be welcome is...to be able to see yourself in the school.”<sup>718</sup> “Being a newcomer is really overwhelming...there’s something comforting about the familiar,”<sup>719</sup> explained another.

<sup>712</sup> Interview 35; Interview 61; Interview 148; Interview 169.

<sup>713</sup> Interview 169.

<sup>714</sup> Interview 94.

<sup>715</sup> Interview 23.

<sup>716</sup> Interview 161.

<sup>717</sup> Interview 160; Interview 171; Interview 176; Interview 179.

<sup>718</sup> Interview 179.

<sup>719</sup> Interview 176.

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Many classrooms and schools reported numerous proactive attempts to create such environments. One elementary school teacher said that there is not much in her classroom at the beginning of the year, but it is soon filled with a diverse array of student artwork that reflects them as individuals.<sup>720</sup>

### EXTRACURRICULAR ACTIVITIES

Participation in extracurricular activities has been found to strengthen student engagement and is connected to improved academic performance.<sup>721</sup> Immigrant community members whose children were participating recognized these benefits. One interviewee said: “My daughter is now much more motivated, because she is involved in more things like swimming.”<sup>722</sup> Another interviewee proudly reported: “We started a soccer team to help give Mexican kids positive alternatives after school and it won several tournaments.”<sup>723</sup>

Unfortunately, interviewees reported that immigrants and refugees, in general, participated at lower rates than their peers, for a variety of reasons. These include lack of appealing options (sports and activities they enjoy), a need to work after school to help support themselves or their families, lack of transportation or money for associated fees, and parental hesitation or refusal. An immigrant man in the metro laid out the concerns of parents in some immigrant communities: “[Parents] are very concerned with their children being in the wrong crowd or being exposed to something that is not acceptable such as alcohol or drugs. But they have this notion that they want their students to do well in the classroom and get accepted to a good school, so they limit what their children can do.”<sup>724</sup>

Schools can work with families and students to find out if extracurricular participation might be an option. Explicitly explaining the benefits of such activities and helping to accommodate for barriers such as transportation may help raise participation, and thus student engagement, satisfaction, and achievement.

### BARRIERS TO FAMILY INVOLVEMENT

Parent, or family, involvement can be limited among many immigrant populations,<sup>725</sup> due to perceptions of being unwelcome, language and culture, and lack of resources. There are many reasons to strive for improved family involvement, chief among them is immigrant students’

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<sup>720</sup> Interview 160.

<sup>721</sup> See, for example: Susan B. Gerber, *Extracurricular Activities and Academic Achievement*, 30(1) *Journal of Research & Development in Education* 42–50 (1996).

<sup>722</sup> Conversation 13.

<sup>723</sup> Interview 90.

<sup>724</sup> Interview 21.

<sup>725</sup> Conversation 19; Interview 66; Interview 147.

experiences and outcomes are impacted by the ability of their families to access the educational system.

“To feel welcome to a place is when I walk into a school building and regardless of culture, they greet me and do not ignore me and let me stand there.”

Federal law recognizes this, with requirements for schools receiving EL funding to try to engage parents and families.<sup>726</sup> Minnesota requires the state to create model parent involvement programs,<sup>727</sup> and “encourages” school

boards “to formally adopt and implement a parent and family involvement policy,” as well as an advisory committee that should represent and “consider the district's demographic diversity and barriers to parent involvement when developing its recommendations.”<sup>728</sup>

#### FAMILY PERCEPTIONS OF UNWELCOME

Any institution can seem intimidating if unfamiliar, particularly if outside your home country, and schools are no different. Some of the frustration experienced by school staff in engaging parents and family members is accounted for in perceptions by immigrants of being unwelcome. A leader in the African immigrant community summarized this sentiment by saying simply: “Parents are not welcomed in the schools. This keeps them from being involved in the way they should.”<sup>729</sup>

The majority of education interviewees started their commentary on “welcome” by describing the first encounter an immigrant would have: the reception area. “To feel welcome to a place is when I walk into a school building...regardless of culture, they greet me and do not ignore me and let me stand there,”<sup>730</sup> said an employee who works with refugee populations.

There were mixed reports of this initial encounter. “The problem is,” explained an outreach specialist in the metro, “it’s spotty. Customer service has...holes. People are overworked. They have cut and cut and cut and cut, and they are down to bare bones. Where there were two or three staff, there is now one person. So, there is little extra support. There is just no time. People think ‘how am I going to get this done?’ Then, someone walks in, and not only do they have to stop and help them, but they don’t speak English, so they have to go get someone who speaks the language.”<sup>731</sup>

<sup>726</sup> 20 U.S.C. § 6301 et seq.; 20 U.S.C. § 6801 et seq.

<sup>727</sup> Minn. Stat. § 124D.895 (2013).

<sup>728</sup> Minn. Stat. § 124D.8955 (2013).

<sup>729</sup> Conversation 21.

<sup>730</sup> Interview 171.

<sup>731</sup> Interview 168.

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An EL teacher at a public school expressed a similar sentiment: “Life is so rushed and you get into rush mode. I can be guilty of it. Grab my paper off the table and take off.”<sup>732</sup> However, she and other school staff said that somehow, each person must “recognize their humanity and needs”<sup>733</sup> and not let any person, regardless of language needs, be ignored. Someone has to “make a phone call,”<sup>734</sup> because “the next level, of course, is having someone who speaks the language. You have to have that to conduct business.”<sup>735</sup>

### COMMUNICATION: LANGUAGE AND CULTURE

Community members and interviewees across the state reported a variety of challenges to family involvement around language and culture. Such barriers can mean the difference between whether a student receives necessary services; whether families participate; and whether a student succeeds or “falls through the cracks.”

### LANGUAGE BARRIERS

While many immigrants speak English proficiently, there are more than 230 primary home languages among Minnesota student families.<sup>736</sup> As a result, language and communication are challenging to people both inside and outside of the educational system. Speaking about school and community participation, a local business leader in southern Minnesota said, “Language is still our biggest barrier.”<sup>737</sup>

Almost every district reported using language lines to communicate with parents who speak different languages. This is a service that allows school staff to call a student’s home, and whatever language is spoken by the parent or family member at the other end will be automatically recognized and translated. Multiple interviewees reported that such lines were cumbersome, however, or that teachers felt uncomfortable using them.<sup>738</sup> Therefore, the responsibility of communicating with immigrant and refugee parents, either through a language line or interpreter, was often put on the EL teacher, cultural liaison, or a bilingual paraprofessional. A liaison in a first-ring suburb reported matter-of-factly: “If I’m not there, and the school needs to call home, they will wait until I am back to make the call.”<sup>739</sup> Over-utilizing cultural liaisons, however, has the potential

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<sup>732</sup> Interview 160.

<sup>733</sup> Interview 168.

<sup>734</sup> Interview 157.

<sup>735</sup> Interview 168.

<sup>736</sup> Minnesota Department of Education, Division of Student Support, *English learner Education in Minnesota: 2013*, 12.

<sup>737</sup> Interview 62.

<sup>738</sup> Interview 152; Interview 153; Interview 157; Interview 161.

<sup>739</sup> Interview 161.

to lead to negative feelings on the part of parents. One community member explained that sometimes “parents feel that the teachers do not want to talk to them.”<sup>740</sup>

#### *CULTURE: COMMUNICATION PREFERENCES, STYLES, AND EXPECTATIONS*

Even with basic language access, there are a host of cultural and personal communication preferences, styles, and expectations that can thwart a message. Misunderstandings can, and do, lead to significant variations in services provided to students that can have an impact on achievement and wellbeing, as well as parent satisfaction – and thus involvement – with the educational system.

#### **PREFERENCES**

One of the primary methods for communicating with families in most schools is a printed flyer or letter home. While perhaps effective for the majority of students in Minnesota, large numbers of immigrant and refugee parents are at a disadvantage due to lack of language, lack of literacy, and cultural differences. For many immigrants, simply having a translated document in their native language can make the difference and make the material accessible. Most schools, however, have budget or staff limitations that prevent full translation. Many translate only the most important materials and only into one or two languages. For other parents, literacy is a solid barrier. An education professional who works with Somali parents explained:

*There is a lack of literacy, so written papers are not a main or a successful way of communication. I do a lot of visiting. I was hired with a Somali person and we went out to the two main apartment complexes with significant populations and just went door to door introducing ourselves. The relationship is so important – once you get to know people, it is easier. The biggest barrier we have is a lack of relationships. I’ve really been encouraging teachers to visit the families at their home to get a real understanding of where they live and the challenges.*<sup>741</sup>

Another common method of communication among schools is the robo-call. Highly efficient, such a service can reach every family in a matter of minutes. However, more than one cultural liaison<sup>742</sup> said they had to make individual phone calls if they wanted “people to show up, or to really get something.”<sup>743</sup> The reverse was also true. “We expect people to leave a message or send an e-mail, but especially for the parents who aren’t comfortable with English, they won’t do that.”<sup>744</sup>

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<sup>740</sup> Conversation 13.

<sup>741</sup> Interview 156.

<sup>742</sup> Interview 150; Interview 156; Interview 161; Interview 171.

<sup>743</sup> Interview 156.

<sup>744</sup> Interview 156.

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For all of these reasons, two administrators said they strongly encourage face-to-face meetings. Sometimes this is at the school, and in other cases, “we have to extend ourselves into the community.”<sup>745</sup> This can be a difficult position for teachers, who can have upwards of 150 students and are working with laws and policies that might discourage such interactions. “Teachers are taught to establish boundaries and not to give our cell phone numbers out; don’t visit people in their homes. But, with this population – it does not work. You have to be more accessible.”<sup>746</sup>

Knowing the preferred method of communication among immigrant families can help schools bridge misunderstandings and get parents and families more involved. Schools and leaders within immigrant communities can also work with families to help familiarize them with educational systems and communication methods in the United States.

### STYLES

Similarly, many immigrant groups reported difficulties understanding not only what was said, but what was not. The normative communication style in Minnesota can be indirect, and sometimes even unspoken, particularly if around a delicate subject matter. This can lead to miscommunication where parents do not know how to “read between the lines.” For example, one Liberian liaison said that a teacher might not want to offend a parent and so might present a consent form, saying, “Johnny is such a pleasure to have in class. He is doing pretty well. We do, however, think he could use some extra help.” She explained this would be very confusing to a Liberian family and said that she would use Liberian English to convey the message, saying something to the effect of, “Johnny is in fifth grade, and he’s reading like a baby. He needs help.” She said that parents also have to hear exactly what services are being offered and why.<sup>747</sup>

A Latino community member in another district expressed similar sentiment: “I have heard many parents say that this ‘Minnesota nice’ doesn’t help us, because in our countries they are very direct and say: ‘your daughter needs to bring her homework,’ but here all they say is: ‘she’s so bright and good,’ but then [she receives] bad grades.”<sup>748</sup>

### CULTURAL EXPECTATIONS

In addition to communication issues, there are different cultural norms that families bring with them when they move from another country. One difference that often arises is the level of engagement families are to have in their child’s education.

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<sup>745</sup> Interview 158; Interview 166.

<sup>746</sup> Interview 156.

<sup>747</sup> Interview 152.

<sup>748</sup> Conversation 13.

An education professional in the suburbs said, “You have to explain what you mean by parent involvement – how you want parents to be involved.”<sup>749</sup> This spans everything from parent-teacher conferences to extracurricular events, reading to children in the home, bringing questions or concerns to the teacher, being responsive to paperwork, participating in field trips, and expecting phone calls when a child is having discipline issues.

“In many countries, teachers are considered to be the experts, and parents are expected to defer to teachers and not “interfere” in their child’s education.”

A suburban outreach worker commented: “It’s hard for our Somali parents to know how to access the school. They don’t know who to call or when to call – we have these systems and spoken and unspoken rules and academic socialization is lacking because a lot of parents didn’t go to school.”<sup>750</sup>

In many countries, teachers are considered to be the experts, and parents are expected to defer to teachers and not “interfere” in their child’s education. A suburban interviewee explained, “Among the Hmong community...there is a reverence for teachers, and they are traditionally more educated and learned than the parents, so the expectation is that the teachers are responsible for teaching the children.”<sup>751</sup> This expectation extends to many other cultures, as well, and was reflected in reports from community members and school staff alike.<sup>752</sup>

Several interviewees or participants of community conversations mentioned the difference in parents acting as “advocates” for their children in the U.S. educational system. A white, long-term resident of a first-ring suburb shared, “My child has a learning disability, and I have had to advocate and advocate for him to go further in school. If we are struggling to advocate for our kids, what about everyone else?”<sup>753</sup> For this reason, a Hmong outreach worker said, “Especially for parents who don’t know the system, they are left out in getting an equitable education for their children.”<sup>754</sup>

Differences in expectations can be difficult for children to understand, too. A liaison commented, “Kids think, ‘if my parents don’t sit down with me to read or they don’t come to school or praise me

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<sup>749</sup> Interview 153.

<sup>750</sup> Interview 156.

<sup>751</sup> Interview 147.

<sup>752</sup> Conversation 17; Interview 104; Interview 147; Interview 150; Interview 156.

<sup>753</sup> Conversation 9.

<sup>754</sup> Interview 171.

for good work, my parents don't value education.' They might tell her, 'do good work in school' and have high expectations for [her], but it's disconnected."<sup>755</sup>

### PARENT-TEACHER CONFERENCES

Parent-teacher conferences are an amalgamation of the communication barriers that schools and families face. Beginning with the basic issue of language, all schools did report the general practice of having interpreters available for parent-teacher conferences. When there was proper outreach – that usually involved individual phone calls with a clear invitation and expectation of attendance – and interpretation was available, one liaison said parents are “delighted” to participate.<sup>756</sup> The potential pitfalls included:

- parents not knowing that they had to request interpreters in advance;
- only having interpreters for certain languages;
- not having enough interpreters and using one or two bilingual staff members to cover all of the conferences; and
- not scheduling more time to accommodate interpretation.

One staff member compared her school to another district: “For parent-teacher conferences – one problem is it takes longer if using an interpreter, but [we] still schedule the conference for [the standard] 15 minutes. In [a nearby district], they schedule 30-minute conferences if an interpreter will be used.”<sup>757</sup> This adds to the overall conference schedule and puts a heavier burden on coordination efforts, but essentially gives the family equal time and can improve family engagement.

Several interviewees also raised concerns around the issue of time.<sup>758</sup> Parent-teacher conferences often follow rigid schedules in order to accommodate many students in a short period of time, and sometimes occur during daytime hours, which is difficult for some immigrant and refugee families where parents may have multiple jobs and varying shifts. Interviewees reported that transportation, expectations of timeliness, misunderstandings of date or time, or simply wanting more time with the teacher can all be issues for teachers and schools. One interviewee in southern Minnesota reported, “We now have both a day and night conference to accommodate parents’ shift work schedules.”<sup>759</sup>

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<sup>755</sup> Interview 150.

<sup>756</sup> Interview 161.

<sup>757</sup> Interview 79.

<sup>758</sup> Interview 64; Interview 79; Interview 154; Interview 156; Interview 161.

<sup>759</sup> Interview 64.



*PARENT-TEACHER GROUPS*

Parent-teacher associations and organizations (PTAs, PTOs) are a good way for parents to take a leadership role in their child’s school. Reflecting wider issues of segregation in Minnesota, however, several interviewees noted that these groups are often segregated by race or country of origin.<sup>760</sup> “[There are] two PTOs – Hispanic parents and white parents,” said a staff member at a school in a suburban district.<sup>761</sup>

One liaison in a metro district said separate groups could help new-to-country immigrants acclimate and learn the system.<sup>762</sup> Others were concerned that segregated groups led to different levels of access to decision-making processes: “In the English meeting, substantive decisions are made, in Spanish, superficial [decisions are made].”<sup>763</sup> A district-level staff member in the metro area reflected on this dynamic, saying that he has heard complaints in the reverse, as well, and believed that it was likely a wider neighborhood or community dynamic being exposed in the group.<sup>764</sup> To deal with inequities, participants in one community conversation called for integration of parent-teacher groups to ensure equal access to decision-making processes.<sup>765</sup>

*LACK OF RESOURCES*

The final set of barriers to immigrant and refugee family participation centers around a lack of resources, and is felt the most acutely by those families experiencing poverty and not having significant formal educational experiences or English fluency.

Stories surfaced in interviews about parents struggling to help their children with homework for a number of reasons. One of those points to evidence of a persisting “digital divide,” in which parents without home access to a computer and internet service could not access parent sections of websites that house student grades, homework assignments, and other information. One EL teacher in central Minnesota reported getting around this barrier by printing out missing homework, grades, and progress reports that parents could not access online.<sup>766</sup> For some parents, it is not internet access, but rather language, which is the biggest barrier, as the entire website is in English. This was accommodated in one district by translating their “parent portal” into Spanish – the second most common language among parents, after English.

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<sup>760</sup> Conversation 9; Interview 152; Interview 155; Interview 161.

<sup>761</sup> Interview 152.

<sup>762</sup> Interview 161.

<sup>763</sup> Conversation 9.

<sup>764</sup> Interview 155.

<sup>765</sup> Conversation 16.

<sup>766</sup> Interview 169.

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Other obstacles included parents' work schedules, transportation, and childcare. Many immigrant parents are working more than one job or work opposite shifts. A professional working with parents of pre-K students said, "There are definitely some barriers to parent involvement in school. Work is the biggest one – people can't be there, can't get time off. We do send out a calendar at the beginning of the year, and when they can, people are asking for those days off way in advance."<sup>767</sup> Several schools described family nights and other school-sponsored events in which childcare and transportation was provided.

### FINDING SOLUTIONS: PARENT/FAMILY CLASSES

Several of the larger districts with high immigrant populations in Minnesota now provide courses for parents and family members to help them navigate the educational system. Parents also learn information to assist them in providing support to their children and advocating on their behalf when there is a problem. A liaison in one district reported that the classes were an effective and even an emotional experience for some participants and encouraged administrators to participate.<sup>768</sup> Most districts reported success with these classes and believed they could help significantly narrow the information gap and empower parents to become more involved.

## POSTSECONDARY SYSTEMS

According to the Universal Declaration of Human Rights, "technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."<sup>769</sup> Many of the issues that affect the K-12 system naturally occur in postsecondary access and institutions, as well, including unequal expectations of students, college readiness and support, college options, and discrimination.

“He recalled one young woman being told by a counselor, “you should probably just stick to being a secretary.”

### UNEQUAL ACCESS

While graduation rates at four-year institutions are going up overall, there are also disparities in graduation rates for those who enter a postsecondary institution (see Table 2). Governor Dayton has identified the need for improving access and opportunities within postsecondary systems: “By

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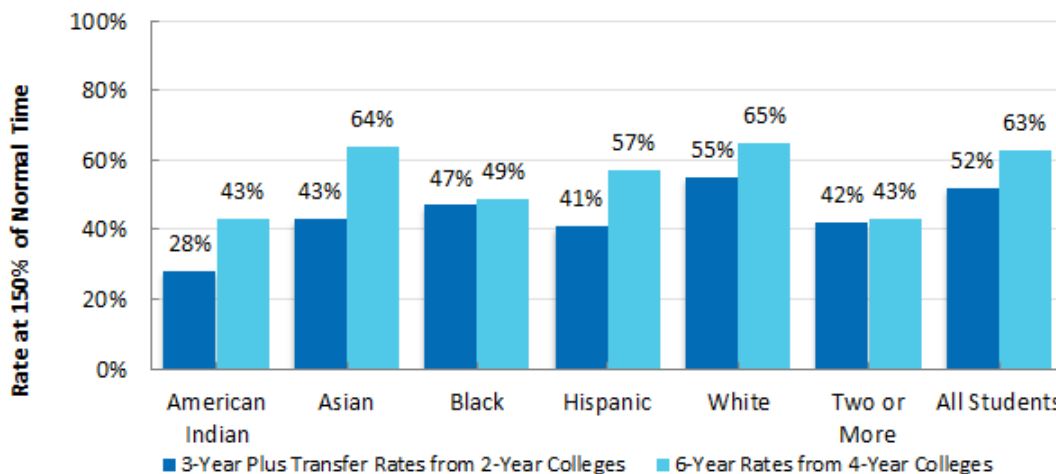
<sup>767</sup> Interview 156.

<sup>768</sup> Interview 152.

<sup>769</sup> UDHR, Art. 26.

2018 an estimated 70 percent of Minnesota jobs will require some education beyond high school. And right now, only 40 percent of Minnesotans hold postsecondary degrees.”<sup>770</sup>

**Table 2: Disparities in Postsecondary Graduation Rates**<sup>771</sup>



First-time, full-time undergraduates entering college in 2006 at Minnesota 4-year institutions and 2009 at Minnesota 2-year institutions and graduating from the same institution, or transferring to another institution (2-year colleges only) by 2012.

Source: U.S. Department of Education, IPEDS Graduation Rate Survey

**EXPECTATIONS**

There is a widespread belief that some groups of immigrant and refugee students are not given equal information about college and postsecondary options. Interviewees reported that “immigrants face very, very low expectations”;<sup>772</sup> need extra supports that they are often not receiving;<sup>773</sup> are prevented from attending college due to a lack of financial aid options; and face other barriers specific to immigration status.

Stories of unequal expectations, both in high school and college, came primarily from immigrant and refugee groups with disproportionate representation in lower socio-economic strata. A Latino man in the metro said, “It is common that Latinos will be told to stick to low-skill work.” He recalled a bright young woman being told by a counselor, “you should probably just stick to being a

<sup>770</sup> Governor Mark Dayton, The Office of the Governor Blog, “Helping Part-time College Students Succeed,” (Oct. 21, 2013), <http://state.mn.us/governor/blog/the-office-of-the-governor-blog-entry-detail.jsp?id=102-90533>.

<sup>771</sup> Minnesota Office of Higher Education, “Graduation Rates: Graduation and Retention Rates of Undergraduates in Minnesota’s Postsecondary Institutions,” <https://www.ohe.state.mn.us/mPg.cfm?pageID=754>.

<sup>772</sup> Interview 114.

<sup>773</sup> Interview 129.

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secretary.” He also told a story about recommending a book for a high school class and being told it was “too hard” for them, saying, “there is a mentality of them not being able to do anything.”<sup>774</sup> One expert commented that “many educators don’t teach as high to most students of color and American Indian students.”<sup>775</sup>

Numerous interviewees reported that immigrant students did not receive equal information about postsecondary options. In one egregious case in West Central Minnesota, a counselor “took Latino kids out of classes and put them in a ‘job shadowing’ class where they worked at a restaurant as bussers. The counselor told them that ‘that’s what you’ll end up doing.’” In this situation, mothers organized to track and report on the counselor responsible.<sup>776</sup>

Participants in a community conversation complained of two different districts: “[They] discourage non-white students from applying for college by saying things like, ‘why do you want this?’”<sup>777</sup> “[Immigrant] youth in high schools don’t receive the same support as white kids...They say, ‘college isn’t for everyone.’ The kids feel ostracized and under-deserving.”<sup>778</sup>

While these narratives relate blatant cases of misconduct, lower expectations are often the result of unconscious assumptions and erroneous connections made between language proficiency and knowledge of academic subject areas.

One interviewee recalled getting excellent assistance: “I had a very good high school counselor. He really encouraged me to apply to as many opportunities as possible. That doesn’t happen to everyone. I was really lucky.”<sup>779</sup>

## COLLEGE READINESS SUPPORT

Parents have traditionally taken primary responsibility for helping students prepare for, select, and apply to, colleges and universities. This leaves students who are the first in their family to attend college at a significant disadvantage, perpetuating familial socio-economic positions. Such students lack the built-in social networks,<sup>780</sup> messages and expectations, and direct assistance that the vast majority of students from middle- and upper-class families receive.

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<sup>774</sup> Interview 114. The book referenced is Alfredo Quiñones-Hinojosa and Mim Eichler Rivas, *Becoming Dr. Q: My Journey from Migrant Farm Worker to Brain Surgeon* (Berkeley: University of California Press, 2011).

<sup>775</sup> Interview 157.

<sup>776</sup> Interview 137.

<sup>777</sup> Conversation 9.

<sup>778</sup> Conversation 9.

<sup>779</sup> Conversation 19.

<sup>780</sup> Interview 182.

Minnesota has the second worst ratio of guidance counselors to students in the nation,<sup>781</sup> leaving many students without the necessary support to make appropriate decisions about college. Students need advice even in middle school and early high school on taking Advanced Placement (AP) and International Baccalaureate (IB) classes and thinking about which colleges might be a good fit academically, socially, and culturally.<sup>782</sup>

The problem has been recognized by a new law that “strongly encourages” districts to “have an adequate student-to-counselor ratio for its students beginning in the 2015-2016 school year and later.”<sup>783</sup> Moreover, numerous programs have sprung up to attempt to close the gap and give equal opportunities to immigrant and refugee students. This includes a state-run educational website for parents and students,<sup>784</sup> as well as mentoring and college-readiness programs run by nonprofits that target first-generation students.<sup>785</sup>

Some of these programs provide much needed direct assistance with filling out college applications and finding financial aid options. Yet, there is still much to be done. One current student recommended the following: “I think people could go into schools to talk to students about college and how to afford it being an immigrant. I think that would have helped me make better decisions.”<sup>786</sup> One government employee believes there should be more marketing to reach students with pointed messages while they are still in high school, such as, “PSAs, ads on sides of buses, etcetera” to “tell kids ‘it’s for them.’”<sup>787</sup> Once in college, many other services can be put in place to make up for gaps in readiness.

### OPTIONS AND AFFORDABILITY

Many immigrant and refugee students, even after overcoming other barriers, often lack postsecondary options for a variety of reasons, including lack of immigration status for undocumented students, lack of proper educational background for refugee students, and overall unaffordable costs of postsecondary institutions.

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<sup>781</sup> See, for example: The National Association for College Admission Counseling, K-12 Public School Student-to-Counselor Ratios, by State: 2010-2011,” <http://www.nacacnet.org/issues-action/LegislativeNews/Documents/StudentCounselorRatios.pdf>, citing the U.S. Department of Education, National Center for Education Statistics, “Public Elementary and Secondary School Student Enrollment and Staff Counts from the Common Core of Data: School Year 2010-2011,” (May, 2012).

<sup>782</sup> Danielle Moss Lee, *How to Provide Guidance to First Generation College-Bound Students*, Edutopia, Jan. 19, 2012, <http://www.edutopia.org/blog/first-generation-college-bound-danielle-moss-lee>.

<sup>783</sup> Minn. Stat. § 121A.39 (2013).

<sup>784</sup> Minnesota Department of Education, “Ready Set Go!,” <http://readyssetgo.state.mn.us/RSG/index.html>.

<sup>785</sup> See, for example: AVID, <http://www.avid.com/US/>; College Possible, <http://www.collegepossible.org/>; and Project Success, <http://www.projectsucces.org/>.

<sup>786</sup> Interview 44.

<sup>787</sup> Interview 164.

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After decades of advocating for their rights, undocumented students were recently granted life-changing opportunities through state legislation and a temporary reprieve from deportation. The Minnesota Dream Act, passed in 2013, opens financial aid options to undocumented students who meet certain requirements,<sup>788</sup> and Deferred Action for Childhood Arrivals (DACA), authorized by President Obama in 2012, provides temporary legal status that allows eligible young people to work.<sup>789</sup>

While the impact of the changes is significant, undocumented students do still face exclusion from some programs intended to assist first-generation students<sup>790</sup> and from some colleges and universities.<sup>791</sup> Others live with the fear that they may not be able to get a job upon graduation if DACA is not extended. These young people still need a permanent immigration status option for secure, universal access and opportunities.

Many new-to-country refugee students who enter as older teens face a different dilemma, struggling to adjust to a new country and culture while catching up academically and finishing high school while entering their 20s.<sup>792</sup>

Many students, regardless of immigration status, need more financial aid options for college to be a real choice. Affordability concerns were frequently cited by interviewees across the state.<sup>793</sup> Some simply cannot afford college. Said one interviewee in greater Minnesota, “Families try to provide in an ‘American’ way, but... people lost homes during the crisis. Kids want to go to college, but have no means.”<sup>794</sup> International students also reported difficulties in finding work,<sup>795</sup> and being “qualified for financial aid,” but not able to get it because they lacked “a credit history in America.”<sup>796</sup> A community interviewee reported students taking time off to save up money.<sup>797</sup> Reflecting on this

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<sup>788</sup> Minnesota Office of Higher Education, “Minnesota Dream Act,” <http://www.ohe.state.mn.us/mPg.cfm?pageID=2056>.

<sup>789</sup> U.S. Department of Homeland Security, “Deferred Action for Childhood Arrivals,” <https://www.dhs.gov/deferred-action-childhood-arrivals>.

<sup>790</sup> *See, for example:* U.S. Department of Education, Office of Postsecondary Education, “Federal TRIO Programs,” <http://www2.ed.gov/about/offices/list/ope/trio/index.html>.

<sup>791</sup> Interview 44.

<sup>792</sup> For additional information about refugees, see “Refugee Resettlement” in Chapter 6: Basic Needs, page 208.

<sup>793</sup> Interview 9; Interview 12; Interview 21; Interview 31; Interview 35; Interview 38; Interview 44; Interview 96; Interview 167.

<sup>794</sup> Interview 96.

<sup>795</sup> Interview 7; Interview 31; Interview 50.

<sup>796</sup> Interview 9.

<sup>797</sup> Interview 21.

pattern, a university faculty member said, “if [students] have to stop-start for various reasons (such as working), it is not a pathway to success. People then drop out.”<sup>798</sup>

According to one monitoring organization, Minnesota maintains a mediocre ranking nationally on state and local support of students in higher education,<sup>799</sup> and its affordability ranking is low.<sup>800</sup>

“There was a Muslim female student, pre-med, really bright. She wore a traditional hijab. In chemistry lab, students wouldn’t pick her to be lab partner. She said, ‘they think I’m less than, or not as smart.’”

## DISCRIMINATION

“Walking into a large lecture hall with 300 or more students and being the only one of three students of color – that’s hard,”<sup>801</sup> said a faculty member at a metro university. In addition to being a minority and having overcome many barriers even before arriving on campus, many foreign-born students face some kind of discrimination or mistreatment once in college.

A campus climate survey at a university in northern Minnesota “found...that white students in the hallways will take over the hallway, not moving, or students of color getting pushed out of the way. This ‘white territory’ issue came up in all the focus groups. Name-calling, people yelling racist statements, was another problem.”<sup>802</sup>

The issue of discriminatory treatment against Muslims emerged in the postsecondary scene, as it had in K-12 schools. One professor described two scenarios he had seen on campus: “There was a Muslim female student...fluent in English, pre-med, really bright. She wore a traditional hijab. In chemistry lab, students would not pick her to be lab partner. She was hurt by that. She said, ‘they think I’m less than, or not as smart.’ Another student removed her hijab, because she thought she’d be more welcomed.”<sup>803</sup>

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<sup>798</sup> Interview 167.

<sup>799</sup> NCHEMS Information Center for Higher Education Policymaking and Analysis, “State and Local Public Higher Education Support Per Full-Time Equivalent Student: 2011,” <http://www.higheredinfo.org/dbrowser/index.php?submeasure=67&year=2011&level=nation&mode=graph&state=0>.

<sup>800</sup> NCHEMS Information Center for Higher Education Policymaking and Analysis, “State and Local Public Higher Education Support Per Full-Time Equivalent Student: 2011,” <http://www.higheredinfo.org/dbrowser/index.php?measure=44>.

<sup>801</sup> Interview 167.

<sup>802</sup> Interview 61.

<sup>803</sup> Interview 167.

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Several current or former college students reported discriminatory grading and treatment by professors.<sup>804</sup> This included outright racism, as told by one interviewee who attended a community college: “I asked a question to my teacher...She started to scold me in class, [saying] ‘this isn’t elementary school’ and I ‘should have learned this in grade school.’ She said, ‘This is what’s wrong with you people.’ I was involved in the TRIO program,<sup>805</sup> so I reported it to the school officials. I was told that this was not the only complaint of this nature...twenty of the forty people in the class dropped it after that incident.”<sup>806</sup>

No single type of postsecondary institution demonstrated more bias than another, but rather varied by individual institution. One interviewee, for example, felt discriminated against at a private university, but described being treated fairly and with dignity after transferring to a community college.<sup>807</sup>

An academic advisor put it this way: “I have heard of professors who make it systematically hard for immigrant students to succeed, to the point that students have quit programs.... [but] most are great advocates for them. I believe immigrant students get a good education; most are able to transfer to engineering and pharmacy schools.”<sup>808</sup>

This again reflected the K-12 experience, where students may have numerous positive experiences with teachers, but gave accounts of those which stood out as discriminatory or simply unfair.

### POSITIVE EXPERIENCES

For immigrant students who described positive experiences, they usually included staff members who seemed to care about them, grade fairly, and stand up for them when bias occurred. One community member was effusive in his recollection: “I just felt the most welcome in Minnesota when I was starting my post-high school education. The staff and students made me feel really welcome and wanted. It is not always a guarantee that people will like you when you are so far away from where you came from. It was extremely nice to feel this connection with people and I felt overwhelmingly welcome.”<sup>809</sup>

Another described an episode in which a friend who had just arrived in the United States from Saudi Arabia was shocked after being called a “terrorist” by an “American citizen” during his first outing

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<sup>804</sup> Interview 24; Interview 35; Interview 38; Interview 132.

<sup>805</sup> TRIO is a college access program. U.S. Department of Education, Office of Postsecondary Education, “Federal TRIO Programs,” (accessed Mar. 21, 2014), <http://www2.ed.gov/about/offices/list/ope/trio/index.html>.

<sup>806</sup> Interview 38.

<sup>807</sup> Interview 35.

<sup>808</sup> Interview 132.

<sup>809</sup> Interview 37.



into the community: “A student advisor reacted quickly. She organized a meeting with international students in this program. She tried to clear up the misunderstanding; she did not want the students to consider this as a Minnesotan attitude. She came up with more procedures to protect us. After a while, all students were happy and enjoyed a high level of confidence.”<sup>810</sup> Even small acts of kindness and advocacy on behalf of immigrants and refugees made a big difference.

## MONITORING

In considering the importance of having accurate information with which to work, one school board member was adamant in her assessment: “It is critical – what you measure is what you see.”<sup>811</sup> In order to fulfill the right to education, international

“Once you come here, you are African American. Liberians are not counted. We need to track those kids.”

human rights standards set forth the obligation to “maintain a transparent and effective system to monitor...standards.”<sup>812</sup> In Minnesota, what data is collected and how it is evaluated and monitored can be somewhat limited. At the school level, interviewees reported the need to think further about various metrics that could be monitored. With regard to “welcome,” teachers and community members stated the need to include student voices in evaluation and reported the usefulness of surveying parents and students.<sup>813</sup> Said one metro teacher: “I think immigrant students feel welcome at our school. We have a survey in the fall and spring so we can compare and contrast. It asks things like, ‘How is the relationship between students?’ ‘Do you feel safe and secure?’, ‘How is the relationship between your parents and teachers?’ ‘Do you feel you have teacher support?’” Teachers see the results...and set up goals for next year”<sup>814</sup>

Educational professionals also expressed a need for tracking immigrant populations within particular schools and districts so that true disparities are known and academic interventions can be more targeted.<sup>815</sup> African and Asian professionals alike expressed a need for disaggregated data. A Liberian liaison stated the need to “get serious” on this issue and recommended schools “keep track of immigrant students and how they’re doing in the system. Once you come here, you are African American. Liberians aren’t counted...we need to track those kids.”<sup>816</sup>

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<sup>810</sup> Interview 27.

<sup>811</sup> Interview 154.

<sup>812</sup> CESCR, GC No. 13, The Right to Education ¶ 54, UN Doc. E/C.12/1999/10 (Dec. 1999).

<sup>813</sup> Conversation 12; Interview 68; Interview 165.

<sup>814</sup> Interview 149.

<sup>815</sup> Interview 113; Interview 150; Interview 152.

<sup>816</sup> Interview 152.

## EDUCATION

However, the ability to track directly is hindered by laws that prevent schools from asking for foreign-born status.<sup>817</sup> One cultural liaison reported using proxy data for EL populations and those who qualified for free and reduced lunch in her school to find data on a particular refugee group.<sup>818</sup> This kind of analysis could be used to approximate disaggregated data in other schools and districts, as well, and it is a challenge for state- and district-level leaders to find a way to make such information available to school staff, parents, and students.

At the state level, there is also a need to both use current research and to collect and analyze local and regional data on immigrant groups to inform educational policy, as well as to find and share best practices. However, one interviewee suggested that the Minnesota Department of Education is currently too under-funded to carry out the full extent of such activities.<sup>819</sup> In an age where data and information is ubiquitous, more resources could be allocated to monitoring on all levels.

## RECOMMENDATIONS

Finding: There are disparities in education that reveal the fact that all students do not receive an equal education.

### Recommendations

- Raise overall funding levels for public education and change funding structures so that all schools are reasonably equal in quality and resources.
- Change the accountability focus from teachers and students to federal and state government bodies and officials, and thus to individuals and communities at large, for ensuring the success of all students.
- Create mechanisms to look at the root causes of educational disparities, including institutional racism, and at solutions for long-term sustainable change at the state, district, and school levels, with participation from immigrants and other affected communities.
- Raise awareness of the causes, potential solutions, and extent of disparities among individuals at the neighborhood and community level.

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<sup>817</sup> *Plyler v. Doe*, 457 U.S. 202 (1982); 20 U.S.C. § 1232g; 34 C.F.R. 99.

<sup>818</sup> Interview 150.

<sup>819</sup> Interview 162.

Finding: The educational system is currently not well equipped to meet the needs of refugee children.

### Recommendations

- Create a plan that meets the educational and emotional needs of refugees who enter the United States as teenagers and young adults and have missed several years of school.
- Hire more mental health professionals in schools and provide culturally appropriate referrals.

Finding: Undocumented students and families and mixed-status families live with the fear of having a loved one deported and face unique challenges around documentation.

### Recommendations

- Provide clear guidance in an administrative rule, law, or communication from the Minnesota Department of Education to all schools that staff members are prohibited from asking about immigration status.
- Change parent volunteer forms so that they do not ask for Social Security numbers, which are not required to run background checks.
- Issue photo IDs so that undocumented students have some form of identification.
- Hire more social workers in schools, and train administrators, teachers, and other staff on how to safely provide referrals for available resources.

Finding: Segregation has increased in Minnesota over the last two decades, leaving many immigrant students in segregated, high-poverty, low-performing schools.

### Recommendations

- Make information about school options more accessible and increase outreach to immigrants to ensure that families understand all available choices for their child's education.

## EDUCATION

- Revise state laws regarding integration, fixing Minnesota Administrative Rule 3535.0110 "Equal Opportunity in Schools" so that it does not require proof of intent to segregate and does not exempt charter schools and open enrollment policies.
- Create a statewide integration plan that requires inter-district planning and cooperation and includes all public schools.

Finding: Many students, in both K-12 and postsecondary institutions, are bullied or discriminated against.

### Recommendations

- Improve state laws regarding bullying to ensure safety and security for every child.
- Conduct school and college campus climate surveys and address areas of concern.

Finding: Students of color, including some immigrant and refugee students, are disproportionately affected by punitive school discipline policies.

### Recommendation

- Conduct an audit of discipline policies that includes input from affected student groups and create a plan to bring policies into alignment with new federal guiding principles from the Departments of Education and Justice.

Finding: Some immigrant and refugee students are not well prepared to enter school.

### Recommendations

- Fund universal early childhood education in Minnesota.
- Increase funding for Early Childhood Family Education (ECFE) and raise awareness among immigrant parents of the program and its benefits.

Finding: There are insufficient overall levels of staff, and an insufficient number and percentage of staff members who represent the student demographic.

### Recommendations

- Provide funding for more educational staff, in general.
- Hire more staff who represent the ethnic, cultural, and linguistic background of students in all professions within the school, and especially as teachers and administrators.
- Conduct audits of hiring policies and practices and survey staff members from all backgrounds to find ways to hire and retain representative staff.
- Recruit and support immigrants and refugees to become teachers and administrators, including foreign-credentialed teachers.

Finding: There is a lack of funding for, and focus on, English learner (EL) staffing levels and support.

### Recommendations

- Require and fund in-depth, tailored trainings for pre-service and current teachers on strategies to effectively teach ELs and work with students from a variety of different cultures.
- Provide more funding, staff, and administrative support for EL services, including district-level EL coordinators who are both language experts and licensed as administrators.
- Implement “Research-based Recommendations for Effective EL Instruction” on page 146.
- Improve EL and special education placement, and ensure immigrant families more fully understand the benefits of these services when students are appropriately placed.

Finding: Some schools are not currently teaching enough about diverse perspectives and experiences.

### Recommendations

- Provide immigration basics trainings to school staff to help them better understand students' experiences and teach about immigration.
- Ensure that standards related to human rights and multicultural education are being taught. Revise curriculum, where necessary, to include more diverse perspectives.
- Facilitate integration among students at the interpersonal level, being cognizant that sometimes students self-segregate as part of their identity formation.

Finding: Parent and family involvement can be limited among immigrant populations, due to perceptions of being unwelcome, communication issues around language and culture, and lack of resources.

### Recommendations

- Ensure that reception areas in schools are adequately staffed and that staff members have the training and resources to accommodate immigrant and refugee family members.
- Hire more liaisons, interpreters, and others who can reduce language and cultural barriers.
- Ensure that all school communication is clear and direct; meets the needs of the ethnic and cultural groups represented in the school; and is made available in relevant languages through the use of interpreters, language lines, and new translation technologies.
- Request that teachers communicate directly with immigrant families as much as possible and not rely solely on school or district liaisons.
- Seek input from parents and families about how to best engage with them.
- Understand cultural differences in expectations regarding family engagement, and where possible, make accommodations for work schedules and provide transportation and childcare for parent-teacher conferences and other important events.
- Provide funding for parent/family classes in all districts.
- Ensure openness to, and inclusion of, all parents in at least one integrated parent-teacher group in which key decisions are made.

- Explicitly explain the student engagement benefits of extracurricular activities for students and help to remove barriers to participation, such as transportation.

Finding: Immigrant and refugee youth receive less information about the full range of postsecondary options and face lower expectations of their future success. Many immigrant students need more college readiness support and greater access to affordable postsecondary education.

### Recommendations

- Hire more guidance counselors.
- Provide assistance to immigrant students in preparing for postsecondary education, including setting goals, taking appropriate high school classes, filling out college applications, finding financial aid options, and selecting colleges or universities.
- Hire multicultural and racially diverse advisors and administrators in postsecondary institutions and provide accommodating services for ELs and immigrant students.
- Improve affordability of college in Minnesota and expand financial aid options.
- Remove eligibility limits based on immigration status for federal financial aid and college readiness programs.

Finding: There is not enough monitoring of the system or data collected on specific immigrant groups.

### Recommendations

- Provide increased funding for monitoring to schools, districts, and the Minnesota Department of Education.
- Review the data being collected at all levels to ensure appropriate measurements and disaggregation by affected populations. Make the data available to school faculty, parents, and students.





# CHAPTER 5: HOUSING



### INTRODUCTION

Immigrants in Minnesota struggle to find safe and well-maintained housing, a problem fueled by a shortage of affordable housing, restrictions on public benefits, immigration status, exploitation by landlords, and outright discrimination in renting and buying. Lack of housing is not exclusively the problem of a particular immigrant group, but affects all immigrants, regardless of their country of origin, immigration status, place of residence in Minnesota, or ethnicity. Some immigrant populations, however, face added difficulties that complicate the search for affordable housing. The systems that protect people from exploitative and discriminatory landlords, realtors, and mortgage lenders are not working for immigrants. The private market is failing to provide affordable housing, and public housing cannot meet the demand, constrained by a lack of funding and a political environment that views it as acceptable to deny the rights of all people to decent, safe housing.

### HUMAN RIGHTS AND HOUSING

The lack of adequate housing violates international human rights standards. “Adequate” in this case means that housing must be safe, structurally sound, affordable, and provide resources such as clean water, heating, lighting, and sanitation.<sup>820</sup> All people are entitled to this basic minimum standard without discrimination, including noncitizens, who should have equal access to housing, as well as to any government housing assistance programs.<sup>821</sup>

### SHORTAGE OF AFFORDABLE HOUSING

Immigrants have difficulty finding affordable rental housing, whether private or publicly subsidized. Large families in particular have trouble finding units with enough bedrooms to comply with occupancy codes. Some immigrants struggle with homelessness because of this housing shortage. Governments at the federal, state, and local level are failing to fund and support the construction or maintenance of enough affordable housing to meet the needs of Minnesota residents, including immigrants.

The affordability of rental properties heads the list of housing concerns. Nearly half of all Minnesota renters, whether immigrant or citizen, spend at least 30 percent of their income on housing, the level at which housing is considered unaffordable.<sup>822</sup> Organizations that work with immigrants

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<sup>820</sup> International Covenant on Economic, Social, and Cultural Rights (ICESCR) Art. 11(1); UN Committee on Economic, Social and Cultural Rights, General Comment No. 4, The Right to Adequate Housing ¶ 8, UN Doc. E/1992/23 (Dec. 1991).

<sup>821</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights Art. 2 ¶2, ¶¶24, 30, UN Doc. E/C.12/GC/20 (2009).

<sup>822</sup> Minnesota Housing Partnership, “Rental Housing,” (accessed Mar. 21, 2014), <http://www.mhponline.org/publications/reports-and-research/housing-trends/310/310-statewide>.

report problems with finding affordable housing: “Housing is next to impossible; the vacancy rate is so low that it is hard even for the community at large, but for refugees it’s that much harder.”<sup>823</sup> In interview after interview,<sup>824</sup> immigrants described their struggles: “It’s not great, but I don’t have money to find another place,”<sup>825</sup> or “It has been difficult to find a place to rent that is affordable.”<sup>826</sup> The lack of affordable housing is a statewide problem. Of the 87 counties in Minnesota, 84 lack enough affordable housing to serve all of their low-income residents.<sup>827</sup>

### THREE MAIN PUBLIC AND SUBSIDIZED HOUSING PROGRAMS

#### *Public housing*

Public housing refers to properties owned and managed by the local Public Housing Authority.

#### *Subsidized housing projects*

In subsidized housing projects, a privately owned and managed property receives a subsidy to provide affordable housing. In both public housing and subsidized housing projects, the government assistance is linked to the unit and is not transferable. The renter pays approximately 30 percent of their income towards the rent.

#### *Section 8 vouchers*<sup>828</sup>

Section 8 vouchers enable low-income renters to afford private, market-rate rentals. As with public housing and subsidized housing projects, the renter pays approximately 30 percent of their income towards the rent and the local housing agency pays the remaining rent amount directly to the landlord.

The lack of unsubsidized affordable apartments drives immigrants to seek public housing assistance, but the serious shortage of public housing prevents many immigrants from finding housing through this mechanism, as well. Long public housing waiting lists, which affect all low-income renters, were cited again and again as a barrier. As one service provider stated, “there is no availability of low-income housing. You have to wait years for Section 8 housing and that’s the same with public housing.”<sup>829</sup> Another reported that in some cities, public housing and Section 8 voucher waiting lists

<sup>823</sup> Interview 115.

<sup>824</sup> Interview 7; Interview 15; Interview 25; Interview 31; Interview 33; Interview 44; Interview 52; Interview 69; Interview 78; Interview 145; Conversation 6; Conversation 16.

<sup>825</sup> Interview 15.

<sup>826</sup> Interview 25.

<sup>827</sup> Minnesota Housing Partnership, “County Profiles,” (accessed Mar. 21, 2014), <http://mhponline.org/publications/reports-and-research/county-profiles/410/410-2013>.

<sup>828</sup> The Section 8 housing choice voucher program is codified at 42 U.S. Code § 1437f. “Section 8” refers to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.

<sup>829</sup> Interview 89.

## HOUSING

were closed to new applicants.<sup>830</sup> In January 2013, 44 percent of public housing agencies in Minnesota reported that their wait lists were over two years; for 16 percent of the agencies, wait times were over six years.<sup>831</sup> Some cities do not even have certain housing assistance programs available, such as Section 8.<sup>832</sup> Even where public assistance is available, landlords may not accept Section 8 housing vouchers, limiting their usefulness.<sup>833</sup>

## LARGE FAMILIES

Large families, in particular, struggle with finding affordable housing, both privately owned and public. In one city in greater Minnesota, an advocate described the impact of insufficient adequately-sized housing: “Some families rent apartments next to each other so their family members can live close to one another.”<sup>834</sup> Even in the Twin Cities, service providers reported that “there are not enough large housing units available for families”<sup>835</sup> and families are “forced to split up.”<sup>836</sup> Public housing does not have many large units: “People are polite, but the system is not welcoming. Because of refugee family size, they need four or five bedroom affordable housing to accommodate families,”<sup>837</sup> increasing wait times. In a 2007 study, the Census found only 17,600 renter-occupied units in the entire Twin Cities metro area that were four bedrooms or larger, out of 321,400 total.<sup>838</sup>

Some of the increased demand for large apartments stems from different patterns of family life that require larger living spaces: “The occupancy limits on adults especially impacts extended families, because often adult children stay and live in the home.”<sup>839</sup> Another service provider reported, “They don’t want individual family housing; they just want a place to eat together and sleep under the same roof [as an extended family].”<sup>840</sup>

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<sup>830</sup> Interview 109.

<sup>831</sup> Minnesota Housing Partnership and Minnesota Chapter of National Association of Housing and Redevelopment Officials, *Out in the Cold: Sequestration and Federal Housing Programs in Minnesota*, (Dec. 2013), 7, [http://www.mhponline.org/images/stories/docs/research/reports/out\\_in\\_the\\_cold\\_final\\_16p.pdf](http://www.mhponline.org/images/stories/docs/research/reports/out_in_the_cold_final_16p.pdf).

<sup>832</sup> Conversation 6.

<sup>833</sup> Interview 130.

<sup>834</sup> Conversation 17.

<sup>835</sup> Conversation 20.

<sup>836</sup> Conversation 24.

<sup>837</sup> Interview 98.

<sup>838</sup> U.S. Census Bureau, *American Housing Survey for Minneapolis Saint Paul Metropolitan Area: 2007.*, (Feb. 2009), 106, 108, Table 4-3 (Size of Unit and Lot -- Renter-Occupied Units).

<sup>839</sup> Interview 126.

<sup>840</sup> Interview 97.

Strictly enforced occupancy limits add to the difficulties large families face finding housing.<sup>841</sup> One organization found it difficult to house large families because “the city is very strict about the number of people in a housing unit.”<sup>842</sup> Because occupancy codes were historically developed to exclude families with children, the U.S. Department of Housing and Urban Development (HUD) has developed guidelines to protect against discrimination. While the guidelines do not establish rigid occupancy rates based on bedrooms or housing unit size, they provide a framework for analyzing the impact and fairness of occupancy codes.<sup>843</sup>

#### A BRIEF HISTORY OF OCCUPANCY CODES

Occupancy codes have a complicated history linked to anti-immigrant movements. San Francisco passed the first occupancy standard in the United States at the request of the Anti-Coolie Association, and the law was disproportionately enforced in Chinatown. Reformers in other parts of the country often promoted occupancy codes not only for sanitary reasons but also to reshape immigrant family living patterns into ways they felt were more “moral.” Modern occupancy codes, while not explicitly anti-immigrant, derive from these early efforts and typically are not based on objective data on health and wellbeing.<sup>844</sup>

### HOMELESSNESS

The lack of affordable housing leaves some immigrants homeless. According to one interviewee, “When I first came here, I didn’t know anybody. I ended up in the shelter.”<sup>845</sup> Even refugees, who have access to public assistance, can end up in homeless shelters because of the housing shortage.<sup>846</sup> Immigrants can face special complications from homelessness. One service provider described how lack of official identification documents, often a problem for immigrants with complicated legal status or who are newly arrived, hurts homeless immigrants: “Homeless refugees often have no documents. So they end up getting arrested a lot. Especially downtown, businesses put a lot of pressure on the police to deal with the issue. Then immigrants spend more time in detention because of Immigration and Customs Enforcement holds.”<sup>847</sup> In some communities,

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<sup>841</sup> Interview 105.

<sup>842</sup> Conversation 20.

<sup>843</sup> Fair Housing Enforcement—Occupancy Standards Statement of Policy; Notice, 63 Fed. Reg. 70256 (Dec. 18, 1998).

<sup>844</sup> Ellen Pader, “Housing Occupancy Standards: Inscripting Ethnicity and Family Relations on the Land,” *Journal of Architectural and Planning Research*, (Winter 2002), 308-309.

<sup>845</sup> Interview 6.

<sup>846</sup> Interview 115.

<sup>847</sup> Interview 124.

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homelessness is not recognized as a problem and so there are no shelters at all.<sup>848</sup> Finally, even when immigrants are able to get into a homeless shelter, they may not receive services that meet their needs. One immigrant with religious dietary restrictions said, “We moved to a shelter for six months. The only thing was we couldn’t eat the food because they served pork. My brother and I relied on the school breakfast and lunch program.”<sup>849</sup>

### CAUSES OF AFFORDABLE HOUSING SHORTAGE

Several forces drive a lack of affordable rental housing, both public and private: neighborhood resistance to new affordable housing developments; zoning rules that limit multi-family housing; and lack of government funding for affordable housing.

Several people reported that affordable housing developments met with considerable neighborhood resistance, in some cases preventing the project completely. In one town, “maybe three years ago, they built newer housing, townhomes, and one apartment building, which are now full. There was a big uproar with people selling their homes because they were worried about property values going down.”<sup>850</sup> In another case, “the neighbors raised a big fuss so the development couldn’t go forward.”<sup>851</sup>

Compounding neighborhood resistance, governments in some cities have not zoned neighborhoods in ways that reflect the need for housing in the area. One service provider described her city as having “too much rental zoning in the downtown vicinity, but otherwise not much multi-family zoning and insufficient apartment zoning.”<sup>852</sup> In a 2001 report by the Office of the Legislative Auditor, builders and developers cited zoning as one of the major factors that limits the construction of affordable housing.<sup>853</sup> Minnesota state law gives local governments significant control over zoning decisions and requires supermajorities when city councils seek to change zoning rules. In the case of Minneapolis, St. Paul, and Duluth, state law also requires that the government get the written consent of two-thirds of the property owners within 100 feet of the proposed development for developments of less than 40 acres.<sup>854</sup> Combining such strict requirements for changing zoning with the likelihood of neighborhood resistance creates a high barrier for developers and builders of affordable housing.

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<sup>848</sup> Interview 78.

<sup>849</sup> Interview 35.

<sup>850</sup> Interview 69.

<sup>851</sup> Interview 98.

<sup>852</sup> Interview 70.

<sup>853</sup> Office of the Legislative Auditor, State of Minnesota, *Program Evaluation Report: Affordable Housing*, (Jan. 2001), <http://www.auditor.leg.state.mn.us/ped/2001/pe0103.htm>.

<sup>854</sup> Minn. Stat. §462.357 subd.5.

In addition to the neighborhood and regulatory barriers to building more rental housing, there is a serious lack of government and private funding for affordable housing. One mayor described his frustrations with the funding available for housing development: “We only get one project a year for the housing tax credit for subsidized low-income housing. We really need workforce housing, for people who could afford some rent, but it is not available, so they go into more affordable housing and bump out people with lower incomes. There is no state assistance for workforce housing.”<sup>855</sup> Since 2010, federal budget cuts have reduced the funding available for public housing by 25 percent and for Section 8 vouchers by 8 percent. These cuts have led public housing agencies to increase wait times; defer maintenance and major repairs; shift voucher holders into lower-cost apartments or increase their contribution; and cut the number of vouchers provided.<sup>856</sup>

Immigrants who reported positively on their experience in finding housing almost always mentioned a trusted institution or individual who helped them navigate the market. Most stayed with family members or friends until they could afford their own housing; in some cases, even after moving out, they rented or bought from family members. One immigrant reported her positive experience: “Housing has not been a problem. My uncle bought a townhome before we came to America. We rented it from him and then bought it.”<sup>857</sup> Churches were another common source of housing: “Most of the cases are folks from my church living with other church members.”<sup>858</sup> In other cases, employers found housing for immigrants coming on work visas.<sup>859</sup> Often, if one person had a successful experience, other members of their community would follow their path: “A woman who is a realtor in town is now the contact for the Karen community because she sold the first house to a Karen family.”<sup>860</sup>

## RESTRICTED ELIGIBILITY AND IMMIGRATION STATUS

Shortages of market-rate and subsidized affordable housing affect all Minnesotans, but some immigrants face additional barriers to finding housing. First, not all immigrants are eligible for public housing assistance. Second, lack of a U.S. credit history, U.S. rental history, Social Security number, or U.S.-issued identification often prevents immigrants from finding an affordable apartment, even though Minnesota law does not require renters to have any of those items to rent.

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<sup>855</sup> Interview 58.

<sup>856</sup> Minnesota Housing Partnership and Minnesota Chapter of National Association of Housing and Redevelopment Officials, *Out in the Cold: Sequestration and Federal Housing Programs in Minnesota*, (Dec. 2013), 3,5, [http://www.mhponline.org/images/stories/docs/research/reports/out\\_in\\_the\\_cold\\_final\\_16p.pdf](http://www.mhponline.org/images/stories/docs/research/reports/out_in_the_cold_final_16p.pdf).

<sup>857</sup> Interview 10.

<sup>858</sup> Interview 5.

<sup>859</sup> Interview 77.

<sup>860</sup> Interview 80.

## HOUSING

### ELIGIBILITY LIMITS

Two laws determine eligibility for the most common forms of housing assistance: the Personal Responsibility and Work Opportunity Reconciliation Act of 1996<sup>861</sup> (PRWORA) and Section 214 of the Housing and Community Development Act of 1980.<sup>862</sup> Both laws prohibit undocumented immigrants and most immigrants on temporary visas from receiving housing benefits. The two laws differ slightly, but neither Congress nor the Department of Housing and Urban Development (HUD) has issued clarifications on how the two laws interact, leaving it unclear whether certain groups are eligible. Other housing benefits, such as emergency shelter and Community Development Block Grants, are not affected by Section 214 limits, but may or may not fall under PRWORA. Again, neither Congress nor HUD has clarified whether the eligibility limits apply to these programs, so undocumented or temporary immigrants may or may not be refused benefits, depending on how the administering agency interprets the statutes.<sup>863</sup>

Mixed status families are supposed to be eligible for all types of housing assistance, pro-rated by how many family members have an eligible immigration status, although this is not always respected in practice. One service provider told a story of a family looking for an apartment: “A client was trying to get a type of subsidized housing. The client was undocumented but the children were documented. The landlord said the client needed Social Security numbers, even though the landlord could rent the unit at [a pro-rated amount]. It took multiple calls and letters to the landlord, including sending the statute, to get them to accept the renters. I think the landlord just didn’t want to have someone undocumented living there.”<sup>864</sup>

“It’s hard; you are being scrutinized like you are a criminal, they are so suspicious.”

### LACK OF CREDIT HISTORY

Immigrants and refugees face additional barriers because of a lack of U.S. credit history or rental history and, in some cases, a lack of accepted identification or Social Security number. One immigrant professional described his experience arriving without a U.S. rental history: “Renting an apartment at first was hard, because I had no credit history, I didn’t have someone who could co-sign with me. It’s hard; you are being scrutinized like you are a criminal, they are so suspicious.”<sup>865</sup>

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<sup>861</sup> Pub. Law 104-193, 110 Stat. 2105 (Aug. 22, 1996).

<sup>862</sup> 42 U.S.C. §1436(a); 24 C.F.R. § 5.506.

<sup>863</sup> Congressional Research Service, *Immigration: Noncitizen Eligibility for Needs-Based Housing Programs*, Alison Siskin and Maggie McCarty, (Jan. 23 2012).

<sup>864</sup> Interview 75.

<sup>865</sup> Interview 14.



According to another, “when you come from anywhere you stay with your family, but you can’t live with them forever. Once you find a job, you are ready to move and get your own place. The problem is they do not accept rental history from back home. If no one gives you an opportunity to have a rental history how do you do it, how do you move forward?”<sup>866</sup> When the interviewee tried to co-sign for multiple people, landlords had objected. Minnesota law does not regulate a landlord’s decision to require additional months of rent or a co-signer that meets the landlord’s criteria when a prospective tenant has no credit history or rental history.<sup>867</sup>

In some cases, immigrants have legal permission to live in the United States, but do not have Social Security numbers for landlords to use when running credit checks. One interviewee, here on a student visa, reported, “Because I have no Social Security number, I had to pay three months’ rent as deposit money.”<sup>868</sup> Requiring large amounts of rent in advance makes it even more difficult for immigrants to find affordable housing. Not having a Social Security number is a barrier, even though landlords do not need one to run background checks. For one person whose husband was an immigrant, “initially it was a challenge to get him on the lease. I had to let them know they can run a background check without a Social Security number.”<sup>869</sup>

### UNDOCUMENTED IMMIGRANTS

Undocumented immigrants have even greater difficulties. Many people feel that “without an ID you cannot get an apartment.”<sup>870</sup> Even looking for an apartment as an undocumented person carries a high risk of arrest and eventual deportation. In one city, reported an attorney, “my client went to rent an apartment, and the manager went to check the application and came back with the police. The management company was using E-Verify to check the status of applicants for rentals,”<sup>871</sup> even though this is not legally required. As a result, undocumented immigrants either live with documented immigrants<sup>872</sup> or tolerate sub-standard living conditions. Limited choices mean that undocumented immigrants are often in “low-quality apartments that are very expensive.”<sup>873</sup>

Immigrants without a Social Security number or legal status do not need to face such barriers. Landlords are not required to gather Social Security numbers, screen for immigration status, or ask

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<sup>866</sup> Interview 103.

<sup>867</sup> Office of the Minnesota Attorney General, “Landlords and Tenants,” (accessed Mar. 21, 2014), <http://www.ag.state.mn.us/Consumer/housing/LT/LT1.asp#EnterAgreement>.

<sup>868</sup> Interview 27.

<sup>869</sup> Interview 116.

<sup>870</sup> Conversation 9.

<sup>871</sup> Interview 112.

<sup>872</sup> Interview 45.

<sup>873</sup> Conversation 9.

## HOUSING

for U.S.-issued identification from applicants or tenants. Minnesota’s law on tenant screening, however, only governs tenant screening services, not landlords, and focuses on providing tenants access to their screening report to ensure accuracy. The law does not prevent a rental property owner from requiring certain forms of identification from prospective tenants, which landlords can use as a proxy for screening for immigration status.<sup>874</sup> California, in contrast, passed a law in 2007 barring landlords from asking about or requiring information regarding a prospective tenant’s immigration or citizenship status.<sup>875</sup> In practice, this means that while California landlords can continue to request U.S.-issued identification and Social Security numbers for credit checks, they must provide alternate means of identification and screening for applicants without them.<sup>876</sup>

## DISCRIMINATION

Though the shortage of affordable rental housing was the primary concern for immigrants, interviewees also reported instances of discrimination by some landlords that violated their right to housing. Though both federal and state law prohibits rental discrimination, immigrants often did not report these incidents to the authorities.

“I don’t put a sign in my yard because I don’t want to rent to immigrants. I post on Craigslist because immigrants don’t look there.”

One interviewee described the classic pattern of discrimination that immigrants face: “I called to set up an appointment to look at an apartment and the manager told me that he had an opening in a few, and just to come over and look at them. When I arrived at the office during normal business hours, no one would answer the door or the phone.”<sup>877</sup> According to another, “we were helping a colleague find housing. My partner made the appointment and took us there. We were standing outside and the landlord never came, and then said it had been rented. We suspected he had

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<sup>874</sup> Minn. Stat. § 504B.235 (2011).

<sup>875</sup> Cal. Civ. Code § 1940.3 (2011) (forbidding landlords from (1) making any inquiry regarding or based on the immigration or citizenship status or (2) requiring any tenant, or prospective tenant, to make any statement concerning his or her immigration or citizenship status); New York City’s Human Rights Law provides a similarly express prohibition on landlord screening. New York City, N.Y., Code § 8-107(5)(a)(1)-(2) (making it “an unlawful discriminatory practice for the owner ... of a housing accommodation ... [t]o refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or an interest therein because of the actual or perceived ... alienage or citizenship status of such person ... [and to] discriminate against any person because of such person’s actual or perceived ... alienage or citizenship status ... in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation.”).

<sup>876</sup> Monica Williamson, *How California’s New Immigration Law Affects Screening Policies*, March, 2008, San Francisco Apartment Association, <http://www.sfaa.org/mar2008/0803williamson.html>.

<sup>877</sup> Interview 37.

driven by and seen us, then claimed it was rented. We had no proof, but how could it have been rented so quickly?”<sup>878</sup> In other instances, the disparate treatment is obvious: “When another [immigrant] student went alone, there was no availability. Then he went back accompanied by a local and there was availability.”<sup>879</sup> In another case, a woman reported enlisting her husband to test if the landlord was discriminating. She was helping someone find an apartment, and the landlord claimed it was rented after making an appointment but not showing up. “Then when my husband called, the apartment was still available, and the landlord hung up the phone when confronted.”<sup>880</sup>

Occasionally, landlords are open about their discriminatory practices. A Richfield community member recounted a conversation with a housing development agent in her city: “The new housing development agents [at that building] make it very difficult for ... immigrants to move into them. [The agent] says that the numbers show that there is more criminal activity when these people move in.”<sup>881</sup> In another case, a landlord told one individual, “I don’t put a sign in my yard because I don’t want to rent to [immigrants]. I post on Craigslist because [immigrants] don’t look there.”<sup>882</sup> In yet another incident, a community leader reported how when she had tried to rent an apartment, “the landlord asked for letters from Immigration and Customs Enforcement”<sup>883</sup> based on her ethnic identity.

Minnesota and federal laws offer protection against discrimination in housing. Under Minnesota law, landlords cannot legally refuse to sell, rent, or lease housing to potential tenants, or have different rental terms, on the basis of race, color, creed, religion, national origin, sex, marital status, sexual orientation, disability, or reliance on public assistance.<sup>884</sup> Similarly, a landlord cannot discriminate against tenants by decreasing services that have been promised in the lease on the basis of race, color, creed, religion, national origin, sex, marital status, sexual orientation, disability, or reliance on public assistance.<sup>885</sup> Under federal law—in particular the Fair Housing Act—housing discrimination based on race, color, national origin, religion, sex, familial status, or disability is prohibited.<sup>886</sup> There are no laws requiring that tenants of private, unsubsidized buildings have legal

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<sup>878</sup> Interview 61.

<sup>879</sup> Conversation 15.

<sup>880</sup> Interview 61.

<sup>881</sup> Conversation 9.

<sup>882</sup> Interview 75.

<sup>883</sup> Interview 139.

<sup>884</sup> Minn. Stat. § 363A.09 Subd. 1(1) (2011).

<sup>885</sup> Minn. Stat. § 363A.09 Subd. 1(2) (2011).

<sup>886</sup> 42 U.S.C. §§ 3601–3631 (2006); 78 Fed. Reg. 11460-01 (Feb. 15, 2013) (HUD released a Final Rule on Implementation of the Fair Housing Act’s Discriminatory Effects Standards. HUD summarizes the major provisions of the Rule as follows: *This rule formally establishes the three-part burden-shifting test for determining when a practice with a discriminatory effect violates the Fair Housing Act. Under this test, the charging party or plaintiff*

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status.<sup>887</sup> There are city, state, and federal agencies charged with overseeing discrimination complaints, which can be adjudicated by state or federal courts.

Despite strong legal protections against discrimination, immigrants in general did not report these incidents of discrimination to the authorities. In many of the cases where the landlord claimed an apartment was rented after meeting the immigrant or hearing a foreign accent, the immigrant felt there was no clear proof of discrimination and that they would not be able to bring a case based on the incident.<sup>888</sup>

## EXPLOITATION AND SUBSTANDARD HOUSING

According to interviewees, some landlords discriminate not only in choosing who to rent to, but in how they treat tenants once they occupy an apartment. In some cases, landlords reportedly refused to maintain apartments, reported immigrants to the police for minor problems, and unfairly withheld deposits or charged additional fees. Interviewees recounted incidents of both private landlords and public housing managers exploiting immigrant renters who have limited options to find other housing. Though such exploitation is against both state and federal law, immigrants are unlikely to take action. In some cases, immigrants are unaware of their rights as tenants; in others, they fear retaliation or other negative consequences.

Immigrants often report living in poorly maintained apartment buildings. One apartment complex was described as “very run down, with trash everywhere, and gang activity.”<sup>889</sup> Despite the poor conditions in the complex, “people aren’t reporting problems with the living conditions because if they complain, they fear retaliation.”<sup>890</sup> In another case involving another poorly maintained apartment complex (with “rats, mice, bedbugs ... and live electrical wires”), “people are reluctant to raise problems with the manager because the rent may be raised or they may be kicked out.”<sup>891</sup> Another service provider reported that case workers “go to people’s homes and find cockroach

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*first bears the burden of proving its prima facie case that a practice results in, or would predictably result in, a discriminatory effect on the basis of a protected characteristic. If the charging party or plaintiff proves a prima facie case, the burden of proof shifts to the respondent or defendant to prove that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. If the respondent or defendant satisfies this burden, then the charging party or plaintiff may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be served by a practice that has a less discriminatory effect.)*

<sup>887</sup> See “Restricted Eligibility and Immigration Status” on page 181.

<sup>888</sup> Interview 61; Interview 74.

<sup>889</sup> Conversation 9.

<sup>890</sup> Conversation 9.

<sup>891</sup> Conversation 23.

nests in the corners” and that one family that came in for assistance had “a girl with bites and sores on her arms from bedbugs.”<sup>892</sup>

When landlords do make repairs to apartments, some try to illegally charge immigrants for the service.<sup>893</sup>

According to one individual, “we’ve had people who have been charged for bed bugs, and a family was charged for failing to prepare the apartment for the bed bug extermination visit.”<sup>894</sup> In another case, a “single

mother’s apartment was broken into. The person broke the lock and shouted racial slurs, scaring the family. He left when the police were called. The mother wanted the landlord to pay for the lock, but he refused.”<sup>895</sup> In yet another case, one school official described how a community liaison had “found out about serious water damage in a place from a flood. The landlord was going to charge the people living there for a replacement apartment while theirs was repaired. That was wrong; they had already paid their monthly rent.”<sup>896</sup> In these cases, service providers and advocates were able to help immigrants and force the landlords to meet their obligations, but “a lot of people don’t call for help.”<sup>897</sup>

“One apartment complex is “very run down, with trash everywhere, and gang activity.”

Immigrants also reported having security deposits withheld or additional charges imposed without just cause. According to one service provider, “we’ve had families whose deposit was being taken because some family in the building was ruining it for the rest of the tenants.”<sup>898</sup> One employer helped their immigrant employees deal with discriminatory landlords: “They will not get their security deposit back from their landlord and so I’ll help write letters.”<sup>899</sup> In some cases, unscrupulous landlords reportedly tried to double-charge immigrants for their rent, taking advantage of their lack of familiarity with the U.S. financial system: “Sometimes I hear that people say they are double-charged. I ask the person if they have a receipt, and they do not. Landlords don’t give out a receipt. You have to ask for that. ... Did you pay cash? Yeah. Did you get a receipt? No. So who saw you give them rent? It was just me and them. ... It is sad when you hear people taking advantage of others.”<sup>900</sup>

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<sup>892</sup> Interview 137.

<sup>893</sup> Minn. Stat. § 504B.161 requires the landlord to maintain the property.

<sup>894</sup> Interview 126.

<sup>895</sup> Interview 97.

<sup>896</sup> Interview 79.

<sup>897</sup> Interview 136.

<sup>898</sup> Interview 145.

<sup>899</sup> Interview 77.

<sup>900</sup> Interview 78.

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Some landlords also impose stricter standards on immigrant renters, reporting them to the police for minor infractions that go unaddressed when committed by others. One attorney had a predatory rental case where “the landlord would rent to immigrants, but then would harass people, wouldn’t let them have guests, would threaten that the police would come, that they would call immigration.”<sup>901</sup> In another apartment complex, one community activist complained that in his view, “the housing office gives more credibility to complaints from white residents than Somalis. White residents threaten Somalis with their dogs and the housing office does nothing.”<sup>902</sup>

One immigrant advocate reported that some tenants faced eviction because they were Muslim. In one incident, an African American Muslim was harassed and threatened with eviction because of a neighbor who was motivated by religious prejudice.

*The neighbor did not want them next door because she assumed he was Somali. He has two little girls and she would basically swear at them and yell at them whenever they left the house. Every time he opened the door to go to his garage, she would open her window and yell ‘Go back inside, you [bad word]!’ She repeatedly reported him to the homeowners association for minor issues like leaving his trashcan out too long. The association fined his landlord and the fines accumulated, so his landlord started eviction proceedings. Neither the association nor the landlord was aware that the person complaining was also shouting racist slurs at him. We were talking to them about the case, but the man decided to move so he didn’t have to deal with that neighbor anymore.*<sup>903</sup>

### LIMITED ACCESS TO LEGAL REMEDY

Minnesota law lays out the obligations of landlords and tenants in terms of leases, security deposits, maintenance, eviction proceedings, and other areas.<sup>904</sup> Special housing courts have been established in Ramsey and Hennepin counties to hear and decide criminal and civil cases related to residential rental housing.<sup>905</sup> The courts hear, for example, claims for rent abatement, rent escrow proceedings, eviction actions and actions for violations of state, county, or city housing codes.<sup>906</sup>

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<sup>901</sup> Interview 126.

<sup>902</sup> Interview 98.

<sup>903</sup> Interview 127.

<sup>904</sup> Minn Stat. §§ 504B et seq. (codifying landlord-tenant law). See: Lawrence McDonough, *Residential Eviction Defense in Minnesota*, (13<sup>th</sup> Ed., Feb. 4, 2014), [http://povertylaw.homestead.com/files/Reading/Residential\\_Eviction\\_Defense\\_in\\_Minnesota.pdf](http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.pdf).

<sup>905</sup> Minn. Gen. R. Prac. §§601 et seq. (setting forth rules of procedure for housing court in Hennepin and Ramsey Counties and noting that housing courts created by the legislature existing only in Hennepin and Ramsey Counties).

<sup>906</sup> Office of the Minnesota Attorney General, “Landlords and Tenants: Other Important Laws,” (accessed Mar. 21, 2014), <http://www.ag.state.mn.us/Consumer/Housing/LT/LT4.asp#ProperNotice>.

Despite these protections, and even though individuals felt that landlords were mistreating them, very few reported their case to the authorities. One individual talked about the challenges of bringing cases involving immigrants: “People are afraid to speak up – nothing will happen. We advocated for [our clients], went to court on behalf of [our clients] where the landlord took their deposit but rented to someone else. The case was successful. Many cases we hear about after it is too late to do something. They didn’t know they had rights.”<sup>907</sup> One legal advocate was troubled by “how many of them happen and aren’t reported. People don’t know their rights, are intimidated, and just move.”<sup>908</sup>

Immigrants have many reasons that they do not report housing law violations, including not knowing their rights and how to claim them, fear of retaliation by landlords, and lack of English proficiency. As one individual stated, “most of the immigrants truly do not know their rights. Because they assume that they don’t have many options, they will accept the mistreatment and stay; most don’t have the means to look elsewhere or move.”<sup>909</sup> Another contrasted this to the non-immigrant population, which “will dispute charges or deductions from their deposits. Immigrants are more afraid. They are afraid it will wreck their credit or they think they have to pay because the landlord said so.”<sup>910</sup>

Immigrants also fear that reporting housing law violations will lead to losing an affordable apartment. Some landlords establish a quid pro quo where immigrant families can exceed apartment occupancy limits with the implicit understanding that they will not report poor housing conditions or unfair charges. “People bring their family and have 20 people in an apartment. The landlord will look the other way. Rent is dirt cheap, but the landlord won’t maintain the house.”<sup>911</sup>

In some cases, renters are undocumented and are reluctant to contact authorities in any situation: “the main reason people don’t report things is fear.”<sup>912</sup> Some landlords have threatened undocumented tenants that they will report them to immigration if the tenants file complaints or report the landlord for lack of maintenance.<sup>913</sup> Even if the landlord does not report an undocumented tenant to immigration in retaliation, undocumented immigrants still fear that their status will be exposed during the complaint process. One advocate reported that a judge in housing

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<sup>907</sup> Interview 61.

<sup>908</sup> Interview 127.

<sup>909</sup> Interview 133.

<sup>910</sup> Interview 126.

<sup>911</sup> Interview 123.

<sup>912</sup> Interview 134.

<sup>913</sup> Interview 180.

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court checks the immigration status of litigants in his courtroom and that undocumented immigrants know this and stay away.<sup>914</sup>

Housing enforcement relies heavily on complaints brought by individuals who are victims of discrimination, exploitation, or other mistreatment. A system that relies on individual complaints does not protect the rights of undocumented immigrants because many undocumented immigrants fear coming into contact with any authority that could report them to immigration officials.

Even when immigrants are documented and in compliance with occupancy standards, they often will not report problems for fear of retaliation by landlords. It is illegal under Minnesota law for landlords to retaliate against tenants who try to enforce their rights, for instance, by reporting health violations to housing inspectors. Retaliation covers a wide range of adverse actions by landlords, including initiating an eviction action, terminating a lease, raising the rent, or otherwise negatively changing the terms of the lease.<sup>915</sup> Despite this prohibition, retaliation “has always been an issue.”<sup>916</sup> Almost all retaliation claims are brought as a defense to an eviction, because the law prohibiting retaliation in other cases does not lay out a clear legal process for obtaining relief. Because retaliation is only raised as a defense, tenants who pursue a case risk having an eviction on their credit history. Even if a tenant wins their eviction case, the fact that an eviction case was filed remains on their rental history. A tenant must file to have that record expunged, which is not mandatory and is granted at the discretion of the judge.<sup>917</sup> In one case, a tenant who complained about bedbugs had her lease terminated in retaliation. Despite strong evidence that the eviction was retaliatory, she dropped her retaliation case against the landlord because she did not want to risk having an eviction on her rental history.<sup>918</sup>

“Nobody Somali works for public housing. You can hear the walls talking to you and saying ‘we’re tired of Somalis.’”

Lack of English proficiency also plays a role in facilitating housing law violations and making it difficult to report problems. In many cases leases, forms, eviction notices, and other important paperwork are in English: “Management doesn’t help people who don’t speak English. They give them eviction letters and warning letters in English, which they do not understand. The housing agency sends people to translate but they are not good. Nobody Somali works for public housing.

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<sup>914</sup> Interview 180.

<sup>915</sup> Minn. Stat. §§ 504B.285, subd. 2-3, 504B.441.

<sup>916</sup> Interview 180.

<sup>917</sup> Minnesota Judicial Branch, “Eviction Expungement: FAQ,” (accessed Mar. 21, 2014), <http://www.mncourts.gov/district/50/?page=3524>.

<sup>918</sup> Interview 181.



You can hear the walls talking to you and saying ‘we’re tired of Somalis.’”<sup>919</sup> One service provider offers to translate leases, “but landlords don’t want it. They say this isn’t a requirement....When we see that, we warn people to be careful.”<sup>920</sup> Public housing agencies and other organizations receiving federal financial assistance are supposed to provide language access to people with limited English, but no such protection applies to the private market.<sup>921</sup>

## HOMEOWNERSHIP OUT OF REACH

Homeownership could potentially solve some of the problems of large families or negligent landlords, but it remains financially out of reach for many immigrants, especially undocumented immigrants. A lack of credit history makes it difficult to buy.<sup>922</sup> Undocumented immigrants may have even greater difficulty. One service provider reported, “Occasionally, we see people unable to get a mortgage because they lack permanent status.”<sup>923</sup> Government-sponsored mortgage purchasers Fannie Mae<sup>924</sup> and Freddie Mac<sup>925</sup> require the mortgage lender to represent and warrant that each mortgage was provided to a person legally in the United States, limiting undocumented immigrants to the much smaller pool of mortgages not backed by Fannie Mae and Freddie Mac. In addition, undocumented immigrants are not always eligible for programs that assist homebuyers and homeowners. One government official recounted the story of a homeowner fined by the housing inspection department who would have been eligible for community development assistance to remedy the problem, except that he did not have a Social Security number and so could not receive a grant.<sup>926</sup>

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<sup>919</sup> Interview 98.

<sup>920</sup> Interview 78.

<sup>921</sup> 42 U.S.C. §2000d et seq.; Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 16, 2000); 72 Fed. Reg. 2732-2744 (Jan. 22, 2007) (HUD Limited English Proficiency guidance).

<sup>922</sup> Interview 49.

<sup>923</sup> Interview 138.

<sup>924</sup> Fannie Mae, *Selling Guide: Fannie Mae Single Family*, (Apr. 9, 2013), 250. (Non-U.S. Citizen Borrower Eligibility Requirements: “Fannie Mae purchases and securitizes mortgages made to non-U.S. citizens who are lawful permanent or non-permanent residents of the United States under the same terms that are available to U.S. citizens. . . . The lender must make a determination of the non-U.S. citizen’s status based on the circumstances of the individual case, using documentation it deems appropriate. By delivering the mortgage to Fannie Mae, the lender represents and warrants that the non-U.S. citizen borrower is legally present in this country.”).

<sup>925</sup> Freddie Mac, *Single-Family Seller/Service Guide*, (Vol. 1), §17.12, <http://www.freddie.mac.com/sell/guide>. (Section 17.12 requires the lender to report immigration status (Permanent Resident Alien, Nonpermanent Resident Alien or US Citizen) for all loans to individuals.); Freddie Mac, “Loan Prospector – Documenting Lawful Residency Status for Non-U.S. Citizens,” (accessed Mar. 21, 2014), [http://www.freddie.mac.com/learn/lo/docres/lo\\_doc\\_resid\\_immigr.html](http://www.freddie.mac.com/learn/lo/docres/lo_doc_resid_immigr.html).

<sup>926</sup> Interview 128.

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Undocumented immigrants are also afraid that if they can afford to buy a house, they could lose it because of their lack of legal status. One immigrant felt that “it was risky to get a house before I had a green card because the house could be taken from me if I didn’t get a green card.”<sup>927</sup> This fear is not unjustified. As a result of the increase in workplace immigration audits and subsequent firing of workers without legal status, many undocumented immigrants have lost their homes: “In 2005, it was rare to hear Latino members who said they did not own their home; now it’s the opposite. People lost jobs in the audits and now 600 out of 1200 are in foreclosure or in fear of foreclosure. Wealth was transferred away from low-income communities. People were proud of owning homes, and now that’s gone.”<sup>928</sup> One immigrant, a pastor in his local community, described the struggles immigrant homeowners face: “A lot of people have trouble with mortgages because they get laid off all the time....They have difficulty with government programs, at times they don’t know where to go to get help, they don’t know it’s available, they know it’s available but they’re afraid. Most of the time they’re very afraid.”<sup>929</sup>

### MORTGAGE DISCRIMINATION

Immigrants are also victims of predatory lending and resulting foreclosures, and the federal laws to prevent mortgage discrimination do not provide an effective deterrent or remedy. “I got a mortgage, but I didn’t know what kind – a high interest, bad mortgage,” stated one individual.<sup>930</sup> Another claimed that the “mortgage company gave me the run around because of where I came from.”<sup>931</sup> In one community, residents reported having to go to a neighboring city to get a loan, rather than through their local banks.<sup>932</sup>

Immigrants of color and those living in high poverty neighborhoods suffer from the same patterns of discriminatory lending that affect all minorities and low-income people in Minnesota. According to one study, “[mortgage] denial rates are higher for black, Hispanic, and Asian applicants than for whites, *regardless of income*. Very high income black, Hispanic, and Asian applicants (applicants with incomes more than \$157,000 per year) show denial rates higher than whites in the lowest-income category (less than \$39,250 per year).”<sup>933</sup> Not only are minority loan applicants more likely

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<sup>927</sup> Interview 32.

<sup>928</sup> Interview 107.

<sup>929</sup> Interview 5.

<sup>930</sup> Conversation 16.

<sup>931</sup> Conversation 21.

<sup>932</sup> Conversation 16.

<sup>933</sup> Institute on Race and Poverty, *Communities in Crisis: Race and Mortgage Lending in the Twin Cities*, (Feb. 2009) 14, <http://www.law.umn.edu/uploads/cP/fm/cPfmhP690iKCCQ1OYdGISAg/IRP-mortgage-study-Feb.-11th.pdf>; Jacob Chin, Anissa Hollingshead, Shanae Phillips, *Racial Disparities in Homeownership: A report prepared for the*

to be denied mortgages by any lender, they are also more likely to apply to subprime lenders, because prime lenders do not have branch locations in poor, non-white neighborhoods and are also less likely to approve loans for homes in those neighborhoods. Neighborhoods with high percentages of residents of color and high rates of subprime lending have higher rates of foreclosure, with the rate of foreclosure increasing dramatically in neighborhoods with greater than 50 percent residents of color. North Minneapolis, with its high concentrations of minorities and high subprime mortgage rates, saw more than one in ten owner-occupied homes in foreclosure in 2007.<sup>934</sup>

Mortgage discrimination is prohibited by the Equal Credit Opportunity Act ("ECOA")<sup>935</sup> and the Fair Housing Act.<sup>936</sup> Both the ECOA and the Fair Housing Act prohibit discrimination based on race, color, religion, national origin, and sex, while the ECOA also covers marital status, age, and use of public assistance and the Fair Housing Act includes familial status and handicap.<sup>937</sup> Mortgage lenders must not discriminate on the basis of any of the characteristics in either statute. Both statutes cover both disparate treatment discrimination, where a lender treats applicants differently on the basis of race, and disparate impact, where a racially neutral policy has a discriminatory effect and is not justified by business necessity. There is no need to prove discriminatory intent when judging whether a lender is engaging in disparate impact discrimination.<sup>938</sup>

Despite these strong legal protections, mortgage lending continues to show strong patterns of discrimination and the system does not do an adequate job of preventing it. In 2008, the Fair Housing Alliance studied the performance of HUD, the primary enforcer of federal fair housing laws, and found that they investigated, by their own estimation, less than one half of one percent of all housing discrimination cases in the United States.<sup>939</sup> Of the cases processed by HUD, the average length of time to close a case was over a year and in only 3.3 percent did they find that

*Minneapolis Urban League*, (2011),  
[conservancy.umn.edu/bitstream/11299/107514/1/Chin\\_Racial%20Disparities%20in%20Homeownership.pdf](http://conservancy.umn.edu/bitstream/11299/107514/1/Chin_Racial%20Disparities%20in%20Homeownership.pdf).

<sup>934</sup> Institute on Race and Poverty, *Communities in Crisis: Race and Mortgage Lending in the Twin Cities*, (Feb. 2009) 19-33, <http://www.law.umn.edu/uploads/cP/fm/cPfmhP690iKCQ1OYdGISAg/IRP-mortgage-study-Feb.-11th.pdf>.

<sup>935</sup> 15 U.S.C. §§ 1691 et seq.

<sup>936</sup> 42 U.S.C. §§ 3601 et seq.

<sup>937</sup> 15 U.S.C. § 1691; 42 U.S.C. § 3604.

<sup>938</sup> Consumer Compliance Handbook, "Federal Fair Lending Regulations and Statutes: Overview," (accessed Mar. 21, 20140, [http://www.federalreserve.gov/boarddocs/supmanual/cch/fair\\_lend\\_over.pdf](http://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_over.pdf); *Gallagher v. Magner*, 619 F.3d 823, 833 (8th Cir. 2010) (not required to show that a policy or practice was formulated with discriminatory intent).

<sup>939</sup> Residential Segregation and Housing Discrimination in the United States, Violations of the Convention on the Elimination of All Forms of Racial Discrimination, 19, <http://www.prrac.org/pdf/FinalCERDHousingDiscriminationReport.pdf>.

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discrimination occurred.<sup>940</sup> Since 2008, funding and enforcement efforts have increased, with the Department of Justice bringing several disparate impact lawsuits over mortgage discrimination and the predatory lending that contributed to the housing crisis.<sup>941</sup>

### RESIDENTIAL SEGREGATION

Not only do immigrants struggle to find affordable housing, they reported that the housing they did find was in segregated neighborhoods. Discrimination in renting and home buying plays a major role in furthering segregation, as do government decisions on zoning and where to build subsidized housing.

One result of segregation is that many immigrants reported living in neighborhoods where they did not feel they could walk around safely. In some cases, the violence in their neighborhood reawakened trauma they had experienced in their own country. “I was dropped off in [my neighborhood]. Coming from a country like Sudan full of war, I felt safe at first. Then I heard gunshots and it brought back all my memories. I have heard more gunshots [here] than I did in my own country.”<sup>942</sup> In one community conversation, immigrants discussed the importance of “being careful about which side of the street to walk on, which people to stay away from, and finding alternate walking and biking routes in the neighborhood to avoid certain people and houses.”<sup>943</sup> Immigrants also had stories of intimidation by people in their neighborhoods, ranging from “I’m trying to get out of their way, but they bumped me with their shoulder”<sup>944</sup> to “one picked up a rock and threw it at [my brother-in-law].”<sup>945</sup> In a few cases, immigrants were victims of more serious crimes: “Most apartments [in my city] are not as safe as in other places – there are break-ins, a sister was raped and nothing was done. Many people don’t feel secure.”<sup>946</sup> In general, studies have shown that segregated, high-poverty neighborhoods have disproportionately high crime rates.<sup>947</sup>

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<sup>940</sup> Housing Scholars and Research and Advocacy Organizations, *Residential Segregation and Housing Discrimination in the United States, Violations of the Convention on the Elimination of All Forms of Racial Discrimination*, (Dec. 2007), 20, <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN27.pdf>.

<sup>941</sup> Christie Thompson, *Disparate Impact and Fair Housing: Seven Cases You Should Know*, Feb. 12, 2013, ProPublica, <http://www.propublica.org/article/disparate-impact-and-fair-housing-seven-cases-you-should-know>.

<sup>942</sup> Interview 38.

<sup>943</sup> Conversation 8.

<sup>944</sup> Interview 23.

<sup>945</sup> Conversation 8.

<sup>946</sup> Interview 5.

<sup>947</sup> David J. Bjerck, *The Effect of Segregation on Crime Rates*, American Law & Economics Association Annual Meetings, Year 2006, Paper 13, <http://law.bepress.com/cgi/viewcontent.cgi?article=1693&context=alea>; Douglas S. Massey, *Getting Away with Murder: Segregation and Violent Crime in Urban America*, 143 U. Pa. L. Rev. 1203 (1995) (linking high rates of black crime to two features of U.S. urban society: high rates of black poverty and

### NEGATIVE IMPACTS OF SEGREGATION

Residential segregation has a negative impact on a range of human rights beyond housing.

#### *Education*

Schools in high poverty, segregated neighborhoods tend to be highly segregated, and students at those schools have worse educational outcomes and lower levels of college success than similar students in integrated, economically well off schools.<sup>948</sup> See “Poverty and Segregation” in Chapter 4: Education, page 129

#### *Health*

Where you live can have a dramatic impact on your health. A recent study by the Minnesota Department of Health found that life expectancy can vary by nearly a decade depending on zip code.<sup>949</sup>

#### *Economic Opportunity*

A 2006 study found that the fastest growing job centers, which are located in the outer suburbs of the Twin Cities, were also the least accessible to minority renters and affordable housing.<sup>950</sup>

Housing discrimination helps drive residential segregation. One community activist described how discrimination by realtors contributes to the ethnic segregation in his town: “Immigrant communities live in the southeast and people with wealth live in the southwest. ... [Immigrants] with more money still get shown the southeast by realtors.”<sup>951</sup> This behavior, of showing clients certain neighborhoods based on their race, is called “steering” and is prohibited by the same fair

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high levels of black segregation); Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 Mich. L. Rev. 291 (1998) (Re-affirming the finding that segregation and poverty are associated with high crime rates and offering a strident critique of the leading alternative explanation, the neighborhood disorder, “broken windows” theory. The author’s statistical analysis suggests that disorder may mask the role of neighborhood poverty, stability, and race in relation to crime.)

<sup>948</sup> Myron Orfield, *A Comprehensive Strategy to Integrate Twin Cities Schools and Neighborhoods*, Institute on Race and Poverty, University of Minnesota Law School, (July 2009), 9-10, <http://www.law.umn.edu/uploads/ec/fd/ecfdc6101486f404170847f46b03a083/1-Comprehensive-Strategy-to-Integrate-Twin-Cities-Schools-and-Neighborhoods.pdf>.

<sup>949</sup> Minnesota Department of Health, *Advancing Health Equity in Minnesota, Report to the Legislature*, (Feb. 2014), 16, [http://www.health.state.mn.us/divs/chs/healthequity/ahe\\_leg\\_report\\_020414.pdf](http://www.health.state.mn.us/divs/chs/healthequity/ahe_leg_report_020414.pdf).

<sup>950</sup> Thomas Luce, Myron Orfield, and Jill Mazullo, “Access to Growing Job Centers in the Twin Cities Metropolitan Area,” *CURA Reporter*, Spring 2006, 10, <http://www.cura.umn.edu/sites/cura.advantagelabs.com/files/publications/36-1-Luce-et-al.pdf>.

<sup>951</sup> Interview 94.

## HOUSING

housing laws, with the same ineffective enforcement system, that prohibit discrimination by landlords and mortgage lenders.<sup>952</sup>

Government decisions on where to build affordable housing are another major contributor to segregation. A service provider from a different city observed how the location of subsidized apartments results in immigrant segregation: “Where these [immigrant] families live tends to be quite isolated, they live in pockets.... There are two main subsidized units in [this town] where most immigrants live. One is by the mall and one is up north in a more residential area. It makes it challenging for them to integrate in the larger community.”<sup>953</sup> The same forces that inhibit the overall construction of affordable housing also lead to segregating affordable housing into low-income neighborhoods: resistance to affordable housing in higher-income neighborhoods; government zoning that restricts multi-family rental units to certain areas; and limited government funding that must be used both to preserve existing affordable housing and to develop new housing (see “Causes of Affordable Housing Shortage” on page 180).

Publically subsidized housing development is subject to the same fair housing laws as all housing. In addition, HUD grantees, including state and local governments, are supposed to comply with an even more exacting standard, that they affirmatively further fair housing through their programs. Though this was a requirement of the Fair Housing Act passed in 1968, HUD only drafted a rule establishing what grantees must do to meet this requirement in 2013.<sup>954</sup> Building subsidized housing in segregated, economically disadvantaged neighborhoods violates the standard that governments affirmatively further fair housing.

The Low Income Housing Tax Credit (LIHTC) has been the main program for building affordable housing since the 1990s,<sup>955</sup> but despite the Fair Housing Act requirements, most housing built with LIHTC funds is located in areas with higher minority populations.<sup>956</sup> Each state sets the criteria by which it awards LIHTC tax credits to projects, and those criteria significantly affect the placement of subsidized housing. In Minnesota, Minneapolis and St. Paul receive a set percentage of LIHTC tax

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<sup>952</sup> See pages 185 and 193.

<sup>953</sup> Interview 108.

<sup>954</sup> 24 C.F.R. §§ 5, 91-92, et al.; Affirmatively Furthering Fair Housing; Proposed Rule. Federal Register citation: Affirmatively Furthering Fair Housing, 78 Fed. Reg. 43710-01 (Jul. 19, 2013)..

<sup>955</sup> Jill Khadduri, *Creating Balance in the Locations of LIHTC Developments: The Role of Qualified Allocation Plans*, Poverty & Race Research Council (February 2013), 1, [http://www.prrac.org/pdf/Balance\\_in\\_the\\_Locations\\_of\\_LIHTC\\_Developments.pdf](http://www.prrac.org/pdf/Balance_in_the_Locations_of_LIHTC_Developments.pdf).

<sup>956</sup> Lance Freeman, *Siting Affordable Housing: Location and Neighborhood Trends of Low Income Housing Tax Credit Development in the 1990s*, Center On Urban and Metropolitan Policy (March 2004), 1, [http://www.brookings.edu/~media/research/files/reports/2004/4/metropolitanpolicy%20freeman/20040405\\_freeman.pdf](http://www.brookings.edu/~media/research/files/reports/2004/4/metropolitanpolicy%20freeman/20040405_freeman.pdf).

credits, despite the fact that the majority of LIHTC housing built in the two cities “were in neighborhoods with more than thirty percent minority households and virtually all of the units were in areas with predominantly non-white, high-poverty, low-performing schools.”<sup>957</sup> Other criteria that seem racially neutral also favor placing LIHTC housing in high poverty, segregated neighborhoods, while Minnesota does not have any criteria that reward developers for building subsidized housing in an integrated or predominantly white neighborhood.<sup>958</sup>

## TRANSPORTATION BARRIERS

Compounding the problems of residential segregation that isolates immigrants away from job centers and other opportunities, immigrants often face barriers to accessing transportation. The right to freedom of movement is a fundamental human right.<sup>959</sup> Access to reliable transportation is necessary to fulfill other basic needs, like going to work, shopping for groceries, and attending school. In community conversations and interviews, people cited the inadequate or absent mass transit options and the inability to get a driver’s license or afford a car as barriers immigrants face in their communities.<sup>960</sup> Service providers listed transportation as a major barrier facing people in poverty trying to access services including sexual assault counseling, court hearings, English language and GED classes, legal services, and employment counseling, among others.<sup>961</sup>

For many people living in communities outside the Twin Cities, there is no transportation alternative to driving, but the limitations on who can obtain a driver’s license severely restricts their ability to move freely in their communities. One advocate said “Having a driver’s license is not a human right but it should be!”<sup>962</sup> A health worker pointed out, “How do you get to work or school without a driver’s license?”<sup>963</sup> An employment counselor in Southern Minnesota cited the lack of reliable transportation as the biggest barrier to employment for all of her clients, regardless of citizenship status.<sup>964</sup> As detailed on page 57 in Chapter 1: Public Safety, undocumented people in particular struggle with transportation access because they cannot legally get a driver’s license in Minnesota.

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<sup>957</sup> Correspondence 13.

<sup>958</sup> Correspondence 13.

<sup>959</sup> UDHR Art. 13.

<sup>960</sup> Interview 81; Conversation 5; Conversation 12; Conversation 22.

<sup>961</sup> Interview 59; Interview 60; Interview 65; Interview 81; Interview 83; Interview 90; Interview 115; Interview 145.

<sup>962</sup> Interview 104.

<sup>963</sup> Interview 136.

<sup>964</sup> Interview 81.

## HOUSING

Even in towns where transit systems exist, the hours of service may be inadequate or may not serve major employers, like meat-processing plants, which tend to be on the edges of town.<sup>965</sup> Within the metro area, buses do not always come regularly to suburban areas, meaning immigrants must drive to get to work.<sup>966</sup> One woman reported being denied unemployment benefits because she answered “no” to a question about being able to drive to get to work.<sup>967</sup> As a result of these limitations, people make do by biking or walking, however one person noted this “can make them a victim of a robbery.”<sup>968</sup> An attorney agreed, citing some clients who were assaulted after leaving work at a meat-processing plant on foot or by bike, “I think the perception is they carry cash.”<sup>969</sup>

## RECOMMENDATIONS

Finding: A shortage of public and private affordable housing leaves immigrants struggling to find a decent place to live.

### Recommendations

- Increase federal and state funding of affordable housing, whether from public or private sources or in partnership with community groups.
- Encourage more landlords to accept Section 8 housing vouchers, either through education or incentives.
- Change state and local zoning laws to make it easier to build affordable rental housing in higher-income neighborhoods with high-achieving schools, either by expanding the areas zoned for multi-family buildings or by making it easier to waive zoning for affordable housing developments.
- Provide a robust housing referral system so that immigrants can receive assistance at their first point of contact, whether with a government agency, nonprofit service provider, religious or cultural institution, employer, or school.
- Educate residents on the need for, and benefits of, affordable housing in their community to reduce opposition to affordable housing developments.

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<sup>965</sup> Interview 81.

<sup>966</sup> Interview 105.

<sup>967</sup> Interview 146.

<sup>968</sup> Conversation 22.

<sup>969</sup> Interview 63.



Finding: Immigrants with large or extended families cannot find affordable housing that can accommodate all of their family members.

### Recommendations

- Provide incentives to build affordable rental units with four or more bedrooms.
- Cities should evaluate occupancy codes to ensure they adequately balance health and safety concerns with the ability of families, including extended families, to live together.

Finding: Eligibility restrictions and immigrants' lack of rental history, credit history, and Social Security numbers create barriers to finding rental housing and to buying a home.

### Recommendations

- Educate landlords and tenants about alternate ways to conduct background checks and verify identity that do not rely on Social Security numbers and U.S.-issued identification.
- Prohibit landlords from requiring or asking for information regarding a prospective tenant's immigration or citizenship status, including requiring a Social Security number from applicants.
- Consider alternate ways for people with no U.S. credit history or rental history to provide other proof of creditworthiness and qualify for an apartment or mortgage.
- Change the law to allow mixed-status families to receive federally subsidized housing assistance at the same rate as fully eligible families.
- Pass a federal law codifying the most expansive interpretation of the eligibility rules for housing assistance to provide clarity to housing agencies charged with enforcing the law and to guarantee access to the broadest possible group of people.
- Remove eligibility restrictions based on immigration status for federal, state, and local housing assistance.

Finding: Immigrants face discrimination by landlords, neighbors, realtors, and mortgage lenders on the basis of race, language, religion, national origin, and immigration status.

### Recommendations

- Increase enforcement of federal and state fair housing rules through an efficient, timely complaint process that ensures individuals receive an effective remedy for housing discrimination.
- Fair housing officials and other groups protecting the rights of tenants and homeowners should conduct more independent investigations that allow enforcement of housing laws without relying on individual complaints, especially when groups such as undocumented immigrants face strong incentives to stay quiet no matter what abuse they experience.
- Educate renters and homebuyers about what constitutes illegal discrimination and how to construct a strong case so that people who experience discrimination are better prepared to gather evidence and file a claim.
- Ensure HUD's new disparate impact rule is disseminated and enforced to prevent discriminatory practices even where discriminatory intent is absent or hard to prove.
- Provide incentives for bank lenders to increase access to prime loans in poor, segregated neighborhoods.
- Prosecute subprime lenders for targeting poor, minority communities for predatory loans.

Finding: Immigrants who live in substandard housing or who suffer exploitation by their landlord cannot access an effective remedy because of unfamiliarity with the system, fear of retaliation, and language barriers.

### Recommendations

- Educate renters about tenants' rights and responsibilities so they are able to recognize exploitative behavior by landlords and know how to enforce their rights.
- Cities should assume the primary responsibility for uncovering predatory housing practices, so that the burden of preventing landlord exploitation does not depend primarily on individual complaints from tenants who may be reluctant to report because of immigration status, language, or retaliation. As part of this effort, cities should increase funding and staffing of independent housing inspection, especially of multi-family units.

- Agencies should protect undocumented immigrants who have experienced housing law violations from being reported to immigration enforcement to reduce their fear of filing a claim.
- Strengthen legal protections against landlord retaliation by creating a procedure for tenants to bring retaliation claims outside of an eviction action so they can pursue their claim without the risk of having an eviction on their rental history.
- Fully fund the requirement that public housing agencies provide assistance in other languages.
- Encourage partnerships between government agencies, community groups, tenants, and landlords to provide access to free or low-cost interpretation and translation so that immigrants with limited English can understand leases, housing policies, and other important documents.

Finding: Residential segregation isolates immigrants in high-crime, low-opportunity neighborhoods with low-performing schools.

### Recommendations

- Rigorously analyze local and state government housing plans against the federal standard of “affirmatively furthering fair housing” and make that a central goal of Minnesota housing agencies.
- Reform the Low Income Housing Tax Credit and other forms of affordable housing subsidies to prioritize integration, access to job centers, and access to high-performing schools in the selection criteria.
- Create public transit that links high economic opportunity areas with affordable housing.



# CHAPTER 6: BASIC NEEDS



### INTRODUCTION

Immigrants and refugees do not receive the support they need to meet their basic needs, primarily because public assistance programs are built not to include everyone who requires assistance, but to exclude certain people from consideration, regardless of their needs.

Despite the United States' commitment to refugee protection, the United States makes scant public benefit provisions for refugees and asylum seekers. Refugees are eligible for basic services, but face strict time limits and complications if they relocate. Asylum seekers receive no support upon their arrival in the United States and face a waiting period for work authorization after applying for asylum.

Many other immigrants face a host of barriers to accessing services to meet their basic needs. Communication around public benefits suffers from the paradoxical problem of both not enough information and “information overload” driven by the complexity of the benefits eligibility system. Language barriers and cultural differences create an additional challenge to communicating with clients about their benefits. Service providers also noted the problematic design of the U.S. public assistance system, which is built on addressing individuals' “deficiencies,” instead of their strengths.

The health care system contains additional barriers. Many immigrants are simply unable to access services due to exorbitant health care costs. Health care professionals also face serious challenges in communicating with their patients due to language, literacy, and cultural barriers. This challenge is particularly acute in the mental health care field, which faces a severe lack of culturally appropriate providers.

Eligibility for most public benefits hinges on immigration status, and confusing and complex rules lead to denial of benefits to qualified immigrants or family members. Some immigrants fear accessing the system at all due to their immigration status or the fear of being labeled a “public charge.” Finally, the categorical exclusion of undocumented immigrants from almost all public benefits and recent cuts to state-funded programs denies basic human rights to many people.

### HUMAN RIGHTS AND BASIC NEEDS

Full participation in a community can only take place once basic human needs, such as food, health, shelter, and economic subsistence, have been fulfilled. The absence of any one of these creates dysfunction and imbalance in a person's life and inequity in society. Securing and protecting access to these foundational human rights for all must be of primary importance to governments. Article 25 of the Universal Declaration of Human Rights states, “Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>970</sup> Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) declares that everyone has the right to an adequate standard of living and that everyone has the right to be free from hunger.<sup>971</sup> Likewise, according to Article 12 of the ICESCR, “Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.”<sup>972</sup> Thus, any discrimination in access to these basic human rights constitutes a violation of international human rights standards and a threat to one’s survival.

## BACKGROUND ON ELIGIBILITY

The access and use of public assistance benefits by newcomers to the United States is determined by federal eligibility rules combined with state and local rules and policies.<sup>973</sup> Federal rules governing public assistance benefits fall in two categories: pre- and post-1996, when Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), commonly known as welfare reform. Before PRWORA, legal immigrants enjoyed eligibility to public benefits similar to U.S. citizens.<sup>974</sup> PRWORA categorized immigrants as “qualified” or “nonqualified” to determine their eligibility for benefits.<sup>975</sup> That same year, Congress passed a new immigration law requiring that people immigrating through family-based petitions demonstrate that they are not likely to become public charges by submitting a legally binding affidavit of support from a sponsor. These laws combined to exclude most legally residing low-income immigrants from public benefit support.<sup>976</sup> For those who remain eligible for benefits, participation rates have declined. The worst impact was on citizen children in families with mixed immigration status, where parents who are not eligible for benefits did not access benefits for their children who are eligible.<sup>977</sup>

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<sup>970</sup> Universal Declaration of Human Rights (UDHR), Art. 25(1).

<sup>971</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 11

<sup>972</sup> ICESCR, Art. 12.

<sup>973</sup> U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Overview of Immigrants’ Eligibility for SNAP, TANF, Medicaid, and CHIP* (Mar. 2012), <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Eligibility/ib.shtml>.

<sup>974</sup> U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Barriers to Immigrants’ Access to Health and Human Services Programs*, Krista M. Pereira, Robert Crosnoe, Karina Fortuny, Juan Manuel Pedroza, Kjersti Ulvestad, Christina Weiland, and Hirokazu Yoshikawa (May 2012), <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Barriers/rb.shtml>.

<sup>975</sup> U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Barriers to Immigrants’ Access to Health and Human Services Programs*, Krista M. Pereira, Robert Crosnoe, Karina Fortuny, Juan Manuel Pedroza, Kjersti Ulvestad, Christina Weiland, and Hirokazu Yoshikawa (May 2012), <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Barriers/rb.shtml>.

<sup>976</sup> Tanya Broder and Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs*, National Immigration Law Center, (Oct. 2011), <http://www.nilc.org/overview-immeligfedprograms.html>.

<sup>977</sup> Karina Fortuny and Ajay Chaudry, *A Comprehensive Review of Immigrant Access to Health and Human Services*, Urban Institute (Jun. 2011), <http://www.urban.org/UploadedPDF/412425-Immigrant-Access-to-Health-and-Human-Services.pdf>.

**DEFINITIONS**

**Qualified Immigrants** include:

- Lawful permanent residents (LPRs) (green card holders)
- Persons granted asylum
- Refugees
- Parolees (paroled into the United States for a period of at least one year)
- Noncitizens granted withholding of deportation by the Department of Homeland Security (DHS)
- Conditional entrants
- Cuban and Haitian entrants
- Certain battered immigrant spouses and children
- Certain victims of trafficking

**Nonqualified Immigrants** include all other immigrants, including undocumented immigrants and many lawfully present immigrants in the United States.<sup>978</sup>

To offset the gaps in eligibility, Minnesota opted to use state money to provide some immigrants who are not eligible for federally funded programs with limited access to state benefits. Despite good intentions, these state-funded programs have been vulnerable to budget cuts and other challenges,<sup>979</sup> leaving some Minnesotans at risk of not having their basic needs met.

**MINNESOTA PUBLIC BENEFIT PROGRAMS**

**Minnesota Family Investment Program (MFIP):** MFIP is Minnesota’s welfare-to-work program for low-income families with children and pregnant women and contains both cash and food assistance. Families can only receive MFIP benefits for a maximum of 60 months.<sup>980</sup> To be eligible for MFIP, families have to meet program income and asset limits and either be a U.S. citizen or have a qualified immigrant status.<sup>981</sup>

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<sup>978</sup> Tanya Broder and Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs*, National Immigration Law Center, (Oct. 2011), <http://www.nilc.org/overview-immeligfedprograms.html>.

<sup>979</sup> Tanya Broder and Jonathan Blazer, *Overview of Immigrant Eligibility for Federal Programs*, National Immigration Law Center, (Oct. 2011), <http://www.nilc.org/overview-immeligfedprograms.html>.

<sup>980</sup> Laura Melnick, *Summary Guide to Minnesota Government Benefit Programs, 2014 Update* Minnesota Continuing Legal Education, Inc., 2014.

<sup>981</sup> Benefits.gov, “Minnesota Family Investment Program (MFIP)”, (accessed Feb 21, 2014), <http://www.benefits.gov/benefits/benefit-details/1666>.



**Supplemental Nutrition Assistance Program (SNAP):** SNAP helps low-income individuals and families obtain food that promotes healthy nutrition.<sup>982</sup> To be eligible for SNAP, households must meet program income limits and have a qualifying immigration status.<sup>983</sup>

**Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA):** Refugee families with minor children in Minnesota qualify for the same cash and medical assistance programs as other low-income eligible families. Refugees who do not have minor children in their home can receive RCA and RMA for the first eight months after their arrival.<sup>984</sup>

**Supplemental Security Income (SSI):** SSI provides cash benefits to adults and children who are blind or disabled, and to people 65 or older who do not have disabilities.<sup>985</sup> Individuals must meet strict income and asset limits and have a specific immigration status to qualify for SSI.<sup>986</sup> SSI has a seven-year eligibility limit for refugees and asylees.<sup>987</sup>

**Medical Assistance (MA):**<sup>988</sup> Federally funded MA pays for medical care for low-income people who cannot otherwise meet their health care needs.<sup>989</sup> To qualify for MA, an immigrant must be in a qualified status and must have been in this status for at least five years. Minnesota has recently eliminated its state-funded MA program<sup>990</sup>

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<sup>982</sup> Minnesota Department of Human Services, "Supplemental Nutrition Assistance Program (SNAP) and Food Assistance Programs," (accessed Feb 21, 2014), [www.dhs.state.mn.us/id\\_002555](http://www.dhs.state.mn.us/id_002555)

<sup>983</sup> Laura Melnick, *Summary Guide to Minnesota Government Benefit Programs, 2014 Update* Minnesota Continuing Legal Education, Inc., 2014.

<sup>984</sup> Minnesota Department of Human Services, "Refugee Assistance", (accessed Feb 21, 2014) [http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id\\_004115](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_004115).

<sup>985</sup> Social Security Administration, "Supplemental Security Income (SSI) Program", (accessed Feb 21, 2014), <http://www.ssa.gov/pgm/ssi.htm>.

<sup>986</sup> Laura Melnick, *Summary Guide to Minnesota Government Benefit Programs, 2014 Update* Minnesota Continuing Legal Education, Inc., 2014.

<sup>987</sup> Social Security Administration, "Supplemental Security Income (SSI) for Noncitizens," (Dec. 2012), <http://www.socialsecurity.gov/pubs/EN-05-11051.pdf>.

<sup>988</sup> Participants did not discuss the Affordable Care Act (ACA), mainly because the research period preceded the implementation of health insurance coverage under the ACA. However, it is important to note that under the ACA, a larger percentage of legally residing immigrants and non-immigrants will be able to receive health coverage. [Randall Chun, *Medical Assistance*, Minnesota House of Representatives Research Department, (Oct. 2013), <http://www.house.leg.state.mn.us/hrd/pubs/medastib.pdf>; Fatema Haji-Taki, *Access to Health Coverage for immigrants in Minnesota: CLE for American Immigration Lawyers Association Minnesota/Dakotas Chapter*, Mar. 6, 2014].

<sup>989</sup> Minnesota Department of Health, "Guide to Minnesota's Public Health Care Programs", (accessed Feb 21, 2014), <http://www.health.state.mn.us/clearinghouse/public.htm>.

<sup>990</sup> Laura Melnick, *Summary Guide to Minnesota Government Benefit Programs, 2014 Update*, Minnesota Continuing Legal Education, Inc., 2014.

**Minnesota Care (MN Care):** MN Care is a health care program for low income Minnesotans who are ineligible for MA due to their income being over MA limits and do not have other health coverage. MN Care is also health coverage program for those who cannot get MA due to immigration status<sup>991</sup>

**Emergency Medical Assistance (EMA):** EMA mainly covers medical emergency services in emergency rooms for the duration of the emergency need.<sup>992</sup>

## FAILURE TO MEET THE BASIC NEEDS OF REFUGEES AND ASYLUM SEEKERS

The United States has committed itself to the principle that everyone has the right to seek and enjoy asylum from persecution.<sup>993</sup> Nonetheless, refugees face strict limitations on services to meet their basic needs, and asylum seekers receive no support upon their arrival in the United States.

### REFUGEE RESETTLEMENT

Minnesota has an especially large refugee population, representing one in five immigrants to the state.<sup>994</sup> Some of Minnesota's largest immigrant groups initially arrived as refugees, including Somalis, Hmong, Ethiopians, Cambodians, Karen, Liberians, and residents of the former Soviet Union.<sup>995</sup> Nearly half of all Minnesotans receiving permanent resident status are refugees or individuals who have been granted asylum.<sup>996</sup>

Refugee resettlement to the United States is governed by federal law.<sup>997</sup> The resettlement reception and placement program provides support to newly arrived refugees and their families.<sup>998</sup>

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<sup>991</sup> Laura Melnick, *Summary Guide to Minnesota Government Benefit Programs, 2014 Update*, Minnesota Continuing Legal Education, Inc., 2014.

<sup>992</sup> Laura Melnick, *Summary Guide to Minnesota Government Benefit Programs, 2014 Update*, Minnesota Continuing Legal Education, Inc., 2014.

<sup>993</sup> UDHR, Art. 14(1). International refugee protection is governed by the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. The United States acceded to the 1957 Protocol in 1968 and in 1980 the U.S. Congress passed the Refugee Act executing its obligations under the Protocol. In addition to guaranteeing the right to seek asylum, the Refugee Act created the refugee resettlement system that continues to govern the identification, adjudication, and resettlement in the United States of those refugees who can neither be repatriated to their homelands nor locally integrated into the countries of first asylum.

<sup>994</sup> The Minneapolis Foundation, *A New Age of Immigrants: Making Immigration Work for Minnesota*, (Aug. 2010), 2.

<sup>995</sup> Minnesota Department of Health, "Cumulative Refugee Arrival Data, 1979-2012", (accessed Feb. 14, 2014), [www.health.state.mn.us/divs/idepc/refugee/stats/refcummm.pdf](http://www.health.state.mn.us/divs/idepc/refugee/stats/refcummm.pdf).

<sup>996</sup> The Minneapolis Foundation, *A New Age of Immigrants: Making Immigration Work for Minnesota*, (Aug. 2010), 2.

<sup>997</sup> 8 U.S.C. §§1157, 1521 (2013).

In Minnesota, resettlement services are coordinated by the state’s Resettlement Program Office<sup>999</sup> and voluntary agencies that provide direct services to new arrivals. One local resettlement agency describes the scope of services: “Resettlement services include welcoming families at the airport when they first arrive, addressing medical needs, finding housing, helping them apply for Social Security cards, economic assistance, school registration and English Language classes, and explaining social adjustment and acculturation issues.”<sup>1000</sup>

Federal regulations outline program requirements for the Refugee Cash Assistance and Refugee Medical Assistance programs, as well as requirements for employability and social adjustment services.<sup>1001</sup> Rigid rules governing refugee assistance programs pose challenges to ensuring that all refugees receive the assistance they need.<sup>1002</sup> For example, almost all professionals working with refugee populations<sup>1003</sup> identified the short time period that refugees can qualify for services and benefits as a major barrier for their wellbeing.<sup>1004</sup>

Core services, such as food, housing, clothing, employment services, and follow-up medical care, are provided only during the first one to three months after a refugee's arrival.<sup>1005</sup> Eligibility for cash and medical assistance extends to eight months, but refugees are then expected to be self-sufficient.

One provider described the various time limits on available services:

*We do refugee resettlement, which is a 90-day program. We assist clients in finding housing, getting their Social Security card, and applying for public assistance benefits. Refugee cash assistance program is a public-private partnership with the city for people who have been in the United States for less than 18 months with no dependents. They can apply for cash and food assistance here at the agency. We also have a Matching Grant Program and an accelerated employment program for the first six months in United States, and a refugee cash assistance coordinator can refer clients to an employment counselor to find work for up to eight months.*<sup>1006</sup>

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<sup>998</sup> 8 U.S.C. §1522; 45 C.F.R. §400 (2013).

<sup>999</sup> Interview 115; Interview 145.

<sup>1000</sup> World Relief Minnesota, “What We Do: Refugee Resettlement,” (accessed Mar. 21, 2014), <http://www.worldreliefmn.org/about/what-we-do/refugee-resettlement-services/>.

<sup>1001</sup> 45 C.F.R. §400.

<sup>1002</sup> 45 C.F.R. §400.1(b) (stating “[i]t is the purpose of this program to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible).

<sup>1003</sup> People who are inspected and admitted as “refugees” under 8 U.S.C. §1157.

<sup>1004</sup> Interview 115; Interview 145; Conversation 7; Conversation 16; conversation 18; Interview 119.

<sup>1005</sup> Refugee Council USA, “Post Arrival Assistance and Benefits,” (accessed Mar. 21, 2014), <http://www.rcusa.org/index.php?page=post-arrival-assistance-and-benefits>.

<sup>1006</sup> Interview 145.

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A social service provider said, “We see refugee clients for three months until the resettlement services contract is done. It used to be 180 days allotted for someone to be fully integrated or be self-sufficient, which was barely adequate. Now it has dropped to three months; cut in half. For someone to have a bank account, have children in school, and find work in three months isn’t at all realistic.”<sup>1007</sup>

“There are times when we are closing a 90 day case and the person has not even been given employment counseling.”

Others working in the field agreed that three months are insufficient to provide all the necessary services and orientation and to be able to assess their clients’ wellbeing, integration, and stability in the community.<sup>1008</sup> A health professional stated, “I don’t think the United States really helps refugees like they

should. They kind of just let them go.”<sup>1009</sup>

Resettlement workers and other service providers noted the challenge of achieving true self-sufficiency in 90 days. One refugee resettlement expert also noted that the focus of the refugee resettlement program has shifted from holistic integration services to getting refugees into jobs.<sup>1010</sup> Given the limited English proficiency many refugees have upon arrival, this often drives refugees into low-wage jobs.<sup>1011</sup>

In addition to the limited period of initial resettlement services, refugee applicants sometimes face a long waiting period for eligibility determination and approval for public benefits. Professionals working with refugees identified this as a major problem for their clients. One advocate said: “One of the major challenges we see, is when someone is referred to MFIP, the actual processing time can take up to 30 days and during this time, the person cannot be referred to a job counselor. There are times when we are closing a 90 day case and the person has not even been given employment counseling.”<sup>1012</sup>

The long wait time for benefits approval can also have health implications. An advocate mentioned that some services do not accept Medical Assistance while approval is pending.<sup>1013</sup> She added that accessing health insurance was not the problem, but the long wait time created a hardship for clients.<sup>1014</sup>

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<sup>1007</sup> Interview 115.

<sup>1008</sup> Interview 115.

<sup>1009</sup> Conversation 10.

<sup>1010</sup> Interview 145.

<sup>1011</sup> Interview 145.

<sup>1012</sup> Interview 97.

<sup>1013</sup> Interview 97.

<sup>1014</sup> Interview 97.

Adding to the problem is that refugee resettlement agencies get all of their refugee clients at the same time. According to the social service providers, this creates an influx of requests to county agencies for benefits and services flooding the system. One social service provider stated: “We all need to jump on what’s available and compete,” adding, “some counties are better equipped to handle it than others. Ramsey County does a great job!”<sup>1015</sup>

One community member reflected that even services prior to arrival have been cut: “Refugees come with little to no English skills or cultural orientation. In the past, many had intensive language classes for months before arrival; that no longer exists,”<sup>1016</sup> increasing the burden on post-arrival services to help refugees achieve self-sufficiency.

### SECONDARY RESETTLEMENT

Resettlement service providers cited the increasing mobility of the refugee population as a significant challenge to providing services. The resettlement system was designed for planned refugee arrivals to designated communities, but advocates noted that a lack of jobs and affordable family housing often drove refugees to move away from the community in which they initially were resettled, a process often referred to as “secondary resettlement.”<sup>1017</sup> Minnesota communities in the southern and western part of the state reported influxes of secondary refugees in the past few years, particularly by refugees seeking employment in the meatpacking industry.<sup>1018</sup> Resettlement providers in the Twin Cities confirmed this trend.<sup>1019</sup> One community in greater Minnesota reported that men come to work during the week, but return to their families in the Twin Cities on the weekends, breaking up families and contributing to a lack of community engagement.<sup>1020</sup>

Unfortunately, refugees who move away from where they are initially resettled risk losing assistance under the refugee resettlement program.<sup>1021</sup> Interviewees expressed concern that refugees in smaller communities do not have access to resettlement services once they relocate. One resettlement worker noted:

*When they decide to move to Windom, Marshall, or Worthington (places with no refugee resettlement services), we can set up the health screening, but we cannot provide any other services. They do get their money [refugee cash assistance]. But when they refuse to stay here, they are on their own. We use translators to make sure they understand the risk and responsibilities of moving to areas that do not have refugee resettlement services. If there*

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<sup>1015</sup> Interview 115.

<sup>1016</sup> Conversation 18.

<sup>1017</sup> Interview 80.

<sup>1018</sup> Interview 145.

<sup>1019</sup> Interview 145; Conversation 2; Interview 80; Interview 105.

<sup>1020</sup> Interview 80; Conversation 2.

<sup>1021</sup> Interview 145.

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*are refugee resettlement services in the areas they move to, they can be transferred if they are within the 90-day period. Case managers will have these conversations with every family.*<sup>1022</sup>

One agency secured funding outside the refugee resettlement program for immigration services and case managers for secondary migrants,<sup>1023</sup> but because the agency is limited to working with refugees who live within 100 miles of their office,<sup>1024</sup> some the refugees simply fall outside the agency's service area.<sup>1025</sup>

## ASYLUM SEEKERS

Although lawfully present in the United States, asylum seekers in Minnesota are barred both from employment and from virtually all forms of government assistance, including assistance for refugees.

One man described his struggle to survive while seeking asylum: "Before I got asylum it was terrible. I did not get any assistance whatsoever apart from legal services. They literally leave you out to die. It was so bad. I think the government does it that way so that people get frustrated and go home. You put them in a six-month period where they cannot work and you are not giving them any assistance at all. How do you expect them to survive?"<sup>1026</sup> Another asylum seeker reported myriad struggles during his first year in the country, including having to rely on friends for food and a place to live, and not having money for bus fare.<sup>1027</sup>

As the interviewee opined, the policy denying work permission to asylum seekers was, in fact, a deliberate attempt to deter asylum claims. In 1994, federal regulations changed to prohibit asylum seekers from receiving employment authorization until their asylum applications had been pending for at least 180 days.<sup>1028</sup> In promulgating the rule, the government noted that the rule was being changed to deter the filing of unmeritorious claims and that asylum seekers should be dependent on their own savings and the charity of friends and family.<sup>1029</sup> The government downplayed the

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<sup>1022</sup> Interview 115.

<sup>1023</sup> Interview 145.

<sup>1024</sup> Interview 145; Interview 115.

<sup>1025</sup> Interview 115; Interview 145.

<sup>1026</sup> Interview 9.

<sup>1027</sup> Interview 8.

<sup>1028</sup> Congress subsequently codified this change as part of the Illegal Immigration and Immigrant Responsibility Act of 1996. 8 U.S.C. §1158(d)(2); Legal Action Center, Penn State Dickinson School of Law Center for Immigrants' Rights, *Up Against the Asylum Clock: Fixing the Broken Employment Authorization Asylum Clock*, 2010, 6-8. [http://law.psu.edu/\\_file/Immigrants/Asylum\\_Clock\\_Paper.pdf](http://law.psu.edu/_file/Immigrants/Asylum_Clock_Paper.pdf).

<sup>1029</sup> 59 Fed. Reg. at 62290-91.

expected hardship to asylum seekers, noting that concurrent policy changes were expected to shrink asylum adjudication times to 60 days.<sup>1030</sup>

The government's expectation of case adjudication times proved to be wildly inaccurate. The Advocates for Human Rights, which represents hundreds of asylum seekers in the upper Midwest, notes an average case processing time of more

“Before I got asylum it was terrible. I did not get any assistance whatsoever apart from legal services. They literally leave you out to die.”

than two years before the Chicago Asylum Office. The Bloomington Immigration Court currently is scheduling hearings for 2016. While in many cases asylum seekers facing these delays do receive employment authorization after their cases have been pending for 180 days, complicated rules relating to the “asylum clock” mean that some asylum seekers never become eligible for employment authorization.<sup>1031</sup>

Being ineligible both for employment and for public assistance leaves asylum seekers in Minnesota especially vulnerable. One attorney recalled a particularly difficult case:

*My client, a young woman who had fled horrific persecution as a ‘bush wife’ during the war in Sierra Leone, was completely destitute when she arrived in Minnesota. We were trying to prepare her for her upcoming asylum interview, which was a really painful process for her. But what she found really difficult was her living situation. She was staying on someone’s couch, and he was forcing her to pose for pornographic photographs in exchange for staying there. When I contacted her social worker to see about housing assistance, their response was that housing was so tight, she was lucky to have anywhere to live at all.*<sup>1032</sup>

## LIMITS AND BARRIERS TO RECEIVING BENEFITS

### INSUFFICIENT BENEFIT LEVELS

Stagnant rates of public benefits keep benefit recipients in poverty and unable to meet their basic needs. A service provider described the problem: “Public assistance rates have not increased since 1986, but as you know, housing rates have risen steadily. This poses a huge challenge to setting families up in housing that they can sustain.”<sup>1033</sup> Indeed, the Minnesota Family Investment Program (the state version of the federal Temporary Assistance to Needy Families program) rates were set in

<sup>1030</sup> 59 Fed. Reg. at 62290-91.

<sup>1031</sup> Legal Action Center, Penn State Dickinson School of Law Center for Immigrants’ Rights, *Up Against the Asylum Clock: Fixing the Broken Employment Authorization Asylum Clock*, 2010, 6-8. [http://law.psu.edu/\\_file/Immigrants/Asylum\\_Clock\\_Paper.pdf](http://law.psu.edu/_file/Immigrants/Asylum_Clock_Paper.pdf).

<sup>1032</sup> Interview 184.

<sup>1033</sup> Interview 145.

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1986 and have not increased since that time (providing just \$437 for a household of two, \$532 for a household of three, and \$621 for a household of four.) As a result, recipients of food and cash assistance live well below federal poverty guidelines.<sup>1034</sup>

### LACK OF INFORMATION

Accessing public benefits for which they are eligible is made more difficult for low-income immigrants because of a lack of information. Some professionals in the social and human services stated that the lack of information and outreach from public agencies to low-income immigrant populations both is a deterrent to accessing services and creates gaps that are laced with a sense of mistrust. For many immigrants who come from cultures and places where support to meet basic needs is provided by community-based entities, the concepts and processes of public benefit programs may not be well understood, making the availability of accurate information even more important.

Community members also identified the lack of information about benefits as a major barrier. As one participant mentioned, there is a “lack of a central place for vital information.”<sup>1035</sup> Another community member stated that there is a “lack of awareness about the government support system.”<sup>1036</sup> The consequences of not having access to information can create undue hardship on people. For example, one respondent said, “a lady’s husband was deported; she now has to take care of her child alone, and it was hard because she did not know where to find resources that were necessary.”<sup>1037</sup> Others also expressed frustration about the lack of accurate information and the negative impact it had on them. A community member remarked: “Information should be easier for people to get. I know a person who got sick and he could not find health resources, so he had to leave and go back to his home country.”<sup>1038</sup> Respondents also mentioned that information is only available in limited venues; an interviewee said, “Churches give information about organization and resources. But that should exist beyond churches.”<sup>1039</sup> As one interviewee stated, outreach efforts are even more important to “people who are a little more cautious of government assistance.”<sup>1040</sup>

The lack of information combined with a fear and mistrust of government entities helps create what an advocate called a “hidden population.”<sup>1041</sup> Members of this group are too afraid to seek services and may not get their information from reliable sources, which pushes them further away from the

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<sup>1034</sup> Laura Melnick, *Eligibility for Cash Assistance Programs*, Southern Minnesota Regional Legal Services, Inc., (Oct. 2013), [http://www.mfsrc.org/Conferences\\_files/2013\\_handouts/MAXIS\\_HANDOUT.pdf](http://www.mfsrc.org/Conferences_files/2013_handouts/MAXIS_HANDOUT.pdf).

<sup>1035</sup> Conversation 21.

<sup>1036</sup> Conversation 21.

<sup>1037</sup> Conversation 22.

<sup>1038</sup> Conversation 24.

<sup>1039</sup> Conversation 21.

<sup>1040</sup> Interview 40.

<sup>1041</sup> Interview 108.



support they need to meet their basic needs. A social worker commented, “I have had a few times when immigrants did not know they were eligible for services. I will tell them, ‘Your children do have a documented status, so you can apply for SNAP.’”<sup>1042</sup> Research also found that while some immigrants had access to community-based organizations and to information that facilitated their access to services, others who did not belong to established communities served by community-based organizations had limited information and substantially more difficulties connecting with services.<sup>1043</sup>

In order to minimize barriers and the information gap, public agencies should form partnerships with nonprofit organizations and community-based entities that have existing trusting and lasting relationships with their clients. These organizations have the ability to reach out to various communities and channel information in a culturally sensitive manner. According to one advocate, most immigrants, especially those who are undocumented, “only trust their churches, grocery stores, and nonprofits.”<sup>1044</sup> As such, most professionals in the field recommended the use of nonprofit organizations that are community-based as a way to create more “connectedness” with immigrant communities, “especially for those who may be wary of coming to a government office.”<sup>1045</sup> Community-based and nonprofit organizations should use existing resources, such as Bridges to Benefits, a web-based tool developed by the Children’s Defense Fund-Minnesota that helps families and individuals safely determine if they are eligible for public benefit programs, without requiring any identifying information, and links them to services.<sup>1046</sup> United Way’s 2-1-1 similarly provides confidential information about health and social services.<sup>1047</sup>

### INFORMATION OVERLOAD

The complex and confusing public benefit eligibility rules resulting from PRWORA have created a highly difficult system to navigate. This complexity has become a substantial barrier to access and participation. Individuals seeking benefits feel discouraged by the sheer number of required documentations. According to the Office of the Assistant Secretary for Planning and Evaluation of the U.S. Department of Health and Human Services, “these barriers were even more acute for immigrant families, in part because the specific policies and requirements related to immigrant

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<sup>1042</sup> Interview 108.

<sup>1043</sup> U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Barriers to Immigrants’ Access to Health and Human Services Programs*, by Krista M. Pereira, Robert Crosnoe, Karina Fortuny, Juan Manuel Pedroza, Kjersti Ulvestad, Christina Weiland, and Hirokazu Yoshikawa (May 2012), <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Barriers/rb.shtml>.

<sup>1044</sup> Interview 147.

<sup>1045</sup> Interview 40.

<sup>1046</sup> Children’s Defense Fund, “Bridge to Benefits,” (accessed Mar. 21, 2014), <http://mn.bridgetobenefits.org/Home2>.

<sup>1047</sup> United Way 2-1-1, “About 2-1-1,” (accessed Mar. 21, 2014), <http://www.211unitedway.org/>.

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eligibility and verification changed rapidly, differed across programs, and added greatly to an already high level of complexity.”<sup>1048</sup>

Many advocates and social service professionals who assist people with the application and re-certification processes identified the process as being time-consuming and complex. A community worker stated that “access is difficult because of having too much paperwork to fill out and not knowing how to do it correctly.”<sup>1049</sup> Another social service provider commented: “It is a difficult and complicated process for someone who speaks the language, let alone for someone who doesn’t speak the language and doesn’t understand or is new to the system.”<sup>1050</sup>

As one advocate reported, “there is an information overload on our clients; every county office is full of bureaucracy, full of paperwork. The process is driven by government rules that are very methodical and cold.”<sup>1051</sup> She added that within this complex system, “keeping everything straight is difficult for most of our clients; so we help explain and make things more manageable.”<sup>1052</sup> One participant who experienced difficulties stated, “[the process was] very difficult because they ask for one paper, then ask for another paper. When I brought what they asked, they said that I needed to bring more documentation; they told me come back with the other papers.”<sup>1053</sup>

Many advocates and workers indicated that in addition to the mounds of paperwork and bureaucracy, the unclear concepts and terminologies of the eligibility rules compound immigrants’

“A client with limited English proficiency regularly came to the agency with a bag full of correspondence and notices from government agencies, seeking help to decipher the vast amount of information contained in those papers. A staff member from the organization would sit with him for a couple of hours, sort through the bag, and read each piece of mail.”

confusion when trying to access the public benefit system. To some immigrants, the concept of public assistance may be new. Many find themselves baffled by terms such as “head of household” or “responsible party” that may not readily translate into their languages or cultures. This is even more challenging to those with

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<sup>1048</sup> U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Barriers to Immigrants’ Access to Health and Human Services Programs*, by Krista M. Pereira, Robert Crosnoe, Karina Fortuny, Juan Manuel Pedroza, Kjersti Ulvestad, Christina Weiland, and Hirokazu Yoshikawa (May 2012), <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Barriers/rb.shtml>.

<sup>1049</sup> Interview 147.

<sup>1050</sup> Interview 106.

<sup>1051</sup> Interview 119.

<sup>1052</sup> Interview 119.

<sup>1053</sup> Interview 15.

limited education and literacy. It is also a system that is increasingly becoming computerized, making it necessary for applicants to have some computer skills.

A social worker remembers a client with limited English proficiency, who regularly came to a social service agency with a bag full of correspondence and notices from government agencies, seeking help to decipher the vast amount of information contained in those papers. A staff member from the organization would sit with him for a couple of hours, sort through the bag, read each piece of mail, and help him understand its content.<sup>1054</sup>

Similarly, navigating insurance and billing in the U.S. health care system is just as overwhelming and creates a great deal of confusion for immigrant individuals and families, even for those who are not on public assistance. An advocate reflected that “one of the biggest barriers is navigating the health care system, knowing how to access it, and understanding the billing and collection components. These are so complex that some elect not to receive health care.”<sup>1055</sup>

### LANGUAGE ACCESS: A CONTINUING CHALLENGE

In addition to the problems with the overwhelming complexity of the benefits system, service providers, advocates, and health care professionals reported serious challenges in communicating with their clients and patients because of language and cultural barriers. In addition to interpretation and translation, people noted that conveying accurate information depends on understanding the context as well as the language. In a state where more than 230 languages<sup>1056</sup> are spoken, service providers, health care institutions, and government agencies can never ensure that interpreters for all languages are readily on hand, but resources continue to be needed to provide language access.

Many human and social service agencies in Minnesota work with immigrants and refugees who are English learners. Although many efforts to address language access have been implemented, language issues still present barriers to receiving essential services and benefits. For people seeking public assistance or medical care, access to interpretation and translation of paperwork is essential. A public agency professional mentioned that clients face “lots of confusion, mounds of paperwork, lack of language access, difficulties with terminology and concepts.”<sup>1057</sup>

Title VI of the Civil Rights Act states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be

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<sup>1054</sup> Interview 185.

<sup>1055</sup> Interview 141.

<sup>1056</sup> Minnesota Department of Education, Division of Student Support, *English Learner Education in Minnesota: 2013*, 12.

<sup>1057</sup> Interview 119.

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subjected to discrimination under any program or activity receiving federal financial assistance.<sup>1058</sup> This requirement applies to states<sup>1059</sup> and to private agencies receiving federal funding.<sup>1060</sup> Minnesota law provides additional requirements for language access, including the employment of bilingual employees in certain state agencies, translation of materials explaining agency services, and provision of translated materials for certain local offices.<sup>1061</sup> In addition, Minnesota law governs interpreter services for recipients of MN Care<sup>1062</sup> and Medicaid.<sup>1063</sup>

Despite both federal and state legal requirements, there are few uniform policies or protocols for public service agencies to respond to the needs of Minnesotans with limited English proficiency.<sup>1064</sup> Those agencies that have developed plans for English learners differ substantially in how they have addressed the need, even among areas with similar populations.<sup>1065</sup> There is no central reporting system or enforcement protocol for violations of Title VI mandates by agencies receiving federal funds.<sup>1066</sup>

Although Minnesota law requires the commissioner of administration to determine the application of Minnesota’s bilingual staff and translation requirements for each state agency in consultation with many partners, including the Council on Affairs of Chicano/Latino People, groups representing other non-English-speaking individuals, and the head of the agency,<sup>1067</sup> information about each agency’s status under this law is not readily available.

“Services tailored to your culture in your own language help make you feel welcome.”

Advocates and professionals noted that certain immigrants have better access to language services, as well as to services provided in their languages and in a culturally appropriate manner. One professional noted that access for large or more established populations often is in place: “for Somalis, at the county they have Somali speakers, which helps. Services tailored to your culture in your own language help make you feel welcome.”<sup>1068</sup>

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<sup>1058</sup> 42 U.S.C. §2000d.

<sup>1059</sup> 42 U.S.C. §2000d-7.

<sup>1060</sup> Exec. Order No. 13,166, 65 Fed. Reg. 50121 (Aug. 16, 2000).

<sup>1061</sup> Minn. Stat. §15.441 (2013).

<sup>1062</sup> Minn. Stat. §256L.03 (2013).

<sup>1063</sup> Minn. Stat. §256B.0625, subd. 18a (2013).

<sup>1064</sup> Interview 173.

<sup>1065</sup> Minnesota Advocates for Human Rights, *The Government Response to Domestic Violence Against Refugee and Immigrant Women in the Minneapolis/St. Paul Metropolitan Area: A Human Rights Report* (Dec. 2004), 41.

<sup>1066</sup> Interview 173.

<sup>1067</sup> Minn. Stat. §15.441, subd. 1 (2013).

<sup>1068</sup> Interview 115.

Other groups of immigrants and refugees, however, struggle to access services and information in their languages. One advocate observed of his community, “Older people feel frustrated when they go to Social Security or benefits offices and there isn’t someone there who speaks their language. They often do not know to ask for an interpreter and leave without being served. They will call our organization to have someone go with them.”<sup>1069</sup> One advocate observed the difficulty of meeting the needs of such a diverse community, even with the best of efforts: “In my organization we provide interpreters, we serve the community and don’t turn anyone away. Although we have staff representing various cultures, we do not have all the cultures covered; I believe we should, since we get our funding to serve them and we owe it to them to have representation.”<sup>1070</sup> Others echoed the statement, observing that language barriers remain a challenge. A service provider in a community-based organization talked about the financial resources needed to meet language needs, noting that her organization wants to be a primary resource for language and other language and culture specific services for immigrants, but they do not have the necessary funding and support.<sup>1071</sup>

Language barriers are exacerbated by the shortage of qualified interpreters. One person noted that “if an interpreter is provided, often the ‘interpreter’ is a staff member of the agency who works in a different area and happens to speak the language – not a dedicated interpreter.”<sup>1072</sup> Another advocate remarked on the risks of using interpreters from the community rather than professionals: “We have people in here who know the medical terms and HIPPA policy, unlike untrained interpreters. For example, when a doctor asks a patient, ‘what happened to your eye?’ the untrained interpreter will say to her, ‘you better not tell that your husband beat you.’”<sup>1073</sup> As required by state law, the Commissioner of Health maintains a voluntary statewide roster of spoken language health care interpreters.<sup>1074</sup>

Most troubling is when people must rely on their children to interpret. Using children as interpreters presents a number of problems. Children may be unable to understand concepts or vocabulary. They may be exposed to information that could cause them undue harm and stress. And, in some cases, children who interpret for their parents assume power over their parents that can result in role reversal and instability in the family.

Problems may arise even when a qualified interpreter is available. An attorney cited a case where her client sought medical attention: “The clinic knew about his language needs and was ready with

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<sup>1069</sup> Interview 146.

<sup>1070</sup> Interview 133.

<sup>1071</sup> Interview 137.

<sup>1072</sup> Interview 146.

<sup>1073</sup> Interview 129.

<sup>1074</sup> Minn. Stat. §144.058 (2013).

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an interpreter from his own country. What the clinic did not know was that the client, an asylum seeker, was deeply afraid that his government would learn that he was in Minnesota. When he saw the interpreter from his own country, he walked out of the appointment.”<sup>1075</sup>

Translation of written information also poses challenges. Both the public benefits and the health care systems rely on written explanations and forms, and the sheer amount of paperwork can deter immigrants and refugees with limited English literacy skills from seeking help. Even when materials are translated into various languages, context and concepts can be lost in translation. Most print materials assume high literacy levels and familiarity with complex concepts and languages that are difficult to understand even for native English speakers. As one advocate stated, “people often need help with the ‘combined application’ for public benefits. It is difficult people who do not speak English, especially for those who may not be literate in their own languages.” Another advocate noted, “The language needs to be adjusted to the level of people being served.”

Service providers also recognized language as a key ingredient to a welcoming and culturally appropriate and sensitive practice. They acknowledged that providing services in the clients’ language or at the very least providing access to language lines went a long way in creating a trusting and lasting relationship with their clients. Not only does language accessibility allow the service provider to do her job effectively, it also offers clients a “sense of belonging and acceptance” and demonstrates sensitivity to and validation of their cultures and their stories. In addition to the benefits to the clients, it helps professionals in the field steer clear of stereotypes, develop their cultural knowledge base, and attribute value to the enrichment it provides.

### BEST PRACTICE:

One social service agency implemented a creative solution to addressing the language and cultural barriers their clients face. An advocate from the agency stated:

*When hiring staff, we are not looking for degrees or previous work experience. We hire people who have passion and want to see their communities not just survive but thrive. Clients are served by people who are like them, share the same experiences and speak their language; the focus is on respect and dignity. We are one small entity within a wider government entity not known for its friendliness. Our clients are treated with dignity and respect, and we celebrate culture. When people come here they need to see someone who understands them, someone who is a bridge from where they are to where they are going.*<sup>1076</sup>

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<sup>1075</sup> Interview 184.

<sup>1076</sup> Interview 119

### PROGRAMS THAT FAIL TO RECOGNIZE CLIENTS' STRENGTHS

In addition to all the barriers that arise from communication difficulties, the design of public benefit programs puts more focus on the limitations of families and individuals than their strengths, hurting service provision. Respondents indicated that there is a tendency in the human services sector to view those who are seeking services, especially immigrants who face language and other barriers, as “deficient.” An advocate declared: “There is a problem on the part of professionals who think they are doing service to immigrants by being ‘nice’ and not factual. They treat them as if they were incapable.”<sup>1077</sup>

Community-based organizations were identified as being more likely to elicit their clients’ existing strengths and further empower them to gain the knowledge and confidence they need to navigate the various systems with which they may come in contact. One service provider said, “My own family used public benefits for a small time when we came here, but my family’s goal was to get off assistance and get established. That is the goal for our program participants too. To eventually get them established and independent.”<sup>1078</sup> Referring to their clients’ strengths, one advocate said, “We work with [refugees], a population that is resilient, hard working and determined. It is an honor and a privilege to work with this population.”<sup>1079</sup> Another advocate reiterated the statement by saying, “They are very resourceful. If you point them to the resources, they will get them, especially if they have access to an interpreter or language access at county phone lines.”<sup>1080</sup>

However, continued insufficient funding and resources present challenges to these organizations. A professional in the field said, “There are many established communities and organizations that can do the work but are unable to do so because of lack of funding; the work requires resources!”<sup>1081</sup>

Furthermore, the assumption that all immigrants have similar needs can lead to culturally insensitive practices that can adversely affect eligible immigrants. As one advocate remarked, “everyone is supposed to be treated equally with the assumption that everyone has equal needs. Clients get very frustrated.”<sup>1082</sup> An interviewee stated that people have a tendency to put immigrants, refugees, and asylees in the same category. He recommends that more education be given to professionals in this regards.<sup>1083</sup> In concurrence, a service provider stated, “Data collection needs to look at different communities instead of lumping them together. Acquisition of

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<sup>1077</sup> Interview 114.

<sup>1078</sup> Interview 106.

<sup>1079</sup> Interview 115.

<sup>1080</sup> Interview 123.

<sup>1081</sup> Interview 130.

<sup>1082</sup> Interview 119.

<sup>1083</sup> Conversation 7.

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information needs to be done in a culturally sensitive way.”<sup>1084</sup> However, at the moment this practice is not yet in place.

## BARRIERS TO HEALTH CARE: COSTS AND CULTURE

### HEALTH CARE COSTS

Human rights standards state that everyone has the right to “the highest attainable standard of physical and mental health,”<sup>1085</sup> which includes being able to access needed health care. However, immigrants and refugees reported having trouble receiving adequate health care because of high costs and cultural barriers. The significant cost of health care and health insurance is one of the main deterrents to immigrants seeking care. Social service providers, advocates, and members of the community discussed at length the damaging effect of steep health care costs. An advocate stated, “The two biggest fears that stop people from seeking health care are fear of being deported and the fear of the cost.”<sup>1086</sup> Another advocate echoed the statement by saying, “It is really sad, but I have heard some people say, ‘I would rather just die.’”<sup>1087</sup>

According to advocates, high costs force many individuals and families to do without health insurance. Research found that even if immigrants, especially those with limited English language proficiency, are employed, they tend to mostly be employed by industries that opt not to offer insurance at all.<sup>1088</sup> For those who decide to have it, often times the premiums are very high. A respondent reported, “health insurance is frustrating; it is expensive if you cannot get it from employment. It is too expensive for me, so I do not have it. I just applied for Minnesota Care for just my son; I have to pay over \$400 that I do not have. In other words, here if you get sick and do not have money you either die or face a bill that is thousands of dollars.”<sup>1089</sup> Research indicates that coverage is worse for immigrant communities in Minnesota than for citizens. In 2011, roughly 32 percent of noncitizens stated they were uninsured, as opposed to 7.7 percent of citizens.<sup>1090</sup>

For immigrants without insurance, visiting a doctor and other kinds of health care are financially out of reach. An interviewee stated, “Health is a huge issue and now it is getting worse. People feel like they cannot go to the doctor, because they do not get insurance benefits at their jobs and they

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<sup>1084</sup> Conversation 24.

<sup>1085</sup> ICESCR, Art. 12.

<sup>1086</sup> Interview 136.

<sup>1087</sup> Interview 136.

<sup>1088</sup> Henry J. Kaiser Family Foundation, “Overview of Health Coverage for Individuals with Limited English Proficiency,” (Aug. 2012), <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/8343.pdf>.

<sup>1089</sup> Interview 44.

<sup>1090</sup> State Health Access Data Assistance Center, “Health Insurance Coverage Estimates, ACS, All Ages, All Poverty Levels, Minnesota: Calendar Year 2011,” (accessed Mar. 21, 2014). <http://www.shadac.org/datacenter/tables/tables/id/0734ed0c-0fd6-461f-9107-56cadd94faec>.



cannot afford a doctor. They feel the system is unfair because their hard work does not get them the same treatment as [others].<sup>1091</sup> Other interviewees also expressed their concerns and frustration about the exorbitant costs associated with health care. A respondent stated, “I am very concerned about my medication. I need to take daily medications. The idea of not having a job and not having insurance to help pay for my medications is very concerning.”<sup>1092</sup> Interviewees observed that the cost of health insurance is too high to afford even when they are working. One said, “Sometimes half of what families are making is being spent on health care.”<sup>1093</sup>

“It is really sad, but I have heard some people say, ‘I would rather just die’ than try to get health care.”

Despite steep costs for both health insurance and health care, fear of becoming a “public charge” discourages lawfully present immigrants who wish to obtain permanent residency from accessing public health coverage. A “public charge” is a person who is dependent on the state for income, and while health care programs are not categorized as support under this policy,<sup>1094</sup> there is immense concern in immigrant communities about being perceived as a public charge and jeopardizing their future immigration status, which inhibits otherwise eligible families from enrolling in public insurance.<sup>1095</sup>

### CULTURAL UNDERSTANDING AND EFFECTIVE SERVICE DELIVERY

In addition to cost, health care providers noted that cultural differences can impede effective communication and limit the ability of immigrants and refugees to get the care they need. A worker in the field explained, “Even in places that have lots of services, the biggest issues are cultural misunderstandings and unwillingness to be open to the others.”<sup>1096</sup>

An advocate observed that, “due to language barriers and cultural differences, the relationship between patients and doctors is not strong.” She added, “maybe because [some immigrant] patients tend to be more animated in their body language, doctors sometimes assume that what patients are saying is exaggerated or untrue. Some patients tell stories, but the doctors want to hurry up and get to the point and want symptoms described exactly. Unfortunately, most of the issues tend to be lost in the conversation.”<sup>1097</sup> Another person gave the following insight, “the

<sup>1091</sup> Interview 139.

<sup>1092</sup> Interview 147.

<sup>1093</sup> Interview 147.

<sup>1094</sup> National Immigration Law Center, *Public Charge: An Overview*, (Oct. 2013).

<sup>1095</sup> Henry J. Kaiser Family Foundation, *Connecting Eligible Immigrant Families to Health Coverage and Care: Key Lessons from Outreach and Enrollment Workers* (Oct. 2011).

<sup>1096</sup> Interview 110.

<sup>1097</sup> Interview 133.

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system here is different from what people are used to back home. In our culture, it is more about building a relationship. But, there is not the time to do that here. Doctor's visits are 15-20 minutes long, which makes it difficult to chat and get to know each other."<sup>1098</sup>

Cultural taboos also present obstacles to health care access. According to professionals in the field, topics such as sexual partners and pregnancy test are difficult to discuss, even when communicating through interpreters to address language barriers. An advocate stated, "Providers try to help the best they can, but sex is not a normal conversation topic in most cultures and this becomes a health care barrier. Sometimes the right information is not being translated correctly."<sup>1099</sup> Another advocate stated, "Some women don't want to see a male doctor and men don't want to see a female doctor. That is hard for people."<sup>1100</sup>

To address the needs of immigrants who may face language and cultural barriers, the Minnesota Department of Human Services and Department of Health contract with various cultural and ethnic organizations to assist immigrants, many of which focus on specific cultural or linguistic groups.<sup>1101</sup> These organizations however, are small in number, they often experience shortages in funding and resources, and they tend to be mainly concentrated in the metro area.

According to a health care worker: "In theory we are welcoming; for example we have a 'welcome' sign in every language, but we still have a way to go to make it really welcoming."<sup>1102</sup> Another person observed: "Most immigrants try to avoid going to clinics if possible because they don't feel comfortable; there is a kind of mistrust. It is hard to explain it but they feel uncomfortable."<sup>1103</sup> A health professional observed, "People who come here find the system strange and hard to access – they only go in when they are really sick and they usually end up in urgent care or the Emergency Room, so the government has to then spend more money. We have the ability to go out and educate the community but there is no funding for our work."<sup>1104</sup> A social service professional indicated that in general, "the health care message is often unwelcoming and not tailored to

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<sup>1098</sup> Interview 136.

<sup>1099</sup> Interview 147.

<sup>1100</sup> Interview 136.

<sup>1101</sup> Minnesota Legislature, Legislative Coordinating Commission, Ethnic Heritage and New American Working Group, "Health Care Services Offered to Immigrants and Refugees," (Sep. 28, 2010), (accessed Mar. 21, 2014), [http://www.lcc.leg.mn/inactive/ehwg/meetings/09282010\\_DHS\\_Services.pdf](http://www.lcc.leg.mn/inactive/ehwg/meetings/09282010_DHS_Services.pdf); Minnesota Department of Human Services, "Contact Numbers," (accessed Mar. 21, 2014), [http://www.dhs.state.mn.us/main/idcplg?IdcService=GET\\_DYNAMIC\\_CONVERSION&dDocName=id\\_006296&RevisionSelectionMethod=LatestReleased](http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&dDocName=id_006296&RevisionSelectionMethod=LatestReleased), ("contact a navigator. A navigator is a person or group that gives free application help").

<sup>1102</sup> Interview 133.

<sup>1103</sup> Conversation 3.

<sup>1104</sup> Conversation 10.

specific communities.”<sup>1105</sup> The provider added that Minnesota’s health care system often fails to address the needs of survivors of torture, war trauma, or other violence, or of those needing culturally sensitive mental health services. “These are people who need to be understood and strongly supported.”<sup>1106</sup> Another advocate noted, “When I think about health, I think about access to medical services. But when a group of refugees was asked about health, they talked about so much more.”<sup>1107</sup> The challenge for the health care system is how to address that holistic concept of health.

One advocate spoke about the missed opportunity to engage health care professionals from other parts of the world due to difficulties they face in becoming licensed in Minnesota: “There are culturally and linguistically competent professionals able to provide support to the communities and there are large immigrant populations here that need physicians who can understand and help them, physicians who know the cultural nuances and know how to ask appropriate questions. This would alleviate so many biases and trust issues. People who have to communicate through interpreters may not say everything. Competent doctors who are from their patients’ cultures’ will be better equipped to provide culturally sensitive service and the government would have to spend less on health care.”<sup>1108</sup> One health professional gave an example of the nuances of communication needed to get and convey accurate information, “for example if doctors ask patients if they eat a lot of salt, they say ‘no.’ But when doctors ask if they eat particular foods that are popular in their culture and very high in sodium, they can give a more accurate answer.”<sup>1109</sup>

### ACUTE SHORTAGE OF MENTAL HEALTH CARE

Mental health service providers stress the critical need for community outreach and educating community members on the benefits of receiving mental health services. The need for culturally sensitive service is most acute in the mental health field, particularly in light of Minnesota’s high proportion of refugees.<sup>1110</sup> Studies corroborate that refugees are more at risk for conditions related to “exposure to deprivation, violence, and forced migration.”<sup>1111</sup> The shortage of “culturally appropriate and competent assessments”<sup>1112</sup> and “the misperceptions that exist on both sides

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<sup>1105</sup> Interview 137.

<sup>1106</sup> Interview 137.

<sup>1107</sup> Interview 184.

<sup>1108</sup> Conversation 10.

<sup>1109</sup> Conversation 10.

<sup>1110</sup> The Minneapolis Foundation, *A New Age of Immigrants: Making Immigration Work for Minnesota*, (Aug. 2010)

<sup>1111</sup> Katherine Fennelly, “The ‘Healthy Migrant’ Effect,” *Healthy Generations: Immigrant and Refugee Health*, University of Minnesota School of Public Health, Maternal & Child Health Program, Feb. 2005, [http://www.epi.umn.edu/mch/resources/hg/hg\\_immi.pdf](http://www.epi.umn.edu/mch/resources/hg/hg_immi.pdf).

<sup>1112</sup> Interview 185.

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about mental health services for refugees<sup>1113</sup> often stand in the way of delivery of appropriate mental health services.

“We have a need for interpreters for therapeutic sessions, but we need a diagnosis first to get the funding for the interpreter. It is a catch-22.”

One professional in the field observed a general “increase in manifestation of mental health issues.”<sup>1114</sup> One service provider stated, “The problem that we see is that mostly the clients think the mental health issues are not pertinent; they think

that they are situational. Even if they have access to mental health care they do not identify as needing those services. Sometimes police have to be called and the client is sent to the hospital.”<sup>1115</sup> Another provider noted that “because mental health is considered very taboo, patients will come in talking about physical pain. It is really hard to get them to therapy, to deal with the issues. A lot of people rely on religious resolutions and other remedies.”<sup>1116</sup> Concurring, a respondent said, “There are no mental health services that are culturally appropriate. In our culture, the way people see mental health is not the way people in this country see it. Often, the issues have escalated before they are clearly noticeable. And psychiatrists and therapists are very expensive.”<sup>1117</sup> A service provider reported, “Community stigma is still attached to mental health and it is very hard for people to reach out for help, because there is such a pressure to hide it.”<sup>1118</sup>

People interviewed identified the need for culturally sensitive practices, training for mainstream health professionals, and recruitment of bicultural and bilingual professionals who have a strong grasp of their communities’ health care needs.<sup>1119</sup> As within the entire health care field, people also noted the failure to capitalize on the resource of foreign-trained professionals who may have both the skills and the ability to serve the health needs of refugees and immigrants.<sup>1120</sup>

In addition to the daunting cultural barriers, mental health service provision is hampered by rigid and complex program requirements. A professional in the field stated, “We have a need for interpreters for therapeutic sessions, but we need a diagnosis first to get the funding for the interpreter. It is a catch-22.”<sup>1121</sup> This unfortunately increases the likelihood for misdiagnosis or under-diagnosis of mental illness and the implementation of incorrect interventions. Additionally,

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<sup>1113</sup> Interview 145.

<sup>1114</sup> Interview 110.

<sup>1115</sup> Interview 145.

<sup>1116</sup> Interview 123.

<sup>1117</sup> Interview 130.

<sup>1118</sup> Interview 105.

<sup>1119</sup> Conversation 10.

<sup>1120</sup> Conversation 10.

<sup>1121</sup> Interview 144.

even though Medical Assistance and MN Care cover mental health care programs and prescriptions,<sup>1122</sup> the steps and requirements involved in accessing care can be daunting for most people, but more so to immigrants with language, literacy, and other barriers.

## DENIAL OF THE RIGHT TO FAMILY UNITY: SPONSOR DEEMING

International law recognizes that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”<sup>1123</sup> U.S. immigration policy also recognizes the principle of family unity, placing family-based immigration at the heart of U.S. immigration policy. Nonetheless, U.S. immigration law, which excludes persons deemed likely to become a “public charge,”<sup>1124</sup> denies this fundamental right to low-income people.

A person immigrating to the United States must establish that he is not likely to become a public charge. For those immigrating through family-based petitions, a legally binding affidavit of support must be completed by a sponsor in the United States who promises to financially support the new immigrants. For the purpose of public assistance programs, the sponsor is financially responsible for the immigrant until the immigrant becomes a U.S. citizen or accumulates 40 qualifying quarters of employment.<sup>1125</sup> The public charge ground of exclusion means that low-income families struggle with reunification because they must wait until they are financially able to support their family members before they can be together.

The impact of the sponsorship requirement continues even after the family is reunited in the United States. Immigrants and their sponsors may have trouble meeting their basic needs because of strict eligibility requirements. When assessing eligibility for federal public assistance programs, 100 percent of the income and assets of the sponsor and the sponsor’s spouse are counted or “deemed available” to the immigrant. As a result, sponsored immigrants are ineligible for many federal benefits and most state benefits, because they are income and asset ineligible.<sup>1126</sup> In some cases sponsors may not fully understand the requirements associated with sponsorship and may not be aware of the ramifications of signing affidavits of support. In other cases, the requirement of financial support creates financial hardship for the sponsor as well as the sponsored individual or family member. Participants stated that “the state should educate sponsors to be better prepared to help bring new arrivals to the community. Agencies and government should do more to help [...]

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<sup>1122</sup> Minnesota Department of Human Services, *Minnesota Health Care Programs: Summary of Coverage, Cost Sharing and Limits* (Jan. 2014).

<sup>1123</sup> UDHR, Art. 16(3).

<sup>1124</sup> 8 U.S.C. §1182(a)(4)(A)-(C).

<sup>1125</sup> U.S. Department of Human and Health Services, “Immigrant Eligibility Restrictions Under Current Law,” (Feb. 25, 2009), <http://aspe.hhs.gov/hsp/immigration/restrictions-sum.shtml>.

<sup>1126</sup> Interview 126.

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and understand newcomers' needs."<sup>1127</sup> According to an advocate, because these rules were previously applied more liberally, sponsor deeming was not a big obstacle, but recent budget and policy changes, have made access to public benefits more difficult.<sup>1128</sup>

## EXCLUSION BECAUSE OF IMMIGRATION STATUS

Despite human rights standards that give everyone, regardless of citizenship status, the "right to a standard of living adequate for the health and wellbeing of himself and his family,"<sup>1129</sup> state and federal law exclude undocumented people from virtually all access to vital public assistance.

Respondents identified these exclusionary policies and practices as threatening to their survival. Many interviewees expressed their frustration about the "nonexistent" access to services to nonqualified immigrants, which includes both undocumented people and some documented immigrants. Those who sought help talked about the fruitless and endless cycles of referrals from one service to another that are unable to provide the help they need. A participant stated, "I have tried, I have consulted some places, but they told me that since I don't have Social Security card, I'm not eligible."<sup>1130</sup> Another said, "I also found some resources online, but my ambiguous immigration status made it difficult for people to help me. There are so many barriers when you are in that gap."<sup>1131</sup> Some immigrants' inability to obtain driver's licenses makes these tasks even more challenging by limiting their movements and ability to seek assistance.<sup>1132</sup>

## BARRIERS FOR MIXED-STATUS FAMILIES

Because eligibility for most public benefits rests on immigration status, the public benefits system expends an enormous effort on determining and verifying applicants' immigration status. Most undocumented immigrants assume that members of their families do not qualify for benefits and support, so they do not ask for them. Undocumented immigrants who are aware that their citizen children are eligible for benefits may seek them for their children, but many remain skeptical of the system.<sup>1133</sup> Undocumented immigrants fear, sometimes with good reason, that seeking public assistance can lead to deportation.

Advocates reported that many immigrants fear that accessing a government agency for services will trigger involvement from immigration authorities. Based on this fear, many make the decision not to access services altogether. One advocate stated, "There is an underlying fear that the system will

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<sup>1127</sup> Conversation 24.

<sup>1128</sup> Interview 126.

<sup>1129</sup> UDHR, Art. 25(1).

<sup>1130</sup> Interview 8.

<sup>1131</sup> Interview 9.

<sup>1132</sup> Conversation 22.

<sup>1133</sup> Interview 133.

separate them from their children, which makes them more protective; they have a very real underlying fear that they will be deported or their kids taken away.”<sup>1134</sup> Another advocate remembers one of her clients stating, “Even if my child is eligible, I am afraid of applying, because once my name, as the head of household on the application form, goes in a government computer, it will be accessible to everyone and I can get deported.”<sup>1135</sup> This sentiment of fear and mistrust drives some immigrants to “stay away from any government places and people as much as possible.”<sup>1136</sup> A social worker stated, “I think part of the reason why I don’t work with undocumented persons is because they’re scared to seek services. I sit in a government office building, so there can be a perception that I could turn someone in.”<sup>1137</sup> Similarly, other community based-professionals find themselves tasked with reassuring clients that they are not “government” workers and will not divulge immigration status information to immigration authorities.

The U.S. Department of Health and Human Services recently confirmed the same trend nationally. Many immigrant parents who do not qualify for public benefits failed to realize that their children who were born in the United States were eligible for services and benefits. Even if they realized that their children were eligible, they feared that attempting to access services on behalf of their children would put them in danger of deportation.<sup>1138</sup>

The fear and mistrust that immigrants feel are often based on actual examples where attempts to access services have triggered deportation. An advocate remembered the case of a woman in her 70s whose public benefits application triggered a response from Immigration and Customs Enforcement (ICE):

*Previously the woman had a Temporary Protection from Deportation status. Over time, her status had expired and she had neglected to renew it, ending up with an Order for Deportation. Due to her severe health issues, she started the process of applying for Medical Assistance, so she could obtain medical care. However, verification of her immigration status by the public benefits worker revealed the Order of Deportation, at which point she was reported to ICE. Sometime later, ICE agents went to her house under the guise of helping her complete her Medical Assistance application and took the woman into custody. She ended up spending one month in jail and was eventually deported.*<sup>1139</sup>

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<sup>1134</sup> Interview 110.

<sup>1135</sup> Interview 185.

<sup>1136</sup> Interview 45.

<sup>1137</sup> Interview 108.

<sup>1138</sup> U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Barriers to Immigrants’ Access to Health and Human Services Programs*, Krista M. Pereira, Robert Crosnoe, Karina Fortuny, Juan Manuel Pedroza, Kjersti Ulvestad, Christina Weiland, and Hirokazu Yoshikawa (May 2012), <http://aspe.hhs.gov/hsp/11/ImmigrantAccess/Barriers/rb.shtml>.

<sup>1139</sup> Interview 184.

### EXCLUSION FROM EMERGENCY MEDICAL ASSISTANCE

Foreign-born Minnesota residents account for eight percent of Minnesota's population, yet they make up about twenty-four percent of all uninsured people.<sup>1140</sup> Although there are numerous contributing factors, budget cuts to benefits programs were described as major barriers to accessing health care. For instance, the Minnesota legislature recently passed funding changes that eliminated the state-funded Medical Assistance (MA) program, causing the loss of health care to noncitizen immigrants who met financial eligibility requirements but were not eligible for federally funded MA. Also, recent cuts to Emergency Medical Assistance (EMA), a program that previously offered broad coverage of chronic and acute conditions for those ineligible for MA,<sup>1141</sup> have had significantly negative impacts on noncitizen immigrant individuals and families.

An advocate stated, "The Minnesota cutback in Medical Assistance (MA) and Emergency Medical Assistance (EMA) eligibility has had a huge impact."<sup>1142</sup> She added, "It used to be that we could get people on EMA in some situations; now we cannot, [some people] are no longer eligible. [The categories] used to include asylum applicants and U-visa applicants. This also forced a lot of people who had been on MA to move to the MN Care program, but MN Care does not cover personal or home care, which impacted a number of disabled clients."<sup>1143</sup>

Another advocate explained that "the 2011 session ended with dramatic changes to whom we would provide emergency health care funding. It restricted access to chemotherapy and dialysis. It affected mostly undocumented people, but also some documented people within their first five years of residence. 2,500 people were notified that their coverage was to be terminated. For families of individuals who have green cards, it was sort of unfathomable that a state would do this: deny chemotherapy to someone who would die without it. This is an unbelievable level of state-sponsored neglect."<sup>1144</sup>

A community health professional reported "the negative impact to the safety net caused by the policy changes in EMA affects all [beneficiaries], including our patients. We need to ensure that health care policy recognizes that various populations will always be here and will have continued need for assistance."<sup>1145</sup> An advocate gave an example of an individual who was a victim of this change in policy. "An elderly woman with chronic conditions had her benefits cut. She has a cardiac

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<sup>1140</sup> Minnesota Department of Health, *Health Insurance Coverage in Minnesota: Early Results from the 2011 Minnesota Health Access Survey*, Jessie Kemmick-Pintor and Stefan Gildemeister (Mar. 2012), <http://mn.gov/health-reform/images/TaskForce-2012-07-12-AccessWG-Health-Access-Survey-Results.pdf>.

<sup>1141</sup> Laura Melnick, *Summary Guide to Minnesota Government Benefit Programs, 2014 Update* Minnesota Continuing Legal Education, Inc., 2014.

<sup>1142</sup> Interview 126.

<sup>1143</sup> Interview 126.

<sup>1144</sup> Interview 121.

<sup>1145</sup> Interview 141.



issue and has colon cancer that is quiescent – but the funds do not cover her medications for diabetes. There are some limited EMA exceptions for dialysis and chemotherapy, but only if a doctor says, ‘without this, they will die within 48 hours.’ For this woman, it was all chronic conditions so she could not get on EMA.”<sup>1146</sup>

A lawsuit by the Immigrant Law Center of Minnesota made it possible to get the cutoff date of EMA postponed. After long negotiations with the Department of Human Services, a process was created so that no one can be cut off without a doctor’s guarantee that there would be no immediate harm to the patient. The goal was to give doctors the decision-making power in regards to who needs emergency care, not legislators.<sup>1147</sup>

## RECOMMENDATIONS

**Finding:** Federal refugee resettlement services are inadequate in their scope and duration and focus mainly on employment.

### Recommendations

- The 90-day period of initial refugee resettlement services should be extended to a minimum of 180 days in order to allow an adequate transition period for refugees coming to the United States. Furthermore, the five-year period for initial refugee resettlement services should be restored.
- Refugee resettlement organizations need funding beyond federal requirements to expand their scope to include robust and comprehensive integration services, including case management, that promote the wellbeing and stability of refugees in their new communities.
- To facilitate the integration of refugees in the United States, the orientation period allotted for refugees abroad should be sufficient to ready them for arrival and should include services such as intensive English language classes.
- Resettlement grants to refugees should be increased in order to adequately meet the demands refugees face in meeting their basic needs.

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<sup>1146</sup> Interview 126.

<sup>1147</sup> Interview 121.

Finding: Refugees face a long waiting period for eligibility determination and approval for public benefits.

### Recommendation

- Expedite the eligibility determination and approval period for public benefits for refugees in order to address their needs within the limited time allotted for refugee resettlement services.

Finding: Secondary migration by refugees results in disconnection from refugee services.

### Recommendations

- Refugee services should be decoupled from the designated resettlement locations and follow the refugee through secondary migration to the extent possible.
- County agencies should create a point of contact for partnering with refugee resettlement organizations to provide resettlement services to refugees who relocate to areas outside of the coverage of the designated refugee resettlement organizations, ensuring uninterrupted delivery of services.

Finding: Although asylum seekers flee their countries and face similar issues as refugees, they are ineligible for public benefit assistance and are barred from employment.

### Recommendations

- State and federal public benefits eligibility rules should expand the “qualified immigrant” category to include asylum seekers, an especially vulnerable population, in order to grant them access to public assistance benefits and reduce hardship while they are waiting to be granted asylum.
- Shorten the wait for asylum seekers to receive work authorization, in order to allow them to be gainfully employed and reduce their need for public assistance.

Finding: Public benefit rates that have been stagnant since 1986 keep benefit recipients in poverty and unable to meet their basic needs.

#### Recommendations

- Congress should increase funding for public assistance grants and adjust them to meet the current costs of basic needs.

Finding: Insufficient or incorrect information about available benefits creates barriers to services for those who are eligible.

#### Recommendations

- Public benefit agencies should partner with community-based organizations to conduct outreach and provide information about benefit programs and eligibilities at safe venues outside of government offices.
- Increase public funding for community-based and nonprofit organizations that serve immigrant communities in order to increase capacity and immigrants' access to information and basic needs services.

Finding: The complexity of public benefits programs and compliance requirements deter immigrants from accessing services.

#### Recommendations

- Forms and written communication should be drafted in simple language to assure they reach a wide range of readers with various literacy levels.
- Written communication should be streamlined and coordinated to indicate only the most current and timely information.
- Automated communications should be clear, simple, and concise, as well as include visual cues to flag levels of importance and the need for an urgent response from participants.
- Participants in public benefits programs should have access to a single worker who handles their cases in order to build rapport and receive coordinated service delivery.

Finding: Language, literacy, and cultural barriers, as well as inadequate interpreters and translation, stand in the way of effective service delivery.

### Recommendations

- Public benefit agencies and other social service agencies should recruit and hire more individuals from within the communities they serve in order to build capacity around language access and cultural understanding and to develop a more trusting relationship with immigrant clients.
- Increase access to language lines and interpreters.
- Increase funding for interpretation and translation training and services.
- Recruit more individuals from within the communities served to be trained and certified as interpreters and translators.
- Ensure continued access to training for public benefits staff on appropriate use of interpreters.
- Minnesota’s Commissioner of Administration should clarify which agencies are required to provide meaningful access to services under state law, either through bilingual staff or translation, and information about these requirements should be readily accessible.

Finding: Public benefits programs focus on complicated eligibility rules and restrictions, rather than ensuring that basic needs are met.

### Recommendations

- Public benefit services should focus more on meeting families’ and individuals’ specific needs and focus less on eligibility criteria that are complex and may not best address the issues expressed by recipients.
- Public benefit application forms should reflect a program design that addresses specific needs by asking applicants to state their needs and the issues they face.

Finding: The cost of health care deters people from seeking medical treatment and preventative care.

#### **Recommendation**

- Immigration status should not determine access to health subsidies under the Affordable Care Act.

Finding: Inadequate bilingual and bicultural health and mental health care create major barriers to immigrants' access to health care services.

#### **Recommendations**

- Engage foreign-trained health professionals who are culturally and linguistically competent in health and mental health care delivery.
- Support and train individuals from immigrant communities to become health care professionals.
- Provide ongoing cultural proficiency training to all health care staff at all levels.
- Train and empower patients to make informed health decisions on their own and their families' behalf.
- Increase the use of interpreter services and language lines.

Finding: Immigrants, especially those from mixed- status families, fear that accessing public benefits may result in deportation or becoming a "public charge."

#### **Recommendations**

- If immigration status is not a legal condition for accessing a service or benefit, service providers should not ask about status and should conduct outreach to make clear that they are not connected to immigration authorities.
- Public benefits application forms should clearly indicate that Social Security numbers or other identifying information are not required for parents and guardians applying on behalf of minor children who are eligible for public benefits.
- Nonprofit and community-based organizations should make use of existing resources such as the Bridges to Benefits website and United Way's 2-1-1 to safely

## BASIC NEEDS

and confidentially determine eligibility for benefits and search for appropriate social and health services.

- Public agencies should clearly delineate the specific public benefit programs that will result in a person becoming a “public charge,” as defined by federal immigration law, and make this information widely accessible.
- Public benefits workers should receive training on basic immigration laws that affect benefit recipients.

Finding: Requiring sponsors to financially support immigrating family members results in a denial of the right to family unity and hinders the ability of immigrants to meet their basic needs.

### Recommendation

- Federal law should eliminate the requirement that a family sponsor’s income be included in public benefits eligibility determinations.
- The public charge ground for exclusion should not apply when it would prevent family reunification.

Finding: State and federal laws exclude many noncitizens in Minnesota from accessing benefits and services to meet their basic needs.

### Recommendations

- Public benefits assistance should be accessible to all those who are not able to meet their basic needs in order to comply with international human rights standards.

# CHAPTER 7: CIVIC ENGAGEMENT AND POLITICAL PARTICIPATION



## INTRODUCTION

Immigrants in Minnesota reported mixed experiences with community involvement, which includes everything from attending local events and volunteering with community organizations to serving in the government. Immigrant engagement is strongest within their own ethnically based organizations and weakest when it comes to holding decision-making power in government or as leaders of large organizations that serve the broader community. English language classes and volunteering are two highly positive sources of connection to the larger community, but not all immigrants took advantage of those opportunities. One of the primary obstacles to greater immigrant involvement is simply a lack of information about community resources. Additional difficulties arise from different cultural norms or unfamiliarity with the U.S. political and civic systems. In other cases, government and organizations either do not know how to become more inclusive or lack the political will to be more open. In a few cases, active religious discrimination prevents immigrants from fully enjoying their rights.

## HUMAN RIGHTS AND CIVIC PARTICIPATION

Democracy and representative government depend on participation to ensure sound decision-making, popular support for programs and initiatives, and accountability when rights are violated. Individuals decide whether they want to participate, but everyone must have equal access to the opportunity to participate. Civic involvement can take many forms, many of them protected by human rights. People have the right to participate in government, either directly by holding public office or through representatives chosen in regular elections.<sup>1148</sup> This right not only prohibits interference with voting, it also requires the government to take active steps to ensure that everyone who is entitled to vote is able to do so.<sup>1149</sup>

Similarly, everyone has the right to participate in the cultural life of the community.<sup>1150</sup> This includes both the right to take part in larger society and the right to preserve and enjoy a minority culture, religion, language, or tradition.<sup>1151</sup> Immigrants, both permanent and temporary, have a right to their culture and to maintain ties with their country of origin.<sup>1152</sup> Religion receives special protection

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<sup>1148</sup> International Covenant on Civil and Political Rights (ICCPR), Art. 25.

<sup>1149</sup> UN Committee on Civil and Political Rights, General Comment No. 25, Participation in Public Affairs and the Right to Vote, ¶¶ 10-12, UN Doc. CCPR/C/21/Rev.1/Add.7 (12 Jul. 1996).

<sup>1150</sup> ICCPR Art. 27.

<sup>1151</sup> UN Committee on Economic, Social, and Cultural Rights, General Comment No. 21, Rights of Everyone to Take Part in Cultural Life, ¶ 32, UN Doc. E/C.12/GC/21, (21 Dec. 2009).

<sup>1152</sup> UN Committee on Economic, Social, and Cultural Rights, General Comment No. 21, Rights of Everyone to Take Part in Cultural Life, ¶ 34, UN Doc. E/C.12/GC/21, (21 Dec. 2009).



from interference. Governments must respect freedom of religion or belief.<sup>1153</sup> People from minority cultures or religions should be protected from discrimination.<sup>1154</sup>

Other human rights facilitate civic involvement, such as freedom of opinion, assembly, and association.<sup>1155</sup> These rights guarantee that people are able to express themselves publicly and connect with like-minded individuals – necessary prerequisites to taking collective action in a community.<sup>1156</sup>

## RELIGIOUS FREEDOM

“I was ready to sell the building to the East African mosque, but reluctance in the community to live next to a mosque prevented it. There was no problem when I sold to a Latino church.”

Immigrants reported serious human rights violations involving limitations on the practice of their religion, especially restrictions on the construction of mosques and other Islamic religious institutions such as schools. Though Muslims were reportedly the main target of religious discrimination, members of the Jewish community also reported incidents where they were penalized for taking off religious holidays

from school.<sup>1157</sup> Although the Constitution and other federal and state laws prohibit discrimination against religious groups, such opposition sometimes succeeds under the guise of seemingly neutral rules, such as zoning or school calendars.

In several communities around Minnesota, proposed mosques or Islamic centers have triggered community opposition and contentious hearings. According to one school official, “approximately two years ago, Somalis established an East African mosque. They attempted to buy a building from the school district and I was ready to sell, but reluctance in [the community] to live next to a mosque [prevented it]. There was no problem when I sold to a Latino church.”<sup>1158</sup> City governments sometimes respond to community pressure by blocking the creation of Islamic centers and mosques,<sup>1159</sup> a violation of religious freedom. In other cases, local governments have allowed

<sup>1153</sup> ICCPR Art. 18.

<sup>1154</sup> UN Committee on Economic, Social, and Cultural Rights, General Comment No. 21, Rights of Everyone to Take Part in Cultural Life, ¶¶ 22, 32-33, UN Doc. E/C.12/GC/21 (21 Dec. 2009).

<sup>1155</sup> ICCPR Arts. 19, 21-22

<sup>1156</sup> UN Committee on Civil and Political Rights, General Comment No. 25, Participation in Public Affairs and the Right to Vote, ¶ 8, UN Doc. CCPR/C/21/Rev.1/Add.7 (12 Jul. 1996).

<sup>1157</sup> Interview 142.

<sup>1158</sup> Interview 73; Laura Yuen, *Willmar showing the way to a more diverse Minnesota*, Mar 12, 2012, Minnesota Public Radio, <http://www.mprnews.org/story/2012/03/12/outside-part3-willmar-is-the-future-of-a-more-diverse-minnesota>.

<sup>1159</sup> Interview 122.

centers to move forward despite the opposition.<sup>1160</sup> Even where the city allows the Islamic institution, however, the opposition has a negative impact on Muslim immigrants: “If others were forming a school, would there be a complaint? No. This is very unwelcoming.”<sup>1161</sup>

The Religious Land Use and Institutionalized Persons Act imposes a very high standard on governments when land use decisions such as zoning impose a “substantial burden” on the practice of a person’s religion.<sup>1162</sup> Governments must show a “compelling governmental interest” for such a decision and that the decision is the least restrictive means of achieving their goal.<sup>1163</sup> Even a neutral statute that does not on its face discriminate against religious institutions may not be allowed under the Act if it imposes a burden on the exercise of religious freedom without a compelling reason. The Department of Justice is investigating one Minnesota town that denied a permit for an Islamic Center in order to determine whether they violated the Religious Land Use and Institutionalized Persons Act.<sup>1164</sup> The lone council member to vote in favor of the Islamic Center cited potential lawsuits as the reason for his vote, evidence that the Act has a deterrent effect on religious discrimination in land use decisions.<sup>1165</sup>

## PARTICIPATION IN IMMIGRANT-LED COMMUNITY ORGANIZATIONS

Outside of overt religious discrimination, immigrants did not report many problems with participating in their own cultural communities. Participants were motivated by familiarity and a sense of safety. Immigrant-led organizations did face some difficulties accessing the same kind of institutional support as organizations that serve the larger community. Interviewees attributed some of this to ignorance of the rules governing nonprofits on the part of immigrant-led organizations and some to a lack of effort by the larger community to foster immigrant-led organizations.

“The Karen community, they have nine geographic areas. These programs are all volunteer-based, and they are so well-organized.”

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<sup>1160</sup> Interview 18.

<sup>1161</sup> Interview 129.

<sup>1162</sup> 42 U.S.C. §2000cc.

<sup>1163</sup> Vermont Natural Resources Board, “Religious Land Use and Institutionalize Persons Act,” (accessed Mar. 21, 2014), <http://www.nrb.state.vt.us/lup/publications/manual/RLUIPA.pdf>.

<sup>1164</sup> Star Tribune Blog, *Feds launch formal investigation into St. Anthony mosque rejection*, Oct. 29, 2012, Minneapolis Star Tribune, <http://www.startribune.com/local/blogs/176309071.html>.

<sup>1165</sup> Rose French, *St. Anthony City Council rejects Islamic center plan*, Jun. 13, 2012, Minneapolis Star Tribune, <http://www.startribune.com/local/158785005.html>.

Attending events, belonging to religious institutions, and supporting organizations representing their own ethnic, cultural, or religious background were the most common forms of participation for immigrants: “I go to the monastery on a lot of Buddhist holidays. Sometimes we come to a workshop at a church here, to learn to organize the community.”<sup>1166</sup> For undocumented immigrants in particular, events within their own cultural or ethnic group are safe, “familiar and relaxed (no immigration presence, no questions asked).”<sup>1167</sup> This kind of cultural participation includes both annual celebrations as well as highly organized outreach and support services: “The Karen community – it is amazing to me – they have nine sections, geographic areas, and each section has its own youth and women leaders [in addition to the overall leader], and each new arrival gets visited by all three [leaders]. These programs are all volunteer-based, and they are so well-organized.”<sup>1168</sup>

The drive for participation and mutual support within their own cultural group has led to a proliferation of immigrant-led organizations: “Everyone wants to start their own 501(c)(3) – they want to offer all services.”<sup>1169</sup> These groups face challenges fitting into the existing nonprofit model and receiving the same support as institutions that serve the larger community. One person who assists new nonprofits described the problems as first, “the lack of knowledge of what a non-governmental organization is and all the rules that go with that – application, IRS forms, by-laws, etc. The whole process is cumbersome. The second issue is start-up funds. Who is going to fund small immigrant-led organizations? The fact that their board members are not well connected to people of influence yet means that they don’t have relationships with the funding community or donors.”<sup>1170</sup> A member of an immigrant organization described her perception that the larger community was not as supportive of immigrant organizations: “We wanted to rent a church space to use for meetings for a Korean-American group but we were told that it could only be used for church activities. However, they rent the gym to a homeschool group and that is okay. It seems like maybe they just didn’t want the Korean group there.”<sup>1171</sup> Despite serving as the primary point of immigrant community participation and support, immigrant-led organizations do not have the same access to funding and other resources as groups that serve the larger community.

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<sup>1166</sup> Interview 23.

<sup>1167</sup> Interview 133.

<sup>1168</sup> Interview 145.

<sup>1169</sup> Interview 83.

<sup>1170</sup> Interview 135.

<sup>1171</sup> Interview 92.

## PARTICIPATION IN ORGANIZATIONS THAT SERVE THE BROADER COMMUNITY

Participation in groups that serve the broader community is a more mixed experience. Some immigrants reported extremely positive experiences, while others expressed a reluctance to become involved. Leaders of these organizations also reported difficulties with attracting participation from all immigrant groups. In some cases, immigrants felt that organizations were not truly interested in changing their programming to reflect their input and they were being selected more as tokens rather than as full participants. In other cases, some immigrant groups have different cultural norms around punctuality or how to conduct meetings that inhibit participation. Language and immigration status also remain major barriers to full participation.

### VOLUNTEERING

Some immigrants reported positive involvement with organizations that serve the broader community, especially through volunteering: “I do volunteer a lot because I was not able to work for a couple of years. I tried to fill the time by volunteering and that helped me a lot. That was life changing.... Probably [volunteering was] the main reason I was able to be involved with the community, learn more culture, be more accepted. People like when you get involved.”<sup>1172</sup> Another immigrant used her own experience volunteering to advise other new arrivals: “Everyone who invited me to anything, I went, and I volunteered for everything. I tell people, you have to try, you have to go out.”<sup>1173</sup>

### CONNECTION THROUGH ENGLISH LANGUAGE CLASSES

Immigrants reported that English language (EL) programs were another extremely positive source of connection to the larger community. Because many immigrants arrive in the United States as adults, they are not connected with the school system, even if they lack literacy, education, or language skills. Language in particular is crucial for many to be able to gain employment and fully participate in civic life. The availability of free and low-cost English-language learning programs is one way Minnesota helps immigrants adjust to life here.

Overall, communities reported that free English language classes are available.<sup>1174</sup> However, in some areas, enrollment outstrips available class spaces.<sup>1175</sup> Other factors such as location, time of classes, transportation, and the availability of childcare determined whether or not students were

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<sup>1172</sup> Interview 3

<sup>1173</sup> Interview 93

<sup>1174</sup> Interview 55.

<sup>1175</sup> Interview 72; Interview 74; Interview 78; Interview 82; Interview 137.

able to participate.<sup>1176</sup> For those who do participate in English language classes, it is a place of connection and learning beyond just language.

English language classes were regularly cited as a welcoming place for new immigrants to connect to the community.<sup>1177</sup> One school in Minneapolis generated unanimous praise from its students.<sup>1178</sup> A woman said, “This school is like a second family, a second house. I have had the opportunity to meet people from other countries. My fellow students encourage me, there are good teachers, good students. The teachers and staff here do not just worry about the language, it is about more. They help you with everything. They connect me with resume help, job application help, bus schedules, and stuff. The teachers here are very good and patient.”<sup>1179</sup> Another man described his English language teacher as “like my American mother. She is a very good friend.”<sup>1180</sup> One person remembered the kindness of his middle school English language teacher. He says, “She came to my house and she also asked me to look after her bunnies while she was gone. I was surprised she trusted me so much. She was like an extended family member.”<sup>1181</sup>

Many communities are conveying civic information to immigrants through EL classes.<sup>1182</sup> In one class, the teacher provided a lesson on cleaning products, after learning that one family had been using a drain-cleaning product as body soap because they did not understand the label.<sup>1183</sup> In another case, the EL teacher arranged for a family about to have a baby to tour the hospital ahead of time, to get familiar with the location.<sup>1184</sup>

“My English language teacher is like my American mother. She is a very good friend.”

English language teachers often learn about problems their students are anticipating before anyone else. One teacher related a problem with school buses that was impacting her Hmong students.<sup>1185</sup> “One woman was concerned about the bus not stopping where it was supposed to for the kindergartners. She called me one morning when the bus did not pick up the kids and I told her she should call the principal. I helped her figure out what to say, but I wanted her to do it on her own.

<sup>1176</sup> Interview 110; Interview 137; Interview 145; Conversation 24.

<sup>1177</sup> Conversation 2; Conversation 8.

<sup>1178</sup> Conversation 25.

<sup>1179</sup> Conversation 25.

<sup>1180</sup> Interview 1.

<sup>1181</sup> Interview 35.

<sup>1182</sup> Interview 55; Interview 64; Interview 100.

<sup>1183</sup> Interview 64.

<sup>1184</sup> Interview 55.

<sup>1185</sup> Interview 55.

## CIVIC ENGAGEMENT

She called the principal and explained the situation and the principal came out and met with her and got the bus back to pick the kids up. She felt really good that she got a response.”<sup>1186</sup>

Ensuring funding and resources for EL classes helps immigrants connect and feel part of their new community, as well as providing the necessary language skills to advance and participate in the employment market.

### DISCONNECT WITH LARGER COMMUNITY

Despite the positive experiences of these individuals, most immigrants were not involved in institutions that serve the broader community: “not at all,” according to one service provider.<sup>1187</sup> Immigrants reported wanting to be involved but feeling unable to participate. One woman wanted to participate in the Breast Cancer Walk: “But I did not attend. I wondered ‘Will they welcome me?’”<sup>1188</sup> Leaders of community organizations often expressed frustration at failing to get active participation from diverse immigrant groups and surprise that their efforts are not successful. One director of a multicultural community organization reported, “it’s hard to get board members from [immigrant] groups; only one [immigrant] board member showed up to be elected,”<sup>1189</sup> despite what she felt were concerted outreach efforts.

Immigrants and community members identified ignorance of community resources as a primary reason that immigrants felt unwelcome and did not participate in the broader community.<sup>1190</sup> People in all regions noted the challenges of finding the right resources and recommended a centralized location where newcomers can seek information about basic needs, community involvement, and other services.<sup>1191</sup> Especially for new immigrants who may lack English proficiency, the primary connection to services and resources is often through family members or friends.<sup>1192</sup> While this network is very effective for many, interviewees highlighted the additional challenge for people who lack a friend or family member to help them connect to the systems.<sup>1193</sup>

There is not a consensus on the best way to consolidate and provide resources for immigrants. Some of the challenges are: knowing when new immigrants or residents arrive, coordinating between government and private agencies, funding welcoming or integration initiatives, and communicating to immigrants about what is available. One immigrant noted that, “those who have

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<sup>1186</sup> Interview 55.

<sup>1187</sup> Interview 106.

<sup>1188</sup> Interview 22.

<sup>1189</sup> Interview 93.

<sup>1190</sup> Conversation 7; Conversation 12; Conversation 16; Conversation 19; Conversation 22.

<sup>1191</sup> Conversation 12.

<sup>1192</sup> Conversation 25.

<sup>1193</sup> Conversation 21.

resources are not doing an aggressive operation. They are not reaching out to the right people.”<sup>1194</sup> Another group said, “A committee needs to know when people move in, so the existing resources can reach out to them.”<sup>1195</sup> An outreach worker highlighted the importance of putting information about resources in the places where people go, and where they are “captive.” This agency posts information at the laundromat, the health clinic, and the doctor’s office among others because people are sitting in those places for periods of time. Another service provider suggested that centralizing all service providers would make things easier.<sup>1196</sup> She said this would help alleviate transportation problems and facilitate communication between providers.<sup>1197</sup> One metro-area city reaches out by providing a welcome packet for newcomers, which includes information about community resources, business, and coupons.<sup>1198</sup>

Service providers identified insufficient funding, too few staff, and a lack of bilingual staff as barriers to deeper outreach.<sup>1199</sup> One community had a well-regarded welcoming organization that helped connect immigrants with resources and educate community residents.<sup>1200</sup> It unfortunately closed, partially due to a lack of stable funding and also because the larger community was not fully invested in its success.<sup>1201</sup>

### BARRIERS TO FULL INCLUSION

Immigrants offer several reasons why they may not participate in organizations that serve the broader community even when they are aware of the opportunities. One of the most commonly mentioned reasons was a sense that the organizations are not interested in adapting themselves to the desires of immigrants, either in terms of priorities or practices. One activist described his church: “Like many well-established white Anglo organizations, people are nice and friendly and all true, but it is all on their terms.”<sup>1202</sup> Another pointed out that many organizations “want immigrants to do it their way,”<sup>1203</sup> continuing their programming as they have always done it. An immigrant

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<sup>1194</sup> Interview 129.

<sup>1195</sup> Conversation 21.

<sup>1196</sup> Interview 81, Conversation 22.

<sup>1197</sup> Interview 81.

<sup>1198</sup> Conversation 9.

<sup>1199</sup> Conversation 24.

<sup>1200</sup> Taryn Arbeiter, Maria Ward and Professor Katherine Tegtmeyer Pak, *After the Welcome Center: Renewing Conversations about Immigration & Diversity*, St. Olaf College, Department of Political Science, August 23, 2011, [http://wp.stolaf.edu/ace/files/2013/11/CURI\\_Immigration\\_Welcome\\_Center.pdf](http://wp.stolaf.edu/ace/files/2013/11/CURI_Immigration_Welcome_Center.pdf).

<sup>1201</sup> Taryn Arbeiter, Maria Ward and Professor Katherine Tegtmeyer Pak, *After the Welcome Center: Renewing Conversations about Immigration & Diversity*, St. Olaf College, Department of Political Science, August 23, 2011, [http://wp.stolaf.edu/ace/files/2013/11/CURI\\_Immigration\\_Welcome\\_Center.pdf](http://wp.stolaf.edu/ace/files/2013/11/CURI_Immigration_Welcome_Center.pdf).

<sup>1202</sup> Interview 122

<sup>1203</sup> Interview 111.

described how her community is always brought to the table too late in the process: “Most time projects don’t work for immigrants because things have already been decided for them.”<sup>1204</sup> One leader of a community diversity effort contrasted two ways of involving immigrant communities, one which is more likely to be successful and the other which can drive people away: “An ally is hand-in-hand, side-by-side as opposed to charity, which is ‘I’m going to do this for you and lead you.’ When you ask people what they want, they say respect and to be asked.”<sup>1205</sup> Immigrants often did not feel they were being asked to participate as allies and equals.

Immigrants’ fear that they are being asked to participate only as a token representative rather than a true participant was intensified in situations where organizations were not very diverse. Multiple people mentioned that, “I get anxiety when I am the only person of color in the room,”<sup>1206</sup> or “If I go to a meeting and I’m the only immigrant or refugee, then I don’t feel included.”<sup>1207</sup> One activist

described her typical experience interacting with an organization that did not have experience with diversity: “[You] feel strange and unwanted because you are a different-looking person. They try to be nice but they overdo it and it makes you feel uncomfortable.”<sup>1208</sup>

Potentially willing participants find themselves the target of repeated solicitations by organizations seeking more diversity, intensifying their feelings of being singled out as representatives of a community rather than on their own merits: “There are a small number of leaders from minority communities who are regularly approached. Everyone calls [this person] when they need the perspective of an African-American woman, for example.”<sup>1209</sup> Once part of a group, they may be asked to speak on behalf of their group. One advocate described his frustration with that experience: “I get a little mad when they say, ‘We need to figure out how to engage the Hispanic population.’ I can’t speak for the whole community.”<sup>1210</sup>

More successful efforts at fostering immigrant involvement focused on bringing together immigrants and long-term residents as equal participants in a joint effort. One suburb created a multi-cultural advisory committee to advise the police department and other government agencies

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<sup>1204</sup> Interview 129.

<sup>1205</sup> Interview 95.

<sup>1206</sup> Interview 78.

<sup>1207</sup> Interview 97.

<sup>1208</sup> Interview 129.

<sup>1209</sup> Interview 95.

<sup>1210</sup> Interview 78.



about how to serve and communicate with the diverse community. The community liaison highlighted the importance of having a meaningful role for the committee: “We do not meet just to have a meeting. Why would we think new Americans have any more time than the rest of us do?”<sup>1211</sup> Members of the committee are recruited from both the long-term resident and new immigrant communities. The community liaison says, “At first we focused only on new Americans for the committee; that was a misstep. You need people who have lived in the community for a long time who can share the changes they have seen, too.”<sup>1212</sup>

Even in situations where organizations that serve the broader community are involving immigrants in meaningful ways that go beyond token representation, different cultural norms about how to run meetings and events can create barriers to participation. Different values placed on time and punctuality by some immigrant groups are a huge barrier to working together. Organizations take different approaches to bridging these differences. One service provider talked about educating immigrants to help them understand the expectations of institutions that serve the broader community: “The U.S. emphasis on schedules and appointment times – people have to learn that it’s a cultural thing and it’s not going to change to a non-time driven system. ... Sometimes we explain the monetary cost, the cost of an interpreter sitting and waiting, for example, and that sometimes resonates more.”<sup>1213</sup> Other groups are successful because the immigrant participants “run meetings in their own way – they are not very institutional. Otherwise people may walk away and not come back.”<sup>1214</sup> Cultural differences extend beyond schedules and punctuality. One service provider described the need for people to learn how to work with different group dynamics, because some “immigrant communities are very passionate and loud in meetings.”<sup>1215</sup>

Language also poses a barrier to participation, one that community groups often do not handle well. One person spoke of her experience attending a community forum in Minneapolis several years ago that had no interpreters: “A large percentage of the participants came from families that speak another language in the home and yet they had no one set up to interpret so I had to do it.”<sup>1216</sup> An immigrant talked about how the churches in her community claimed that they could not hold unified services because Latinos would not participate: “How about bilingual services? Maybe

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<sup>1211</sup> Interview 190

<sup>1212</sup> Interview 190

<sup>1213</sup> Interview 64.

<sup>1214</sup> Interview 128.

<sup>1215</sup> Interview 64.

<sup>1216</sup> Interview 110.

they will participate.”<sup>1217</sup> Smaller language communities have an even more difficult time: “Russians aren’t included in the mainstream. Their language isn’t available.”<sup>1218</sup>

Immigration status can also play a role in inhibiting immigrant participation in organizations that serve the broader community. One organization described how their effort to attract a more diverse pool of volunteers has run into difficulties because undocumented immigrants are afraid to give out their personal information: “We have forms to fill out to become volunteers and that can frighten people. We no longer make copies of IDs. We explain the process to people and they do not come back. We don’t know how to get around the need for a liability waiver and contact information.”<sup>1219</sup>

### PARTICIPATION IN THE POLITICAL SYSTEM

Immigrant participation in politics and government has a mixed record as well. The political system presents some of the same barriers to participation that interviewees cited to explain low participation in non-governmental organizations that serve the larger community, including: lack of familiarity with the system; cultural differences in behavior on boards and committees; discomfort with being the only minority present; and language and status barriers.

People from all over the state bemoaned the lack of diverse representation in local government and services. One representative example came from a suburban city: “There was a big city meeting and they were doing city employee recognitions. I was standing in the room with [my colleague] in the back and I don’t honestly think there was one non-white person in that entire room besides us and it was packed. Police, fire, parks and rec, maintenance, and a lot of city people.”<sup>1220</sup> Even in the most diverse cities in the state, “most [employees] are white, English language-only speakers. There is no diversity in leadership.”<sup>1221</sup>

The lack of political representation at the local level is particularly troubling because it inhibits people from getting the services they need and further reduces participation. One service provider explained: “We need all citizens to be engaged in political life, because that’s where the power is and immigrants most often aren’t involved, so they can’t influence it.”<sup>1222</sup>

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<sup>1217</sup> Interview 99.

<sup>1218</sup> Interview 142.

<sup>1219</sup> Interview 67.

<sup>1220</sup> Interview 108.

<sup>1221</sup> Interview 128.

<sup>1222</sup> Interview 106.

**BEST PRACTICE: DIVERSIFYING CITY SERVICES**

In one city, to recruit and retain multi-cultural officers, the department supports bilingual and multi-cultural cadets by paying for their schooling while they work part-time for the department.<sup>1223</sup> These cadets have a conditional offer of employment upon graduation, and the department is increasingly reflective of the city population.<sup>1224</sup>

Low rates of voting by immigrant communities contributes to the lack of immigrants in elected office and may add to a sense that elected officials are not responsive to immigrant concerns. According to one service provider, “when people are not part of the voting population, their values are not heard and valued. For 15 years, Somalis weren’t heard, but now [that they are voting], attention is being paid to them.”<sup>1225</sup> Newer immigrant communities or ones with substantial populations that cannot become citizens because of legal status are particularly disadvantaged because voting in Minnesota is restricted to citizens, even for local offices like school board.<sup>1226</sup> Even after becoming citizens, immigrants do not vote at the same rates as native-born citizens,<sup>1227</sup> perhaps because they are less familiar with the political system: “Immigrants and refugees are often coming from non-democratic countries. Kids learn about the democratic process and U.S. culture in schools, but there is nothing for adults. We should help the older generation learn about the democratic process and give them opportunities for involvement.”<sup>1228</sup>

Immigrants not only vote at lower rates, they are also less likely to serve as an elected official. Many individuals reported that no immigrants have ever held elected office in their municipality, despite the presence of a large community.<sup>1229</sup> In one example, immigrants did run for office but lacked the qualifications to be elected: “Around ten years ago, two

“For 15 years, Somalis weren’t heard, but now that they are voting, attention is being paid to them.”

<sup>1223</sup> Interview 190.

<sup>1224</sup> Interview 190.

<sup>1225</sup> Interview 119.

<sup>1226</sup> Ron Hayduk, “Immigrant Voting,” (accessed Mar. 21, 2014), <http://ronhayduk.com/immigrant-voting/> (Seven municipalities in the United States (Chicago and six towns in Maryland) allow noncitizen voting in local elections.) Office of the Minnesota Secretary of State, “Voter Information: How to Register,” (accessed Mar. 21, 2014), <http://www.sos.state.mn.us/index.aspx?page=1766>. (Minnesota rules on voter eligibility).

<sup>1227</sup> Sarah R. Crissey and Thom File. “Voting Behavior of Naturalized Citizens: 1996-2010” U.S. Census Bureau Social, Economic and Housing Statistics Division, [http://www.census.gov/hhes/www/socdemo/voting/publications/other/Voting\\_Behavior\\_of\\_Naturalized\\_Citizens.pdf](http://www.census.gov/hhes/www/socdemo/voting/publications/other/Voting_Behavior_of_Naturalized_Citizens.pdf).

<sup>1228</sup> Interview 143.

<sup>1229</sup> Interview 64; Interview 97.

or three immigrants ran for the school board all at the same time. The candidates did not really have the knowledge or language skills to be effective. It came through at the public forum and no one was elected.”<sup>1230</sup> In other cases, potential immigrant representatives may be reluctant to run because, according to one activist, they “are nervous about the commitment because they would get a lot of calls as the ‘diverse’ person, as well as getting lots of calls from their own community for help with everything.”<sup>1231</sup>

Recently, immigrant candidates have had more success winning elections, through some combination of increased voter turnout in immigrant communities and structural changes to

“The word ‘political’ is already intimidating to most. They stay away because they may not know how to participate and they would be afraid to participate.”

election processes. In Minneapolis, three immigrant candidates were elected to city council after a number of electoral changes, including redistricting and ranked choice voting, both of which may have contributed to the new diversity in city government.

Outside of voting and running for office, immigrants can also participate in the political process by holding unelected positions on government boards and commissions. Here, too, immigrants are not well represented. One immigrant reported on her city’s efforts: “The human relations commission has one Latino. They are not very involved, not very organized....This is the city’s attempt at outreach, there is no other attempt.”<sup>1232</sup> In some cases, the law prevents a deliberate effort to increase board and commission diversity: “Decisions are made by the mayor and council. The law prohibits choosing candidates for the commissions based on race, which makes it very difficult. You can’t even indicate race on the application.”<sup>1233</sup> Even though this law may have been passed with an intention to prohibit racism and facilitate minority participation, it now has the opposite effect.

In other cities, simple policy changes have made it easier for a diverse group of people to become involved in boards and commissions. One government official described how his city changed its process for filling commission vacancies: “We used to fill openings on city commissions as they arose, but it was hard to do adequate publicity each time and so only people in the know would apply. We centralized it to one time during the year and offered a diverse range of positions. The effect has been pretty subtle but it increased the number of applicants.”<sup>1234</sup>

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<sup>1230</sup> Interview 64.

<sup>1231</sup> Interview 64.

<sup>1232</sup> Interview 86.

<sup>1233</sup> Interview 128.

<sup>1234</sup> Interview 58.

Even in places where there are no obvious barriers to participation, immigrants may feel uncomfortable engaging in a process they do not understand or one that is unfamiliar. One service provider explained, “in regards to political meetings: the word ‘political’ is already intimidating to most. It means ‘authority.’ They stay away because they may not know how to participate and they would be afraid to participate. They also don’t think that these meetings are intended for them.”<sup>1235</sup> Another activist attributed some of the confusion to the informality of the political system in her city: “They have a perception of certain things that aren’t true, that things aren’t accessible. If you want to talk to the mayor, you just walk in and talk to him, but they feel they can’t. I think people bring preconceived notions of how things are done from their own cultures and they don’t know how things are done here...I tell people they can just go talk to people in government, and people find it a very strange notion, because that’s not the way things were done at home.”<sup>1236</sup>

Some groups have tried to address that discomfort with deliberate steps to bring immigrants into contact with the political process so that they understand the system and are able to meaningfully participate. Minneapolis created a Latino Taskforce and provided support through the Neighborhood and Community Relations Department so that it could engage with the government. One city employee explained, “We’ve started to connect Taskforce members with the city government so they can understand its structure. ... My goal is to create a pipeline through the Latino Taskforce, have them learn about the city so they are better equipped [to serve on commissions and boards]. Other taskforces [for under-represented groups] will be modeled on the Latino Taskforce.”<sup>1237</sup>

Non-governmental organizations can play a similar role. One union described how they help members become advocates: “We try to teach them to get involved in the city council, bring them to meetings. It is an educational process. ...It is extremely inspiring to see the progress. Members started getting used to what they were doing, making phone calls.”<sup>1238</sup> A community service organization is using a similar process to try to cultivate more diverse leadership in their community: “There’s a broad community effort toward more integrated leadership, including boards. We have done leadership training to help both groups better understand. ... We bring together established leaders with emerging leaders, especially immigrants and refugees, in informal settings with free-flowing conversation.”<sup>1239</sup>

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<sup>1235</sup> Interview 133.

<sup>1236</sup> Interview 93.

<sup>1237</sup> Interview 128.

<sup>1238</sup> Interview 118.

<sup>1239</sup> Interview 64.

## CIVIC ENGAGEMENT

One positive improvement in political participation in the last year has been an increase in immigrant advocacy, especially at the state level. One activist noted, “The 2013 Minnesota legislative session was the most successful in terms of advocacy from the Latino group.... So for the organized grassroots Latino community, it was a great year and I think it’s the beginning.”<sup>1240</sup> He attributed the shift to an increased openness on the part of the political system: “The national tenor around immigration has changed. Really, up to this year, what we were fighting at the state capitol was one group in power being anti-immigrant. This was the first year people felt no danger.”<sup>1241</sup> New organizations such as Mesa Latina and Minneapolis’ Latino Taskforce took advantage of the opportunity. Another activist credited support from the city of Minneapolis in helping boost the success of the advocacy efforts: “We had the Intergovernmental Relations department to help with the lobbying effort. Minneapolis is the only city in Minnesota that intentionally hires people to engage with the community and lobby with the community so the community can achieve their goals.”<sup>1242</sup> The combination of leadership by immigrant activists and strong support from a coalition of allies created an effective advocacy movement that led to the passage of the long-awaited Minnesota Prosperity Act, which helps undocumented youth attend Minnesota colleges and universities.<sup>1243</sup>

## RECOMMENDATIONS

Finding: Muslim immigrants face discrimination limiting their religious practice, especially in land use decisions.

### Recommendation

- City councils should abide by the requirements of the Religious Land Use and Institutionalized Persons Act and avoid land use decisions that limit the religious practices of Muslim immigrants and other religious groups.
- Educate the broader community on religious tolerance, combating the myths and misinformation about Islam and other minority religions that fuel discrimination.

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<sup>1240</sup> Interview 121.

<sup>1241</sup> Interview 121.

<sup>1242</sup> Interview 128.

<sup>1243</sup> Interview 184.

Finding: Immigrant-led, ethnically based organizations see strong participation from immigrants and refugees, but lack the resources and support to fully serve their constituents.

### Recommendations

- Funders should ensure broad dissemination of their programs and priorities so that immigrant-led organizations that may not be well established or connected to the funding community can access funding and technical support.
- Government agencies and institutions with resources for small organizations, such as free space or low-cost technology assistance, should increase outreach so that immigrant-led organizations know what help is available.
- Encourage partnerships between new immigrant-led and established organizations to gain more input from immigrants in programs that affect the broader community, while providing capacity building, technical assistance, and shared resources to help immigrant-led organizations become more effective.

Finding: Immigrants are not always aware of community resources and opportunities for engagement with the larger community.

### Recommendations

- Use existing forums to reach immigrant communities, such as English language classes, immigrant churches, grocery stores, and other trusted institutions.
- Centralize information about community resources so that it is easy for immigrants to find what they need, using methods such as telephone hotlines, online referral services, and community connector organizations.
- Adequately fund organizations that serve as connectors between immigrant communities and existing public institutions so that they can serve as linguistic and cultural navigators for everyone who needs assistance.
- Government agencies with significant public contact, such as child protection, housing inspectors, and residential regulation enforcement (e.g. shoveling and mowing), should conduct community orientation and listening sessions. These should be in collaboration with community groups, and focus on both educating new arrivals about laws and common violations, as well as hearing from immigrants about problems and concerns.

Finding: Immigrants feel that organizations serving the broader community do not reflect their priorities, encourage their leadership, accommodate their cultural norms, or assist them in overcoming language barriers, which limits their participation.

### Recommendations

- Organizations should encourage volunteering and other engagement that values immigrant expertise.
- Use forms of outreach and communication that place a strong emphasis on forming personal relationships as a way to bring immigrants into existing community institutions.
- Actively solicit input from all constituents to help shape the priorities and processes of organizations that serve the broader community.
- Organizations should evaluate potential barriers to immigrant involvement and consider changes to accommodate cultural differences, where practical.
- Recognize the need for integrated organizations that include newcomers and long-term residents working in partnership.
- Provide language services where possible to facilitate involvement by all members of the community.
- Avoid asking for Social Security numbers or U.S.-issued identification from potential participants. Keep confidential any personal information about volunteers and other participants, especially regarding immigration status.

Finding: Immigrants are not well represented in the political system, whether as elected officials, government employees, appointees, or members of boards and commissions.

### Recommendations

- Municipalities may need to re-examine electoral districts and voting processes to promote a more representative government that reflects the demographic shifts caused by immigration.
- Public and private organizations should provide widely available civic education for adults on voting, running for office, and holding appointed positions.
- Political parties should think about ways to leverage immigrant communities as volunteers, activists, and candidates.



- Local governments should consider changing how appointed positions are publicized and filled to attract a more diverse pool of applicants, for instance by centralizing all applications or conducting targeted outreach to achieve diversity goals.
- Local governments and community institutions should help immigrants build the capacity and personal connections to be involved in politics and government through citizen academies, leadership trainings, or other outreach programs.



# CHAPTER 8: IMMIGRATION



## INTRODUCTION

In the majority of interviews conducted for this report, participants made a distinction between the issues facing undocumented people and those facing immigrants with legal status. The problems experienced by those with legal immigration status include long waits for application processing, difficulties communicating with immigration officials, and discrimination based on religion and country of origin. The situation facing undocumented people is much worse by virtually every marker. Not having legal immigration status means living with a continual, abiding fear that you or a family member could be deported at any moment. This fear undermines the ability of undocumented people to live safely and with dignity and to fully realize other fundamental human rights. Though the problems are fundamentally different between these two groups of immigrants, they all reflect a lack of respect for the right to live with dignity and security.

## HUMAN RIGHTS AND IMMIGRATION

The U.S. immigration system, while generous in many respects, is riddled with systemic failures to protect human rights and meet obligations under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The UDHR and the ICCPR recognize that noncitizens in the United States have the right to freedom from discrimination.<sup>1244</sup> The ICCPR ensures the right not to be subjected to inhuman or degrading treatment or punishment.<sup>1245</sup> Noncitizens have the right to liberty and security of person, freedom from arbitrary and inhumane detention, and are entitled to prompt review of their detention.<sup>1246</sup> Noncitizens in the United States also have the right to due process and fair deportation procedures, including international standards on proportionality.<sup>1247</sup> Additionally, the UDHR enshrines the right to family unity,<sup>1248</sup> a right which is frequently abrogated in the United States as a result of deportation policies that separate families.<sup>1249</sup> The Human Rights Committee has stated that the right to family unity places limits on the power of States to deport.<sup>1250</sup> The UDHR also guarantees the right to security of the person.<sup>1251</sup>

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<sup>1244</sup> Universal Declaration of Human Rights (UDHR), Art. 2; International Covenant on Civil and Political Rights (ICCPR), Art. 2

<sup>1245</sup> ICCPR, Art. 7.

<sup>1246</sup> ICCPR, Art. 9; UDHR, Art. 3, 9, 10.

<sup>1247</sup> ICCPR, Art. 13; UDHR, Art. 7, 10.

<sup>1248</sup> UDHR, Art. 12, 16(3).

<sup>1249</sup> The Advocates for Human Rights and Detention Watch Network, "Report to the United Nations Working Group on Arbitrary Detention: Detention of Migrants in the United States," January 20, 2014, [http://www.theadvocatesforhumanrights.org/uploads/migrant\\_detention\\_in\\_the\\_us\\_-\\_ahr\\_dwn\\_-\\_january\\_2014.pdf](http://www.theadvocatesforhumanrights.org/uploads/migrant_detention_in_the_us_-_ahr_dwn_-_january_2014.pdf).

<sup>1250</sup> United Nations Human Rights Council, 7th Session, *Report of the Special Rapporteur on the Human Rights of Migrants*, ¶ 17, A/HRC/7/12/Add.2 (Mar. 5, 2008) (prepared by Jorge Bustamante); *Report to the United Nations*

## IMMIGRATION FRUSTRATIONS: DELAY AND DISRESPECT

Immigration law and regulations are administered by multiple federal agencies. The Department of Homeland Security oversees Citizenship and Immigration Services (USCIS), which is responsible for benefits applications, including citizenship, permanent resident status, family petitions, and asylum; Immigration and Customs Enforcement, which is responsible for detention, removal, and investigations of trafficking and other abuses; and Customs and Border Protection, which is responsible for inspecting all people and goods entering the United States and enforcing border policies. The Department of State oversees visa issuance and overseas refugee processing. The Department of Justice is responsible for the Immigration Court, which hears and decides all removal cases.

Both immigrants and advocates reported long waits for paperwork and processing.<sup>1252</sup> One citizen noted that “legal immigration takes too long because of all the bureaucracy.”<sup>1253</sup> A permanent resident said he was looking forward to becoming a citizen, but “to get there, we had to go through an asylum case and it took thirteen years to get there. The reason is because, every time we would win a case, the government immigration attorney would appeal and fight more, we would have to re-file our case, which meant spending more money.”<sup>1254</sup> This individual summed up his experience by saying “it is kind of a reminder to those involved about the mistakes in the immigration system.”<sup>1255</sup> Because of the lengthy delays, one asylee whose case processed for eleven years said he had the “worst opinion that could exist of the immigration system and the people that work there that anyone could ever have. Because we were almost deported because of an error that immigration made and they never acknowledged their fault.”<sup>1256</sup>

Interactions with the immigration system are reportedly often characterized by disrespect and a lack of fundamental dignity towards the immigrants. These interactions are frustrating for immigrants and their advocates. One woman said, “It seemed as if the people who worked in these places talked down to me and just wanted to hurry and get me out of their sight and out the

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*Working Group on Arbitrary Detention: Detention of Migrants in the United States*, The Advocates for Human Rights and Detention Watch Network, January 20, 2014.

[http://www.theadvocatesforhumanrights.org/uploads/migrant\\_detention\\_in\\_the\\_us\\_-\\_ahr\\_dwn\\_-\\_january\\_2014.pdf](http://www.theadvocatesforhumanrights.org/uploads/migrant_detention_in_the_us_-_ahr_dwn_-_january_2014.pdf).

<sup>1251</sup> UDHR, Art. 3.

<sup>1252</sup> Interview 16 (“it took two years to get my citizenship, but it was mostly a waiting process.”); Interview 39 (“my mom’s process took an extra year”); Interview 54 (“it was a long process”); Conversation 20.

<sup>1253</sup> Interview 48.

<sup>1254</sup> Interview 46.

<sup>1255</sup> Interview 46.

<sup>1256</sup> Interview 53.

door.”<sup>1257</sup> A researcher returning from a visit to family overseas had \$10,000 seized when she was re-entering the United States, because her foreign currency placed her over the legal limit.<sup>1258</sup> Her U.S. citizen colleague said, “They were so nasty to her up there at the airport, just like she was dealing drugs or something.”<sup>1259</sup> The colleague noted that if the woman did not have connections or resources, she would not have been able to get the money back.<sup>1260</sup>

Many people expressed frustrations over attempts to communicate with USCIS or get questions answered. All types of applications with Citizenship and Immigration Services are filed by mail, with a receipt mailed as confirmation of filing and evidence of a pending matter. Questions about the status of an application are addressed to the agency through three primary channels: an online case status system to check case status and average processing times;<sup>1261</sup> the USCIS agency customer service telephone inquiry system, working through a menu in English or Spanish, to speak with a representative; or an appointment, scheduled online, to visit the local office and speak with an officer in person.<sup>1262</sup> It is uncommon to receive detailed or meaningful answers about case questions through any of these channels. Many immigrants, especially older immigrants who do not speak English or use a computer, seek help contacting immigration from service providers or fellow community members.

Interviewees said it was hard to speak with a person or get an answer from immigration.<sup>1263</sup> Another person expressed frustration at the automated phone system, “It is hard to get answers; there is no live person.”<sup>1264</sup> One person said, “I paid the fee but I never got a response, yes or no.”<sup>1265</sup> Interviewees and service providers reported frustration at the lack of ongoing information from the immigration agencies when clients had pending matters.<sup>1266</sup> Another woman describes the process as confusing: “We forgot a paper and no one in the process told us it was missing.”<sup>1267</sup> People said “the slow process creates delay and hardship.”<sup>1268</sup>

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<sup>1257</sup> Interview 38.

<sup>1258</sup> Interview 77.

<sup>1259</sup> Interview 77.

<sup>1260</sup> Interview 77.

<sup>1261</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “USCIS Online Case Status;,” <https://egov.uscis.gov/cris/Dashboard/CaseStatus.do>.

<sup>1262</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “INFOPASS,” <https://infopass.uscis.gov/> (The INFOPASS system for making appointments is available in twelve languages.).

<sup>1263</sup> Interview 89; Interview 147.

<sup>1264</sup> Interview 22.

<sup>1265</sup> Interview 3.

<sup>1266</sup> Interview 86; Interview 89; Interview 109.

<sup>1267</sup> Interview 19.

<sup>1268</sup> Interview 132.

All immigration interviews, hearings, and appointments with immigration officers are conducted in Bloomington, Minnesota, where the agencies offices are located.<sup>1269</sup> Because of this, immigrants outside the Twin Cities metro area face additional costs in their immigration process, specifically the time and expense of travel to Bloomington. Moreover, U.S. Citizenship and Immigration Services is in the process of moving their offices to a location that not accessible by public transit, which will pose challenges even for metro area residents in the future.<sup>1270</sup>

Despite the delays and challenges, most immigrants describe their encounters with immigration officers as fair and free from discrimination.<sup>1271</sup> One person said, "I was treated well,"<sup>1272</sup> another remarked "we were treated fairly by the judges."<sup>1273</sup> One attorney said many of her clients are content to wait for status inside the United States, because it is much better than waiting abroad.<sup>1274</sup> Most immigrants feel a sense of security and relief once status is granted, which overshadows any prior challenges. One asylee felt he could not really complain about the process, since he ultimately granted asylum.<sup>1275</sup> Another noted, "It has been a long process, but I feel like it works."<sup>1276</sup>

## PROFILING OF MUSLIM IMMIGRANTS

Extensive security checks cause lengthy delays and are discriminatory in some cases. People practicing the Muslim faith, or from countries with high percentages of Muslim citizens reported

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<sup>1269</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Field Offices," <http://www.uscis.gov/about-us/find-uscis-office/field-offices>; U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, , "Minnesota," <http://www.uscis.gov/about-us/find-uscis-office/field-offices/minnesota>; The United States Department of Justice, "Office of the Chief Immigration Judge", <http://www.justice.gov/eoir/sibpages/spm/spmmain.htm>; U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, "Enforcement and Removal Operations," <http://www.ice.gov/contact/ero/>.

<sup>1270</sup> Mark Brunswick, "Twin Cities' new U.S. immigration building lacking bus service," *Star Tribune*, February 10, 2014, <http://www.startribune.com/local/244657501.html>; "A costly, illogical move on immigration office site in Bloomington," *Star Tribune* Editorial Board, February 13, 2014, <http://www.startribune.com/opinion/editorials/245456971.html>; (The local officers have expressed concerns about the lack of transit access, and in response actively surveyed immigrants at the office for one week to determine how many were using public transit to access the agency).

<sup>1271</sup> Interview 6 ("the system was fair to me"); Interview 24("my case was treated fairly"); Interview 39("it was just smooth transition for me"); Interview 49(because he has done everything he was supposed to, to be in this country legally); Interview 51(she has been treated well).

<sup>1272</sup> Interview 25.

<sup>1273</sup> Interview 53.

<sup>1274</sup> Interview 138.

<sup>1275</sup> Interview 9.

<sup>1276</sup> Interview 35.

additional scrutiny and delays especially when entering the United States.<sup>1277</sup> Advocates report that most of their complaints about discrimination from Muslim immigrants pertain to harassment at the airport.<sup>1278</sup>

One individual said, “Any Muslim who travels to Muslim countries will get stopped at the Minneapolis airport. They will be directed into secondary questioning. The agency claims it is random, but everyone in the room is Muslim.”<sup>1279</sup> Another immigrant expressed nervousness at traveling with a name like Muhammad because “everyone can tell that you are Muslim with those names.”<sup>1280</sup> One person related seeing her husband taken into secondary inspection nearly every time they re-enter the United States after travel abroad. She said, “That is one thing that really bugs me every time that I come back to the country. This is my country. My kids were born here. I live here, I pay taxes here, I vote for elected officials here. I am a very active citizen in that I participate in all the elections. So then why is it that every time I come back my husband is treated that way?”<sup>1281</sup> A Palestinian man also reported, “Showing my passport at the airport causes officials to look at me repeatedly and check my passport several times, making the process longer.”<sup>1282</sup> These experiences are consistent with discrimination experienced by people of Muslim background at ports of entry around the country.<sup>1283</sup>

As The Advocates for Human Rights documented in a 2007 report, *Voices from Silence*, increased scrutiny at land and air ports of entry and secondary screenings at the airport for domestic travel are a regular occurrence for Muslim individuals.<sup>1284</sup>

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<sup>1277</sup> Interview 127; Interview 18; Interview 7.

<sup>1278</sup> Interview 127.

<sup>1279</sup> Interview 127.

<sup>1280</sup> Interview 18.

<sup>1281</sup> Interview 18.

<sup>1282</sup> Interview 7.

<sup>1283</sup> Sarah Abdurrahman, “My Detainment Story or: How I learned to Stop Feeling Safe in My Own Country and Hate Border Agents\*,” On The Media, <http://www.onthemedial.org/story/my-detainment-story-or-how-i-learned-stop-feeling-safe-my-own-country-and-hate-border-patrol/>; *Cherri v. Mueller*, 951 F.Supp. 2d 918, 923 (E.D.Mich. 2013) (Decision denying the government’s motion to dismiss. Muslim plaintiffs are challenging the official policy, custom, and practice by CBP of repeatedly questioning individuals on entry to the United States about religious practices).

<sup>1284</sup> Minnesota Advocates for Human Rights, “Voice from Silence: Personal Accounts of the Long-Term Impact of 9/11,” February 2007, 24-27, 29, [http://www.theadvocatesforhumanrights.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/97648\\_final\\_voices\\_from\\_silence2.pdf](http://www.theadvocatesforhumanrights.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/97648_final_voices_from_silence2.pdf).



That these violations happen at ports of entry is problematic because of the lack of legal protections at the border. Noncitizens being questioned at the border are not allowed to call anyone and have no right to counsel

“Any Muslim who travels to Muslim countries will get stopped at the Minneapolis airport. They will be directed into secondary questioning. The agency claims it is random, but everyone in the room is Muslim.”

during their interrogation.<sup>1285</sup> The U.S. border, which includes airport ports-of-entry, is considered exempt from Fourth Amendment prohibitions against random and arbitrary stops and searches.<sup>1286</sup> Customs and Border Protection officials have the right to detain and search any person or item at a port of entry.<sup>1287</sup> However, protections against discrimination apply and the Department of Homeland Security (DHS) notes that their policy is to “prohibit the consideration of race or ethnicity in our investigation, screening, and enforcement activities in all but the most exceptional instances.”<sup>1288</sup> However, an exception is noted allowing for consideration of nationality in “antiterrorism, immigration, or customs activities in which nationality is expressly relevant to the administration or enforcement of a statute, regulations, or executive order, or in individualized discretionary use of nationality as a screening, investigation or enforcement factor.”<sup>1289</sup> The DHS Office of Civil Rights and Civil Liberties reviews and assesses complaints about civil rights abuses and profiling based on race, ethnicity, and religion.<sup>1290</sup> Travelers can also submit complaints using the DHS Traveler Redress Inquiry Program (TRIP) online system.<sup>1291</sup> Attorneys report that complaints do receive a response, though not always a satisfactory resolution.<sup>1292</sup>

<sup>1285</sup> 8 C.F.R. §292.5 (No right to representation when seeking admission to the United States); 19 C.F.R. §162.6 (CBP Search Authority); 19 U.S.C. §1487 (Customs Duty Title).

<sup>1286</sup> *Carroll v. United States*, 267 U.S. 132, 154 (1925); *United States v. Montoya de Hernandez*, 473 U.S. 531, 537 (1985) (Government interest in preventing entry of unwanted persons and effects is at its zenith at the international border); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (citing the important governmental interest in preventing illegal entry).

<sup>1287</sup> 19 C.F.R. § 162.6.

<sup>1288</sup> Secretary Napolitano, “Memorandum for Component Heads: The Department of Homeland Security’s Commitment to Nondiscriminatory Law Enforcement and Screening Activities,” April 26, 2013. [http://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013_0.pdf).

<sup>1289</sup> Secretary Napolitano, “Memorandum for Component Heads: The Department of Homeland Security’s Commitment to Nondiscriminatory Law Enforcement and Screening Activities,” April 26, 2013. [http://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013_0.pdf).

<sup>1290</sup> 6 U.S.C. § 345; 42 U.S.C. § 2000ee-1; Department of Homeland Security, “File a Civil Rights Complaint,” <http://www.dhs.gov/file-civil-rights-complaint>. (In FY 2012, there were five complaints lodged about discrimination by CBP agents and 34 complaints were resolved in that period, according to the Civil Rights and Civil Liberties Office Annual Report for FY 2012, [http://www.dhs.gov/sites/default/files/publications/crcl-annual-report-fy-2012\\_4.pdf](http://www.dhs.gov/sites/default/files/publications/crcl-annual-report-fy-2012_4.pdf)).

<sup>1291</sup> U.S. Department of Homeland Security, “DHS Traveler Redress Inquiry Program (DHS TRIP),” <https://www.dhs.gov/dhs-trip>.

<sup>1292</sup> Interview 188.

## FEAR AND UNDOCUMENTED STATUS

Fear of detention and deportation underpins the lives of undocumented immigrants in Minnesota. Whether immigrants can fully realize their human rights in Minnesota depends first and foremost on their immigration status. Undocumented immigrants are fearful and isolated in Minnesota, leaving them excluded from the systems designed to protect human rights. Status or lack thereof, determines who can access other fundamental rights, such as housing, health care, employment, justice, and safety.

Service providers, immigrants, and government employees repeatedly explained the situation of undocumented immigrants using the words “fear,” “invisible,” and “isolated.” In the majority of interviews, people initially responded to questions about the problems facing immigrants by distinguishing between those with legal status and those without status. For undocumented immigrants, fear of deportation and the subsequent family separation drives nearly all of their other decisions.

Because of this fear, people are reluctant to engage in their community or to seek help from sources that are not known or trusted. Among the trusted sources are churches, grocery stores, and some nonprofit agencies.<sup>1293</sup> One school employee noted that, being a government employee, people are afraid she might “turn them in,” so it is perceived as safer to avoid contact with her.<sup>1294</sup> A volunteer in greater Minnesota said that the Latinos in her town try to stay below the radar, because they are afraid of being caught by immigration and deported.<sup>1295</sup>

In many cases, a lack of knowledge and awareness about how agencies actually work compounds the fear. A social service provider said “people are afraid to fill out forms because they think it might raise a flag with immigration.”<sup>1296</sup> People do not seek medical care<sup>1297</sup> or help with housing problems<sup>1298</sup> because they think if they do so, they will be vulnerable to deportation.<sup>1299</sup> In rural areas, where agricultural work is often the main means of employment, migrants are isolated both physically on farms and by the nature of their status.<sup>1300</sup> Rather than seek a remedy, people without

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<sup>1293</sup> Interview 137.

<sup>1294</sup> Interview 108.

<sup>1295</sup> Interview 96; Interview 97 (Interviewee makes similar statement).

<sup>1296</sup> Interview 133.

<sup>1297</sup> Interview 136.

<sup>1298</sup> Interview 133.

<sup>1299</sup> Interview 144.

<sup>1300</sup> Interview 87.

status often choose to live with the problem, viewing it as the lesser of two evils.<sup>1301</sup> People are afraid to report violations of their rights for fear it may lead to disclosure of their status.<sup>1302</sup>

The fear is compounded by immigration enforcement actions in communities, which greatly undermine personal security. Large-scale raids, like the Swift Meatpacking Plant action in 2006,<sup>1303</sup> created fear, but also incentivized communities to prepare for these types of events and educate residents about their rights.<sup>1304</sup>

The model of enforcement has changed, however, and is now focused more on review of booking sheets at jails, targeted warrants for outstanding removal orders, and auditing employment forms at worksites. This enforcement strategy, though less visible, still creates fear. Increasing use of E-Verify and similar electronic verification programs have resulted in large-scale “silent raids.” One meatpacking plant in Southern Minnesota used a system called IMAGE to verify employment in 2011.<sup>1305</sup> A community member reported that after the company ran the documents to verify employment status, people who were working under a different name had two options.<sup>1306</sup> The first was to stay and then be fired (and presumably reported), the second was to leave and no report would be made.<sup>1307</sup> The person reported that many Hispanic people left the community.<sup>1308</sup> A union representative also observed the increasing frequency of “desktop raids” in the metro area since 2009.<sup>1309</sup> In one audit of a building management company, people were given one week to prove their employment eligibility status.<sup>1310</sup> In prior audits, there was a 90-day period to respond to a letter indicating a non-matching Social Security number.<sup>1311</sup> In this case, the union advocated and was able to get the 90-day period and 21 members were able to legalize with some protection.<sup>1312</sup>

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<sup>1301</sup> Interview 87; Interview 133.

<sup>1302</sup> Interview 91.

<sup>1303</sup> John Reinan, Matt McKinney, and Richard Maeryhew, “Workers say 400 detained in Worthington raid,” *Star Tribune*, December 12, 2006, <http://www.startribune.com/local/11586076.html>.

<sup>1304</sup> Interview 71.

<sup>1305</sup> Interview 78; U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, “IMAGE Partners,” <https://www.ice.gov/image/partners.htm>.

<sup>1306</sup> Interview 78.

<sup>1307</sup> Interview 78.

<sup>1308</sup> Interview 78.

<sup>1309</sup> Interview 117.

<sup>1310</sup> Interview 117.

<sup>1311</sup> Interview 117.

<sup>1312</sup> Interview 117.

Another change in enforcement has been more targeted efforts to deport individuals with outstanding removal orders or criminal convictions.<sup>1313</sup> ICE officers execute warrants for the targeted person at a last-known address. Often the person is no longer living at the address, but in the process, ICE officers find and arrest other undocumented people at the home. People then flee the neighborhood or apartment building *en masse*, for fear that ICE will return and arrest them.<sup>1314</sup> In one small community in southern Minnesota, ICE officers went door-to-door in a mobile home park with a high concentration of immigrant residents and also stationed an officer at the entrance, checking the documents of everyone who entered.<sup>1315</sup> The resulting deportation proceedings and family separation were devastating for the individuals involved.<sup>1316</sup> Additionally, those who witness enforcement efforts share the fearful experience with others, which validates the fears of many undocumented immigrants. A community member said, “The sad thing is that after things like that happen, people come here with a full array of emotions. They come in and are crying; their kids are crying. And then we have to figure out where [the person] was taken.”<sup>1317</sup> Another advocate described a different incident where “ICE folks showed up at six in the morning and scared the kids half to death and then said, we are not going to deport you today, but maybe next week.”<sup>1318</sup>

There have also been incidents where fears of large-scale enforcements were not realized. After a

In one small community in southern Minnesota, ICE officers went door-to-door in a mobile home park with a high concentration of immigrant residents and also stationed an officer at the entrance, checking the documents of everyone who entered.

criminal investigation involving tax fraud and drug sales at a restaurant with immigrant employees, many feared those employees would be arrested by immigration. Ultimately, “ICE didn’t take it as an opportunity to take everyone.”<sup>1319</sup> After an employment audit, union representatives noted that ICE did not use the list of individuals to “come to the house as feared by many.”<sup>1320</sup> Even when discretion is exercised, however, the uncertainty and fear experienced by those without status continues.

<sup>1313</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, “Fugitive Operations, ICE Enforcement and Removal,” <http://www.ice.gov/fugitive-operations/>.

<sup>1314</sup> Interview 133; Conversation 22.

<sup>1315</sup> Interview 94.

<sup>1316</sup> Conversation 22.

<sup>1317</sup> Interview 78.

<sup>1318</sup> Interview 57.

<sup>1319</sup> Interview 94.

<sup>1320</sup> Interview 117

The increasing information sharing between local law enforcement agencies and federal immigration agencies has reinforced these fears. Community members reported that people associate the police with immigration, and are therefore afraid to call the police for help, fearing deportation.<sup>1321</sup> In another community, ICE has a contract to house immigration detainees at the local jail.<sup>1322</sup> As a result, the community associates the police and sheriffs with ICE, making people even more wary of the police.<sup>1323</sup> An advocate cited reports that “sometimes the police give information to ICE. A year ago we asked the police to agree that they would not work with ICE, but the group pushing that initiative fell apart, I do not know how it finished.”<sup>1324</sup> (See Chapter 1: Public Safety on page 51.)

For undocumented people in Minnesota, lack of immigration status means a lack of security in all areas of their lives. This fear extends beyond law enforcement to other government entities and even non-governmental entities. As a result of their lack of status, undocumented people often live isolated from the broader community and struggle to meet their basic needs.

## RECOMMENDATIONS

Finding: Immigrants face lengthy waits for a resolution to their immigration cases.

### Recommendations

- Congress should allocate increased funding to the Executive Office for Immigration Review in order to hire more Immigration Court judges, judges at the Board of Immigration Appeals, and support staff in order to decrease the wait time for, and between, hearings on types of relief from removal.
- Agencies should conduct investigations of immigration applications expediently and not hold decisions indefinitely.
- Agencies running fingerprint clearances and biometric checks for immigration applications should prioritize adjudication of those applications to reduce wait times.
- USCIS should minimize repeated requests for fingerprint and biometric data collection by automating resubmission of collected information for renewed clearances on pending applications.

<sup>1321</sup> Interview 94.

<sup>1322</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, “Facility Locator,” <http://www.ice.gov/detention-facilities/> (Select “Minnesota” to see facilities).

<sup>1323</sup> Interview 80.

<sup>1324</sup> Interview 86.

Finding: USCIS does not communicate well with immigrants, leaving them uncertain about the status of their case and whether more information is required.

### Recommendations

- USCIS should provide an option on the 1-800 Customer Service number to immediately speak with a customer service representative to facilitate communication with immigrants who may not be able to navigate the menu.
- USCIS should better use existing online case status and customer service information to provide meaningful answers about case processing delays, such as “case is pending review of potential ineligibility under section 212(a)(3)(B) based on prior membership in the \_\_\_ organization. Case is pending at headquarters with an indefinite timeline.”
- Automatic, periodic case update letters should be sent to applicants to assure them that their case is pending.
- USCIS should ensure offices are easily accessible by public transit.

Finding: Muslim immigrants face discrimination based on religion and country of origin.

### Recommendation

- Increase oversight of border enforcement by permitting legal review in the immigration court or federal court of allegations of discrimination or inappropriate treatment by CBP officers at ports of entry. Provide information about this mechanism for discrimination complaints to every person taken to secondary inspection for questioning.

Finding: Fear of deportation dominates the lives of undocumented immigrants and prevents them from accessing services and protections to which they are entitled and is a barrier to engaging with the broader community.

### Recommendations

- Congress must pass commonsense immigration law reform that provides a roadmap for people who are currently undocumented to gain status that does not prohibit naturalization.
- Congress should restore discretion to immigration judges so that individual circumstances can be considered in deportation cases.
- Congress should repeal mandatory detention laws and ensure that every person detained by immigration authorities has access to a review of their custody status before an independent judicial authority.
- Congress should repeal the unlawful presence bars to adjustment of status to permanent residence that prevent family reunification.
- Congress should create realistic ways for workers to immigrate to the United States that meet the needs of the U.S. economy.





# CHAPTER 9: BUILDING A MINNESOTA BEYOND “NICE”



## INTRODUCTION

As The Advocates for Human Rights interviewed individuals and held community conversations around Minnesota, participants were asked to describe what “welcome” means to them, what has made them feel welcome in Minnesota, and what barriers to welcome they have encountered.

Participants noted that while Minnesota is welcoming, the welcome does not extend very far. Newcomers face discrimination and exclusion from social networks and by extension, exclusion from the economic opportunities and political power such networks bring. People spoke about the need to be “accepted” without having to discard their identities in order to be able to live with dignity. People pointed to opportunities where long-term residents can learn about other cultures and believed such education is essential to helping foster acceptance. Participants also described the barrier that segregation creates in building networks and recognized the power of connections, whether fostered through formal programs or informal encounters, to help overcome this.

## IMPORTANCE OF BEING ACCEPTED

Minnesota has become increasingly diverse over the past thirty years.<sup>1325</sup> Demographers predict that this trend will continue, particularly because the white population is older than the minority population.<sup>1326</sup> The Minnesota State Demographic Center states, “all regions will be more racially and ethnically diverse in the future than they are now.”<sup>1327</sup> Immigrants are a key part of this growing diversity.

As part of living in a diverse community, Minnesotans must respect each individual’s right to be free from discrimination.<sup>1328</sup> The Minnesota Human Rights Act and federal civil rights laws guarantee freedom from discrimination for all persons in the state based on race, religion, national origin, and other grounds.<sup>1329</sup>

“She said, ‘You are not like the rest of them!’ And then she talked about how bad the ‘rest’ of them are.”

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<sup>1325</sup> Minnesota State Demographic Center, 2010 Census Results: Minnesota, (accessed March 17, 2014), <http://www.demography.state.mn.us/Census2010/>.

<sup>1326</sup> Martha McMurry, *Minnesota Population Projections by Race and Hispanic Origin, 2005 to 2035*, Minnesota State Demographic Center, January 2009, <http://www.demography.state.mn.us/documents/MinnesotaPopulationProjectionsbyRaceandHispanicOrigin2005to2035.pdf>.

<sup>1327</sup> Martha McMurry, *Minnesota Population Projections by Race and Hispanic Origin, 2005 to 2035*, Minnesota State Demographic Center, January 2009, <http://www.demography.state.mn.us/documents/MinnesotaPopulationProjectionsbyRaceandHispanicOrigin2005to2035.pdf>.

<sup>1328</sup> UDHR Art. 2.

<sup>1329</sup> Minn. Stat. 363A.02 Subd. 1.

These legal provisions recognize the importance of being accepted into society without needing to change one’s race, religion, color, creed, national origin, sex, marital status, disability, age, sexual orientation, or other key characteristic.

Despite this recognition, numerous people reported experiences of discriminatory treatment by others. One man said, “I look different and the first thing people would ask is ‘where are you from?’ and ‘why did you come here?’”<sup>1330</sup> A student reported going to the college writing center: “We talked for a long time and then she detected [that I was an immigrant] and she said, ‘Oh, your writing is so good though! You are not like the rest of them!’ And then she talked about how bad the ‘rest’ of them are.”<sup>1331</sup> Another man who ran an ice-cream truck reported numerous people telling him to “go back to Africa.”<sup>1332</sup> Another woman said, “When I go out and my head is covered, people look at me in a weird way. They are all nice and friendly to the person ahead of me in the checkout line but when I get to the checkout, their demeanor changes. It is like they are not supposed to be nice and friendly or they are afraid to be nice and friendly. It might be either way.”<sup>1333</sup> One man noted racism especially towards Somali and Muslim immigrants: “People tie what is happening outside of the borders to people here.”<sup>1334</sup>

Service providers reported that clients experienced discrimination, even if the clients could not precisely articulate the experience. Talking about newly arrived refugees, one service provider explained: “It’s the ‘honeymoon’ period. They are so new they may not have conceptualized it yet. It would take about twenty-four months to understand the discrimination. They are not trained to think that way.”<sup>1335</sup> A refugee woman reported an African-American neighbor told her, “The farther you go into the system, the more you meet up with discrimination.”<sup>1336</sup>

Being accepted is critical to inclusion and belonging. While, at a minimum, acceptance means not facing discrimination because of immutable traits,<sup>1337</sup> it also means ensuring that differences in language, culture, dress, religion, and other experiences are acknowledged, valued, and included in the community. A man said, “You want to be accepted, you need to be accepted, you need people to be tolerant of your mistakes and to accept all of you.”<sup>1338</sup> Others observed that “acceptance of

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<sup>1330</sup> Interview 3.

<sup>1331</sup> Conversation 19.

<sup>1332</sup> Conversation 21.

<sup>1333</sup> Interview 18.

<sup>1334</sup> Interview 143.

<sup>1335</sup> Interview 115.

<sup>1336</sup> Interview 129.

<sup>1337</sup> UDHR Art. 2.

<sup>1338</sup> Interview 5.

different viewpoints and cultures,”<sup>1339</sup> “being accepted and understood,”<sup>1340</sup> or having “people take an active interest in learning about new neighbors and getting to know someone,”<sup>1341</sup> are signs of acceptance. “Being accepted for who you are,”<sup>1342</sup> being “respectful of your lifestyle,”<sup>1343</sup> and “having a sense of belonging”<sup>1344</sup> are key to feeling included in the community. As one interviewer said, “It honestly means that you can be yourself, and that self will be accepted. It means feeling like home.”<sup>1345</sup>

Many of the immigrants interviewed for the project cited “being accepted” as an area where Minnesota can continue to improve.<sup>1346</sup> A human rights commissioner expressed the need for communities to “go beyond tolerance to acceptance.”<sup>1347</sup> In another community, one woman depicted the current attitude as “you have to play by our rules, but you are welcome if you do. It is tolerance as opposed to acceptance.”<sup>1348</sup> An English language teacher expressed frustration with how closed her community is, saying, “It is hard to get acceptance of new refugees.”<sup>1349</sup> Others noted that acceptance was “not quite there.”<sup>1350</sup> An immigrant observed that “they just need to accept differences and not point them out as something weird. I remember when I first came here with my strong accent, people would always ask questions. So just knowing that somebody who looks different from you is not a bad person helps.”<sup>1351</sup> The cost of excluding people from the community can be high. One community advocate noted, “When kids do not feel accepted, they join gangs.”<sup>1352</sup>

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<sup>1339</sup> Interview 40.

<sup>1340</sup> Interview 42.

<sup>1341</sup> Interview 111.

<sup>1342</sup> Interview 21 (“To be welcomed is to be accepted for who you are and people being respectful of your lifestyle.”); Interview 54 (“I feel that you are accepted for who you are as an individual.”).

<sup>1343</sup> Interview 47 (“I would define a welcoming state as accepting any race/gender.”).

<sup>1344</sup> Interview 7 (“To me, feeling welcome means being safe, feeling accepted ...”); Interview 11 (“I think a place that is welcoming is accepting, non-judgmental, fair no matter who you are.”); Interview 113 (“More open and acceptable, more inclusive.”); Interview 115; Interview 134 (“I established relationships based on business; over the years I was seen differently and was more accepted.”); Interview 137 (“Being accepting of languages, people of different colors.”).

<sup>1345</sup> Interview 46.

<sup>1346</sup> Conversation 7; Conversation 16.

<sup>1347</sup> Interview 88.

<sup>1348</sup> Interview 79.

<sup>1349</sup> Interview 100.

<sup>1350</sup> Interview 44 (“Being a state in the Midwest, I don’t think acceptance is fully there.”).

<sup>1351</sup> Interview 50.

<sup>1352</sup> Interview 136.

An important step towards acceptance is educating receiving communities about immigrant groups and their experiences.<sup>1353</sup> One interviewee remarked, “Welcoming includes outreach, education, and sensitivity to culture and language. It is not just wanting diversity but also having a deeper understanding of peoples’ stories.”<sup>1354</sup> A service provider recalled a presentation for agency employees about Burmese refugees. She said, “It was a cultural orientation for us, and it was very helpful. We need more programs like that.”<sup>1355</sup>

“It honestly means that you can be yourself, and that self will be accepted. It means feeling like home.”

One person recommended that groups “start at the community level to create cultural awareness and exchange.”<sup>1356</sup> Communities cited annual cultural festivals as one way to bring groups together and promote cross-cultural learning.<sup>1357</sup> In one town, the welcoming initiative and the school collaborated on a

public art project.<sup>1358</sup> The students painted chairs to represent the heritage of town residents, and the chairs are displayed throughout the central business district.<sup>1359</sup>

Multiple community conversation participants agreed that people with previous exposure to diversity are less likely to be offensive towards immigrants.<sup>1360</sup> A man suggested people need to learn more about different cultures besides U.S. culture.<sup>1361</sup> Another person acknowledged the need to “be more involved and open-minded. That is easier said than done. It takes education at a young age to learn acceptance. It takes knowledge and education to learn acceptance at an older age. It takes exposure to different situations.”<sup>1362</sup> Participants in one conversation noted that people who have traveled and had diverse experiences are much more receptive and welcoming towards a diverse community.<sup>1363</sup> A group at another conversation emphasized, “We need to educate people about the benefits of increased diversity, so people learn immigration is benefitting their community.”<sup>1364</sup>

<sup>1353</sup> Interview 80; Conversation 2; Conversation 7; Conversation 12; Conversation 16; Conversation 20.

<sup>1354</sup> Interview 115.

<sup>1355</sup> Interview 81.

<sup>1356</sup> Interview 43.

<sup>1357</sup> Conversation 7 (“Cinco de Mayo, Oktoberfest”); Interview 79; Interview 90; Conversation 2; Conversation 9.

<sup>1358</sup> Interview 90.

<sup>1359</sup> Interview 90.

<sup>1360</sup> Conversation 12.

<sup>1361</sup> Interview 6.

<sup>1362</sup> Interview 46.

<sup>1363</sup> Conversation 9.

<sup>1364</sup> Conversation 7; Conversation 24.

## MINNESOTA BEYOND “NICE”

Acceptance increases when there is greater empathy and understanding towards immigrants in the community.<sup>1365</sup> A young woman said Minnesota could be more welcoming if people better understood the situation of many immigrants and “put themselves in that situation and knew how hard that transition is.”<sup>1366</sup> One man said, “The English-only community does not understand the immigrant experience.”<sup>1367</sup> An immigrant explained that people need to be more informed and sensitive towards immigrants, for example by not asking questions like “aren’t you hot in there?” to women wearing headscarves.<sup>1368</sup>

“People try to help you, but they try not to be your friend.”

Conversation participants acknowledged that reaching out and stepping into unfamiliar situations can be difficult.<sup>1369</sup> One person recommended that everyone “talk with others in spite of our fear.”<sup>1370</sup> Another group felt that it was important to “promote going out of one’s comfort zone.”<sup>1371</sup> A participant said listening and seeing someone face-to-face are both vital to building a connection, even though “you do not always feel comfortable, but that is part of it.”<sup>1372</sup> A school employee explained, “Relationship is the key to change. It’s all about creating relationships.”<sup>1373</sup> The relationships between people and groups help foster trust, overcome stumbling blocks, and can last for many years.<sup>1374</sup>

## NEED TO GO BEYOND “MINNESOTA NICE”

While participants reported feeling that Minnesotans were welcoming, even more so than people in other states,<sup>1375</sup> many people felt it was a shallow welcome. As one person observed, “people try to help you, but they try not to be your friend.”<sup>1376</sup>

Another observed that “everybody from different states, different countries, they live here, so Minnesota is very welcoming, but making friends is very hard in Minnesota. Every race moves together, Somali you find that group, Hispanic, African, African-American, Caucasian, Native

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<sup>1365</sup> Conversation 7; Conversation 21.

<sup>1366</sup> Interview 44.

<sup>1367</sup> Conversation 6.

<sup>1368</sup> Interview 18.

<sup>1369</sup> Conversation 22.

<sup>1370</sup> Conversation 7.

<sup>1371</sup> Conversation 9; Conversation 24.

<sup>1372</sup> Conversation 11.

<sup>1373</sup> Interview 120.

<sup>1374</sup> Conversation 11.

<sup>1375</sup> Interview 1; Interview 7; Interview 14; Interview 18; Interview 31; Conversation 8; Conversation 21.

<sup>1376</sup> Interview 4.

American. It is hard to make friends of different races. Most of your friends are where you are from.”<sup>1377</sup>

Many interviews and conversations noted that “people do not step out of their groups.”<sup>1378</sup> A group of students said, “People are very guarded. People are nice, but it doesn’t get past a certain point. People are polite, but they aren’t necessarily open.”<sup>1379</sup> Others cited challenges deciphering the communication style.<sup>1380</sup> “People will tend to say things that may be different than what they are feeling in order not to offend. But people tell me that it is a ‘Minnesotan thing.’ I find this to be very frustrating.”<sup>1381</sup>

The absence of deeper relationships between immigrant communities and long-term resident groups results in the exclusion of immigrants from the community. This is often unintentional, which means it requires a concerted effort by government, institutions, and organizations to ensure they are making efforts to include all residents.

Minnesota’s climate of surface-level welcome, rather than full acceptance and belonging, can negatively affect some newcomers’ abilities to succeed. A transplant from another state said, “Because people in Minnesota seem to stay in the same community, the ‘networks’ are more closed – it can be harder to get a job.”<sup>1382</sup> One student expressed frustration in trying to engage in the civic life: “Having a connection helps, but getting past a certain point depends on who you know. A lot of stuff is underground, you have to look for it, people do not want to advertise. You only get to know about things if you already know people.”<sup>1383</sup> Another man observed, “It is difficult to figure out how people socialize and form relationships. I think more information about the cultural setting would help.”<sup>1384</sup> Excluding immigrants from the tight-knit networks in Minnesota communities undermines their ability to fulfill other fundamental rights, such as accessing employment, housing, and participation in civic life. If access to jobs and other opportunities depends on referrals, the polarization of long-term resident groups and immigrant groups carries tremendous implications of exclusion.

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<sup>1377</sup> Interview 6.

<sup>1378</sup> Conversation 16.

<sup>1379</sup> Conversation 5.

<sup>1380</sup> Conversation 13.

<sup>1381</sup> Interview 7; Conversation 13.

<sup>1382</sup> Conversation 22.

<sup>1383</sup> Conversation 5.

<sup>1384</sup> Conversation 15.

## POWER OF CONNECTIONS

People who are strongly connected to their community feel more included and have greater success fulfilling their basic needs. Reaching out and offering connection to newcomers is a best practice for creating an inclusive community that avoids human rights violations associated with discrimination. One person suggested that people “learn each other’s culture at the individual level.”<sup>1385</sup> A group of women said, “a common theme is it does not matter where we travel, when someone outside your community welcomes you, it’s really special – a church community, a close friend, or a neighbor.”<sup>1386</sup> Many interviewees described similar positive welcoming experiences that involved small kindnesses from individuals.<sup>1387</sup>

One community created “community connectors” as part of a school-based integration collaborative. These individuals field calls from community members about a wide range of questions and concerns and serve as the go-between for the person and the government office or service provider. The connectors are bilingual, and from the ethnic community they represent. Part of the success of these connectors is a strong emphasis on confidentiality. As one put it, “I don’t even share this information with my wife.” A second part of the success is the connectors’ availability, receiving calls at home and on cell phones at all hours. The program’s philosophy is to make sure people who reach out get *something* in return. “We started by building trust, making people feel comfortable. Whoever walks in, we will take care of him and figure out what he needs. It does not matter if they speak the language or not.” This system works well in part because the community is small and the community connectors know the people at the relevant agencies, churches, and government offices so they can make calls that make things happen.

Many people identified their church as a welcoming place.<sup>1388</sup> One woman said she went to church the day after she arrived and a couple there gave her “the most welcoming hug ever” which stuck with her.<sup>1389</sup> A man said that his community church was a very important resource which “made it feel more like back home.”<sup>1390</sup> Another man explained, “I was able to be involved with the community, learn more culture, and be more accepted. People like when you get involved. My church really has been life changing. I know lot of people because of that.”<sup>1391</sup>

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<sup>1385</sup> Conversation 21.

<sup>1386</sup> Conversation 19.

<sup>1387</sup> Conversation 11; Conversation 12; Conversation 21; Conversation 22.

<sup>1388</sup> Conversation 16; Conversation 21; Conversation 22.

<sup>1389</sup> Conversation 21.

<sup>1390</sup> Interview 2.

<sup>1391</sup> Interview 3.



Because of the central role that faith and religion play for many immigrants as a basis of community, social services interested in reaching immigrants should consider connecting with religious institutions and leaders. A refugee who serves as a lay pastor explained, “For organizations who want to reach immigrants, they should reach out to churches because there are very strong connections between pastors and members. There is more infighting in national-based organizations, but less in church. The trust is thicker in church.”<sup>1392</sup> Another social service provider emphasized that undocumented immigrants may trust their church more than any other institution.<sup>1393</sup> A group of English language students highlighted an example of interfaith connection: “Reunions are taking place in some mosques where people from different religions and cultures get together, have dinner, and talk about different things, such as traditions and what makes their culture different than others. They talk about peace among all people and how to leave differences behind so people can get along.”<sup>1394</sup>

While community programs can foster relationships, powerful connections also happen informally every day that can transform how people experience their new communities. One man related the difference a stranger made for him, changing his thoughts about American people and helping him feel like less of an outsider:

*I was at the Mall of America with my two children around Christmastime two years ago. I’m not comfortable speaking English, but I can be understood at a slower pace. And I was really struggling to find a store to get my kids things. So I stopped a mall security guard to ask him if he could help me out. The security guard then asked me what I was looking for, in Spanish. We began to have a conversation, and it struck me that this guy was not Hispanic, yet fluently spoke Spanish. I asked how he learned the language, and he said he was a Spanish major in college right now. Then the security guard told me he would be able to help me on his lunch break. The security guard then took me and my two girls around the Mall through the back doors because the crowds were so thick with people. He took us to stores for the girls to pick out things they wanted. When it was time for him to go back to work, we shared a goodbye conversation and then never saw each other again. But this was one of the nicest things anyone had done for me. And it made me feel very welcome.*<sup>1395</sup>

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<sup>1392</sup> Interview 5.

<sup>1393</sup> Interview 137.

<sup>1394</sup> Conversation 8.

<sup>1395</sup> Interview 49.

# CONCLUSION

While Minnesota takes seriously the commitment to create welcoming communities, too often the fundamental human rights of immigrants and refugees are violated and abused. Although welcoming gestures can help ease transitions and build friendships, welcome by itself, without upholding fundamental human rights, ultimately leaves some Minnesotans excluded from the most basic protections.

Immigrants and refugees report barriers to belonging in Minnesota that result from discrimination, social distance, exclusion from the greater community, and fear. These barriers lead to human rights violations that impact safety and security and that undermine immigrants' ability to earn a living and to meet their basic needs. The failure to protect these fundamental human rights undermines Minnesotan values and squanders the rich resources that Minnesota's newcomers bring. Public policy must guarantee that all people who live in Minnesota, regardless of where they were born or what their immigration status is, enjoy the fundamental human rights that allow them to live with dignity.

# APPENDIX A:

## IMMIGRATION LAW PRIMER

U.S. immigration laws govern who can come to this country, how long they can stay, and the privileges they enjoy while they are here. The Immigration and Nationality Act of 1952, as amended, created an array of “nonimmigrant” visa categories for people temporarily coming to the United States<sup>1396</sup> and established the framework for immigrant visa priorities based on family, employment, and humanitarian grounds.<sup>1397</sup> U.S. immigration laws also set forth the grounds and process for admission to, and expulsion of, people from the United States, establish inspection and detention authority, and provide for the admission of refugees. U.S. immigration law, though generous in some ways, has evolved largely without regard for human rights obligations.

### TEMPORARY (NONIMMIGRANT) STATUS

While over 50 million people come to the United States each year, the vast majority are here only temporarily.<sup>1398</sup> People can come to the United States temporarily for many different purposes, but all forms of temporary status have specific restrictions and requirements.<sup>1399</sup> For example, a person admitted as a student must maintain full-time enrollment.<sup>1400</sup> A person admitted as a temporary professional worker may work only in the position and for the employer specified in the visa petition.<sup>1401</sup> If a student fails to maintain their full course load or a worker takes an additional part-time job, they are deportable.

People coming to the United States generally must have a passport issued by their country of nationality and a visa issued by the United States.<sup>1402</sup> Individuals from certain countries (known as “visa waiver countries”) do not have to obtain a visa before visiting the United States for up to 90

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<sup>1396</sup> 8 U.S.C. §1101(a)(15); U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: Nonimmigrant Admissions to the United States: 2012*, (Washington D.C., August 2013), 1. [http://www.dhs.gov/sites/default/files/publications/ois\\_ni\\_fr\\_2012.pdf](http://www.dhs.gov/sites/default/files/publications/ois_ni_fr_2012.pdf).

<sup>1397</sup> 8 U.S.C. §1101(a)(15).

<sup>1398</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: Nonimmigrant Admissions to the United States: 2012*, (Washington D.C., August 2013), Table 1. [http://www.dhs.gov/sites/default/files/publications/ois\\_ni\\_fr\\_2012.pdf](http://www.dhs.gov/sites/default/files/publications/ois_ni_fr_2012.pdf).

<sup>1399</sup> 8 U.S.C. §1101(a)(15) (See statute for requirements for each status type.)

<sup>1400</sup> 8 U.S.C. §1101(a)(15)(F)(i).

<sup>1401</sup> 8 U.S.C. §1101(a)(15)(H)(i)(b); *Ali v. Mukasey*, 542 F.3d 1180 (7<sup>th</sup> Cir. 2008) (Alien was deportable due to commencing work with a new employer three months prior to new employer's filing petition to allow him to work in the country lawfully).

<sup>1402</sup> U.S. Department of State, Bureau of Consular Affairs, “Entering the United States,” accessed March 10, 2014, <http://travel.state.gov/content/visas/english/visit/entering-the-u-s-.html>.

days.<sup>1403</sup> Visa waiver countries include most European countries, Australia, Brunei, Japan, New Zealand, Singapore, South Korea, and Taiwan.<sup>1404</sup>

Some kinds of temporary status depend on the circumstances in a person's home country. For instance, if there is a humanitarian crisis in a person's home country that would make it dangerous for them to return, the United States may grant them Temporary Protected Status, which allows them to stay until the situation in their home country improves.<sup>1405</sup> The current list of countries designated for TPS includes: El Salvador, Haiti, Honduras, Nicaragua, Somalia, Sudan, South Sudan, and Syria.<sup>1406</sup> Liberia has a separate status called Deferred Enforced Departure, which is an extension of a prior TPS status.<sup>1407</sup>

Most people living temporarily in the United States cannot obtain legal permanent residency, and are expected to leave when their period of authorized stay ends.<sup>1408</sup> People who fail to leave when their status expires are part of the U.S. undocumented population; they have "overstayed" their visa.<sup>1409</sup> About forty percent of all undocumented people came on a temporary status, but did not leave when required.<sup>1410</sup>

Only two categories of non-immigrants have a path to permanent residency. Those admitted as fiancé(e)s must marry the U.S. citizen who petitioned for them within 90 days of entry and may then file an application for permanent resident status.<sup>1411</sup> Professional workers admitted temporarily may pursue immigrant visa petitions that will allow them to work permanently in the United States, but other temporary workers, such as seasonal or agricultural laborers, cannot.<sup>1412</sup>

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<sup>1403</sup> 8 U.S.C. §1187.

<sup>1404</sup> U.S. Department of State, Bureau of Consular Affairs, "Visa Waiver Program," accessed March 10, 2014 <http://travel.state.gov/content/visas/english/visit/visa-waiver-program.html>.

<sup>1405</sup> 8 U.S.C. §1254a.

<sup>1406</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Temporary Protected Status," accessed March 10, 2014, <http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status>.

<sup>1407</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "DED Granted Country-Liberia," March 21, 2013, <http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/ded-granted-country-liberia/ded-granted-country-liberia>.

<sup>1408</sup> U.S. Department of State, Bureau of Consular Affairs, "What the Visa Expiration Date Means," accessed March 10, 2014, <http://travel.state.gov/content/visas/english/general/visa-expiration-date.html>.

<sup>1409</sup> Cassie M. Chew, "Forty Percent of Non-Citizens Live in U.S. on Expired Visitor, Student Visas," *The Rundown*, PBS Newshour, April 23, 2013, <http://www.pbs.org/newshour/rundown/forty-percent-noncitizens-living-in-us-on-expired-visitor-student-visas/>.

<sup>1410</sup> "Cassie M. Chew, "Forty Percent of Non-Citizens Live in U.S. on Expired Visitor, Student Visas," *The Rundown*, PBS Newshour, April 23, 2013, <http://www.pbs.org/newshour/rundown/forty-percent-noncitizens-living-in-us-on-expired-visitor-student-visas/>.

<sup>1411</sup> 8 U.S.C. §1101(a)(15)(K)(i).

<sup>1412</sup> 8 U.S.C. §1153(b)(3)(A)(i), (iii).

## LEGAL PERMANENT RESIDENT STATUS

In the last decade, around one million people became legal permanent residents of the United States each year.<sup>1413</sup> While this sounds like a large number, it is less than one-half of one percent of the total U.S. population. A complicated formula determines the number of permanent resident visas available annually.<sup>1414</sup>

Getting legal permanent residency is a two-step process.<sup>1415</sup> First, an applicant must fit into certain categories or they cannot legally immigrate to the United States.<sup>1416</sup> Only close family members of legal permanent resident or citizens,<sup>1417</sup> people with job offers,<sup>1418</sup> refugees and asylum seekers,<sup>1419</sup> winners of the diversity visa lottery,<sup>1420</sup> and certain particularly vulnerable groups are eligible to immigrate to the United States. Second, the person must be individually admissible.<sup>1421</sup> Even if an individual has relatives or a job offer in the United States, they may have to wait for many years for an immigrant visa to become available. In addition, the person must be individually admissible; depending on criminal or immigration history, the person may never be allowed to immigrate.<sup>1422</sup> Actions that can restrict a person's ability to immigrate include: certain crimes, posing a threat to national security, fraud, and previous immigration violations.<sup>1423</sup> Following are the main avenues to immigrate permanently to the United States.

### FAMILY-BASED IMMIGRATION

The majority of immigrants – over 60 percent – come to the United States on family-sponsored visas.<sup>1424</sup> Of these, more than 40 percent are the immediate relatives of U.S. citizens, namely

<sup>1413</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: U.S. Legal Permanent Residents: 2012* (Washington D.C., March 2013), Table 1.

[http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf).

<sup>1414</sup> 8 U.S.C. §1151; U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: U.S. Legal Permanent Residents: 2012* (Washington D.C., March 2013), Appendix.

[http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf).

<sup>1415</sup> 8 U.S.C. §1154.

<sup>1416</sup> 8 U.S.C. §1153.

<sup>1417</sup> 8 U.S.C. §1153(a).

<sup>1418</sup> 8 U.S.C. §1153(b).

<sup>1419</sup> 8 U.S.C. §1159(a) (Refugees); 8 U.S.C. §1159(b) (Asylum).

<sup>1420</sup> 8 U.S.C. §1153(c).

<sup>1421</sup> 8 U.S.C. §1182.

<sup>1422</sup> 8 U.S.C. §§1151 – 1153 (categories and calculation of wait times) 1182 (grounds of inadmissibility); U.S. State Department, Bureau of Consular Affairs, "Visa Bulletin," <http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html/>.

<sup>1423</sup> 8 U.S.C. §1182.

<sup>1424</sup> 8 U.S.C. §1153(a); U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: U.S. Legal Permanent Residents: 2012* (Washington D.C., March 2013), 1, [http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf).

## APPENDIX A: IMMIGRATION PRIMER

spouses,<sup>1425</sup> unmarried minor children, and parents.<sup>1426</sup> There are no quotas on the number of immediate relatives of U.S. citizens who may immigrate to the United States in any given year.<sup>1427</sup>

The remaining immigrants fall into different categories based on their relationship to the petitioning family member, whether that family member is a citizen or legal permanent resident (LPR), and their country of origin.<sup>1428</sup> Combined, these factors determine how long the person must wait for an immigrant visa to the United States.<sup>1429</sup> Only spouses, children, parents, or siblings of U.S. citizens and spouses<sup>1430</sup> or children of lawful permanent residents may immigrate to the United States on family-sponsored visas.<sup>1431</sup>

The United States restricts how many people can receive family-sponsored visas in a given year. The current cap is 226,000 and allows no more than seven percent of available visas to be issued to citizens of a single country.<sup>1432</sup> Over time, the overall family immigration cap and the individual country cap have resulted in long backlogs for people from certain countries who are trying to join their families in the United States.<sup>1433</sup>

### EMPLOYMENT-BASED IMMIGRATION

People can also immigrate to the United States on employer-sponsored visas. On average, 14 percent of immigrants in the past decade came to the United States through an employer.<sup>1434</sup> As with family-sponsored visas, prospective immigrants are divided into preference groups based on

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<sup>1425</sup> Same-sex spouses of U.S. Citizens and Lawful Permanent Residents are eligible, so long as the marriage is valid in the jurisdiction where it took place. See *Matter of Zeleniak*, 26 I.&N. Dec. 158 (BIA 2013). (Recognizing that the Defense of Marriage Act is no longer an impediment to the recognition of lawful same-sex marriages and spouses under the Immigration and Nationality Act).

<sup>1426</sup> 8 U.S.C. §1153(a); U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: U.S. Legal Permanent Residents: 2012* (Washington D.C., March 2013), 2, [http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf).

<sup>1427</sup> 8 U.S.C. §1151(b)(2)(A)(i).

<sup>1428</sup> 8 U.S.C. §1153(a) ; 8 U.S.C. §1152.

<sup>1429</sup> 8 U.S.C. §§1151 – 1153 (categories and calculation of wait times); U.S. State Department, Bureau of Consular Affairs, "Visa Bulletin," <http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html/>.

<sup>1430</sup> Same-sex spouses of U.S. Citizens and Lawful Permanent Residents are eligible so long as the marriage is valid in the jurisdiction where it took place. See *Matter of Zeleniak*, 26 I.&N. Dec. 158 (BIA 2013). (Recognizing that the Defense of Marriage Act is no longer an impediment to the recognition of lawful same--sex marriages and spouses under the Immigration and Nationality Act).

<sup>1431</sup> 8 U.S.C. §1153.

<sup>1432</sup> 8 U.S.C. §§1151(c)(1)(B)(ii) (226,000 cap) - 1152(a)(1)(B)(2) (seven percent calculation).

<sup>1433</sup> U.S. State Department, Bureau of Consular Affairs, "Visa Bulletin," <http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html/>.

<sup>1434</sup> 8 U.S.C. §1153(a); U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: U.S. Legal Permanent Residents: 2012* (Washington D.C., March 2013), Table 2, [http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf).

various factors: their skills and qualifications, the type of job they are filling, and their country of origin.<sup>1435</sup>

The U.S. government caps the total number of employer-sponsored visas allowed in a year at 140,000 and also limits each country to seven percent of the total.<sup>1436</sup> As part of the application process for an employer-sponsored visa, the employer usually must prove that they could not find a U.S. worker for the job by getting a labor certification from the Department of Labor.<sup>1437</sup>

### DIVERSITY VISA

A small number of immigrants, on average four percent each year, receive their permanent residency through the diversity visa lottery.<sup>1438</sup> The diversity visa lottery distributes 50,000 visas to applicants from countries that do not send many immigrants to the United States.<sup>1439</sup> Applicants must have a high school education or two years of work experience.<sup>1440</sup> People from high admission countries such as Brazil, Canada, China, India, Mexico, the Philippines, and South Korea are not eligible to participate in the lottery.<sup>1441</sup>

### REFUGEES & ASYLUM SEEKERS

Refugees and asylum seekers are people who are fleeing persecution in their own country.<sup>1442</sup> On average, fifteen percent of immigrants each year in the past decade were either refugees or asylum seekers.<sup>1443</sup> The United States extends protection to them as a reflection of its commitment to political and religious liberty and racial tolerance. The difference between refugees and asylum seekers is that refugees apply for their status while they are still outside the United States, and asylum seekers apply once they are in the United States.<sup>1444</sup> Both refugees and asylum seekers must prove that they fear persecution in their home country, such as torture, imprisonment, or physical

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<sup>1435</sup> 8 U.S.C. §1153(b).

<sup>1436</sup> 8 U.S.C. §§1151(d)-1152(a)(1)(B).

<sup>1437</sup> 8 U.S.C. §1153(b)(3)(C).

<sup>1438</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: U.S. Legal Permanent Residents: 2012* (Washington D.C., March 2013), Table 2, [http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf).

<sup>1439</sup> 8 U.S.C. §1153(c).

<sup>1440</sup> 8 U.S.C. §1153(c)(2).

<sup>1441</sup> 8 U.S.C. §1153(c)(1); U.S. Department of State, "Instructions for the 2015 Diversity Immigrant Visa Program (DV-2015)," [http://travel.state.gov/content/dam/visas/DV-2015-Instructions-Translations/DV\\_2015\\_Instructions.pdf](http://travel.state.gov/content/dam/visas/DV-2015-Instructions-Translations/DV_2015_Instructions.pdf).

<sup>1442</sup> 8 U.S.C. §1101(a)(42).

<sup>1443</sup> 8 U.S.C. §1153(a); U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: U.S. Legal Permanent Residents: 2012* (Washington D.C., March 2013), Table 2, [http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf).

<sup>1444</sup> 8 U.S.C. §1157 (refugees); 8 U.S.C. §1158 (asylum).

abuse, on the basis of one (or more) of five protected grounds.<sup>1445</sup> These grounds are race, religion, nationality, political opinion, or membership in a particular social group.<sup>1446</sup> In a refugee or asylum case, the burden of proof is on the applicant, who must be able to provide objective evidence or credible testimony to support their claim.<sup>1447</sup>

Not everyone who suffers persecution in other countries is eligible for refugee status. The United States only accepts refugees who have either been referred to the United States by the UN High Commissioner for Refugees (UNHCR) or who are members of a designated group or from a designated country. People who belong to these groups have to prove that they individually qualify as a refugee because of a fear of persecution on one of the five grounds previously mentioned. The United States caps the number of refugees it will accept annually.<sup>1448</sup> For 2014, the United States will resettle a maximum of 70,000 refugees.<sup>1449</sup>

People who are not from one of the designated groups or countries and who cannot get a referral from the UNHCR can only receive protection if they travel to the United States and claim asylum once they arrive.<sup>1450</sup> Asylum seekers can either make an affirmative asylum claim by filing a form within a year of arriving in the United States or they can make a defensive asylum claim once they have been placed in deportation proceedings.<sup>1451</sup> Anyone in the United States can claim asylum whether they are here legally or not.<sup>1452</sup>

### VULNERABLE GROUPS

U.S. immigration laws offer special protections to certain groups of people, such as victims of domestic violence,<sup>1453</sup> trafficking,<sup>1454</sup> or serious crime;<sup>1455</sup> abused, abandoned, or neglected

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<sup>1445</sup> 8 U.S.C. §1101(a)(42).

<sup>1446</sup> 8 U.S.C. §1101(a)(42).

<sup>1447</sup> 8 U.S.C. §1158(b)(1)(B)(i).

<sup>1448</sup> 8 U.S.C. §1157(a).

<sup>1449</sup> White House, "Presidential Memorandum – Refugee Admission for Fiscal Year 2014," October 2, 2013, <http://www.whitehouse.gov/the-press-office/2013/10/02/presidential-memorandum-refugee-admissions-fiscal-year-2014>.

<sup>1450</sup> 8 U.S.C. §1158(a).

<sup>1451</sup> 8 C.F.R. §208.2(a)-(b).

<sup>1452</sup> 8 U.S.C. §1158(a)(1) ("Any alien who is physically present in the United States ...may apply for asylum....").

<sup>1453</sup> 8 U.S.C. §1154(a)(1)(A)(iii); 8 C.F.R. §204.2(c).

<sup>1454</sup> 8 U.S.C. §1101(a)(15)(T).

<sup>1455</sup> 8 U.S.C. §1101(a)(15)(U).



children;<sup>1456</sup> and people with special or long-term ties to the United States.<sup>1457</sup> A very small number of people each year can immigrate under these laws.<sup>1458</sup>

## CITIZENSHIP

The U.S. government confers citizenship on three groups of people: People born in the United States, people born to U.S. citizen parents abroad, and people who naturalize (or whose parents naturalize before they turn 18).<sup>1459</sup>

To become a naturalized citizen, an individual must usually be a legal permanent resident first for at least five years, residing in the United States for half of that time.<sup>1460</sup> Naturalization requires passing an interview in English, an English test, and a civics test, undergoing a background check, and taking an oath of allegiance.<sup>1461</sup> Naturalized citizens are entitled to all the same rights and privileges of a citizen at birth, except that they may not become President of the United States.<sup>1462</sup>

## UNDOCUMENTED IMMIGRANTS

U.S. immigration laws provide a limited number of ways for people to immigrate permanently to the United States and limited numbers of visas for those who do qualify. The pathways to immigrate do not match the demand for timely family reunification, for workers to fill economic needs, and for protection from persecution. As a result, some people choose to come to the United States without a visa or to overstay a temporary visa once they arrive and are known as undocumented, or illegal, immigrants. In 2012, the estimated undocumented population of the United States was 11.7 million.<sup>1463</sup>

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<sup>1456</sup> 8 U.S.C. §1101(a)(27)(J).

<sup>1457</sup> 8 U.S.C. §1101(a)(27).

<sup>1458</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report: U.S. Legal Permanent Residents: 2012* (Washington D.C., March 2013), Table 2, [http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2012\\_2.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf).

<sup>1459</sup> U.S. Const. Amend. 14; 8 U.S.C. §1401; 8 U.S.C. §1421 et seq.

<sup>1460</sup> 8 U.S.C. §1427.

<sup>1461</sup> 8 U.S.C. §1423; U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “A Guide to Naturalization,” <http://www.uscis.gov/us-citizenship/citizenship-through-naturalization/guide-naturalization>.

<sup>1462</sup> U.S. Const. Art. 2, Sec. 1, Cl. 4.

<sup>1463</sup> Pew Hispanic Research, “Unauthorized Immigrant Population: National and State Trends, 2010”, Table A3: Estimates of Unauthorized Immigrant Population by State, Selected Years 1990 to 2010, February 1, 2011, 23, <http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed/>.

## ENFORCEMENT AND REMOVAL<sup>1464</sup>

Any person who is not a U.S. citizen can be detained and removed if they are found to have violated immigration laws.<sup>1465</sup> Undocumented people may be arrested and deported at any time if found by immigration officials.<sup>1466</sup> Refugees, permanent residents, and people on temporary visas all may be deported or refused permission to re-enter the United States if they violate the conditions of their visas.<sup>1467</sup>

### IMMIGRATION ENFORCEMENT

The U.S. immigration enforcement system is an enormous operation. In fiscal year 2013, Immigration and Customs Enforcement (ICE) completed 368,644 deportations.<sup>1468</sup> Increasingly, ICE cooperates with state and local law enforcement through both formal programs and informal arrangements, leading to growing numbers of people being detained or deported.<sup>1469</sup> In addition, Customs and Border Protection (CBP) apprehended 420,789 people at or between ports of entry.<sup>1470</sup>

In addition to overseeing deportation proceedings, ICE operates the largest detention program in the United States, with a total of 478,000 noncitizens in custody or supervised by ICE in fiscal year 2012.<sup>1471</sup> Many people, including arriving asylum seekers<sup>1472</sup> and noncitizens convicted of certain crimes<sup>1473</sup> face mandatory detention without a hearing by a court. People in detention may spend an indefinite time in jail, sometimes waiting weeks, months, or years for their hearing or appeal.

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<sup>1464</sup> Although technically changed from “deportation” to “removal” proceedings in the 1996 Immigration Reform and Immigrant Responsibility Act, this report uses the terms interchangeably when referring to the legal process of expelling people from the United States.

<sup>1465</sup> 8 U.S.C. §1227.

<sup>1466</sup> 8 U.S.C. §1227(a)(1)(B)-(C).

<sup>1467</sup> 8 U.S.C. §§1182, 1227.

<sup>1468</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, “FY 2013 ICE Immigration Removals,” <http://www.ice.gov/removal-statistics/index.htm>.

<sup>1469</sup> U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, “Fact Sheet: ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS),” <http://www.ice.gov/news/library/factsheets/access.htm>.

<sup>1470</sup> U.S. Department of Homeland Security, U.S. Customs and Border Protection, “CBP Fiscal Year 2013 in Review”, January 17, 2014, <http://www.cbp.gov/newsroom/local-media-release/2014-01-17-000000/cbp-fiscal-year-2013-review>.

<sup>1471</sup> U.S. Department of Homeland Security, *Annual Report: Immigration Enforcement Actions: 2012*, by John Simarski and Lesley M. Sapp (December 2013), [http://www.dhs.gov/sites/default/files/publications/ois\\_enforcement\\_ar\\_2012\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_0.pdf).

<sup>1472</sup> 8 U.S.C. §1225(b)(1)(B)(iii)(IV).

<sup>1473</sup> 8 U.S.C. §1226(c).

## REMOVAL FROM THE UNITED STATES

In general, people accused of being in the United States in violation of immigration laws have a right to a hearing in front of an immigration judge.<sup>1474</sup> At the hearing, the judge decides whether there is sufficient evidence that the person is in the United States without permission or in violation of their immigration status.<sup>1475</sup> The judge also decides whether the person qualifies for any legal way to remain in the United States.<sup>1476</sup> While U.S. law provides that people in removal proceedings have “the privilege of being represented,” representation must be “at no expense to the Government.”<sup>1477</sup>

U.S. immigration laws are strict. Undocumented people facing removal have few options to prevent deportation. An undocumented person who has lived in the United States for at least ten years, has “good moral character,” and whose deportation would result in *exceptional and extremely unusual* hardship to their U.S. citizen or lawful permanent resident children or spouse may apply for a waiver of deportation, though it is not guaranteed.<sup>1478</sup> Victims of crimes, human trafficking, persecution, or domestic violence who are in removal proceedings generally may ask the judge for protection.

Any noncitizen who is convicted of an “aggravated felony” must be deported, regardless of how long they have lived in the United States or what impact their deportation may have on their family.<sup>1479</sup> Over fifty crimes are considered “aggravated felonies.”<sup>1480</sup> Noncitizens convicted of other crimes are deportable, although long-term permanent residents may ask a judge to allow them to stay based on their length of residence, hardship to their families, and evidence that they have rehabilitated.<sup>1481</sup>

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<sup>1474</sup> 8 U.S.C. §1229.

<sup>1475</sup> 8 U.S.C. §1229a(a)(1).

<sup>1476</sup> 8 U.S.C. §1229a(c)(1)(A).

<sup>1477</sup> 8 U.S.C. §1229a(b)(4)(A).

<sup>1478</sup> 8 U.S.C. §1229b(b).

<sup>1479</sup> 8 U.S.C. §1227(a)(2)(A)(iii).

<sup>1480</sup> 8 U.S.C. §1101(a)(43). The term “aggravated felony” was statutorily defined by Congress in 1988 and included only three crimes: murder, controlled substance or drug trafficking, and weapons trafficking. In 1990, Congress amended the definition to include seventeen categories of offenses, including crimes of violence for which the term of imprisonment was at least five years. In 1994, Congress again amended the definition of aggravated felony, adding twenty new offenses to include money laundering, child pornography, prostitution, and theft offenses where the term of imprisonment was five years or more. In 1996, Congress expanded the definition of aggravated felony again to include more than fifty offenses and reduced the imposed term of imprisonment for many crimes from five years to one year.

<sup>1481</sup> 8 U.S.C. §1229b(a) – (b).

## APPENDIX A: IMMIGRATION PRIMER

People removed from the United States are barred from returning for at least ten years; those removed because of an aggravated felony conviction are permanently barred from returning to the United States.<sup>1482</sup>

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<sup>1482</sup> 8 U.S.C. §1182(a)(9)(A)(i) – (ii).

# APPENDIX B:

## COMMUNITY RESOURCES

### DISCRIMINATION - GENERAL

The Minnesota Human Rights Act protects everyone in Minnesota from illegal discrimination on account of race, color, creed, religion, national origin, sex, marital status, familial status, disability, public assistance, age, sexual orientation, or local human rights commission activities. The Minnesota Department of Human Rights enforces Minnesota's Human Rights Act.

#### **Minnesota Department of Human Rights**

Saint Paul Office  
625 Robert Street North  
Saint Paul, MN 55155  
Phone: 1-800-657-3704  
Hours: M-F 8:00am-4:30pm  
Website: [mn.gov/mdhr](http://mn.gov/mdhr)

MDHR – St. Cloud Regional Office  
St. Cloud City Hall  
400 2nd Street South  
St. Cloud, MN 56301  
Phone: 320-650-3133  
Hours: M-F 8:00am-4:00pm

#### **City of Duluth Human Rights Office**

411 West First Street  
Duluth, MN 55802  
Phone: 218-730-5630  
Website: [duluthmn.gov/boards-commissions/duluth-human-rights-commission](http://duluthmn.gov/boards-commissions/duluth-human-rights-commission)

## APPENDIX B: COMMUNITY RESOURCES

### **City of St. Paul Department of Human Rights and Equal Economic Opportunity**

15 West Kellogg Blvd.  
City Hall, Room 240  
Saint Paul, MN 55102  
Phone: 651-266-8966  
Email for complaints: [hrightscomplaints@ci.stpaul.mn.us](mailto:hrightscomplaints@ci.stpaul.mn.us)  
Hours: M-F 8:00am-4:30pm  
Website: [stpaul.gov/index.aspx?NID=2728](http://stpaul.gov/index.aspx?NID=2728)

### **Minneapolis Department of Civil Rights**

350 South 5th Street  
City Hall, Room 239  
Minneapolis, MN 55415  
Phone: 612-673-3012  
Hours: M-F 8:30am-4:30pm  
Website: [minneapolismn.gov/civilrights](http://minneapolismn.gov/civilrights)

### **League of Minnesota Human Rights Commissions**

4100 Lakeview Avenue North  
Robbinsdale, MN 55422-2208  
763-535-1051  
Website: [leagueofmnhumanrights.org/list-member-commissions](http://leagueofmnhumanrights.org/list-member-commissions)

## DISCRIMINATION – SPECIFIC AGENCIES

### [HOUSING](#)

#### **Office of Fair Housing and Equal Opportunity (FHEO)**

Chicago Regional Office of FHEO  
U.S. Department of Housing and Urban Development  
Ralph H. Metcalfe Federal Building  
77 West Jackson Boulevard, Room 2101  
Chicago, Illinois 60604-3507  
(312) 353-7776 ext. 2453  
(800) 765-9372  
TTY (312) 353-7143

**Federal Office of Housing and Urban Development**

Minneapolis Field Office

International Centre

920 Second Avenue South, Suite 1300

Minneapolis, MN 55402-4012

Jurisdiction: State of Minnesota

Phone: (612) 370-3000

Fax: (612) 370-2055

TTY: (612) 370-3186

Hours: M-F 8:00am to 4:30pm

Submit a complaint: [portal.hud.gov/hudportal/HUD?src=/topics/housing\\_discrimination](https://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination)

**LABOR**

**Minnesota Department of Labor**

*This agency oversees the state's apprenticeship, construction codes and licensing, occupational safety and health, wage and hour standards, and workers' compensation programs.*

Saint Paul (Main Office)

443 Lafayette Road North

Saint Paul, MN 55155

Phone: 651-284-5005 or 1-800-342-5354

Email: [dli.communications@state.mn.us](mailto:dli.communications@state.mn.us)

Hours: M-F 8:00am-4:30pm

**U.S. Department of Labor**

*Hosts information on a variety of topics related to employment, including equal employment opportunity, hiring, benefits, termination, unemployment, wages, whistleblowers, work hours, workers' compensation, and workplace safety.*

National Contact Center

1-866-4-USA-DOL (1-866-487-2365)

Hours: M-F 7:00am-7:00pm

Website: [dol.gov](https://dol.gov)

## EMPLOYMENT

### **The Office of Special Counsel for Immigration-Related Unfair Employment Practices**

*(OSC) enforces the anti-discrimination provision (§ 274B) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. This federal law prohibits: 1) citizenship status discrimination in hiring, firing, or recruitment or referral for a fee, 2) national origin discrimination in hiring, firing, or recruitment or referral for a fee, 3) document abuse (unfair documentary practices during the employment eligibility verification, Form I-9, process, and 4) retaliation or intimidation.*

If you feel you have suffered one of these forms of discrimination, click here to file a charge or call our Worker Hotline: 1-800-255-7688.

If you are an employer with questions about the anti-discrimination provision of the INA, call our Employer Hotline: 1-800-255-8155.

### **Equal Employment Opportunities Commission (EEOC)**

*EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex, national origin, age (40 or older), disability or genetic information.*

330 2nd Ave South, Suite 720  
Minneapolis, MN 55401  
Phone: 1-800-669-4000  
Hours: M-F 8:00am-4:30pm

## EDUCATION

### **U.S. Department of Education**

#### **Office for Civil Rights (OCR)**

*Individuals can call the OCR to report any educational discrimination on the basis of race, sex, disability, etc. or request information on civil rights compliance.*

Lyndon Baines Johnson Department of Education Building  
400 Maryland Avenue, Southwest  
Washington, DC 20202-1100  
Phone: 1-800-421-3481  
Fax: 202-453-6012; TDD: 1-800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web-based complaint form: [www2.ed.gov/about/offices/list/ocr/complaintintro.html](http://www2.ed.gov/about/offices/list/ocr/complaintintro.html)



## **POLICE**

### **Minnesota State Patrol Internal Affairs/Affirmative Action**

*Takes complaints regarding state patrol officer conduct.*

445 Minnesota Street, Suite 530  
St. Paul, MN 55101-5530  
Telephone: (651) 201-7136  
TTY: (651) 282-6555  
Fax: (651) 282-6873  
Email: [dps.ia@state.mn.us](mailto:dps.ia@state.mn.us)

Complaints regarding municipal police officers or county sheriff's officers should be made to that department's civilian review board.

## **CIVIL RIGHTS ADVOCACY ORGANIZATIONS**

### **American Civil Liberties Union of Minnesota**

*A nonpartisan organization that provides litigation services, public education, and lobbies in the interest of civil liberties of all Minnesotans.*

Saint Paul Office  
2300 Myrtle Avenue, Suite 180  
Saint Paul, MN 55114  
Phone: 651-645-4097  
Fax: 651-647-5948  
Email: [support@aclu-mn.org](mailto:support@aclu-mn.org)  
Website: [aclu.org](http://aclu.org)

### **Greater Minnesota Racial Justice Project—South**

227 East Main Street, Suite 100  
Mankato, MN 56001  
Phone: 507-625-7966

## APPENDIX B: COMMUNITY RESOURCES

### **Council on American Islamic Relations Minnesota**

*Provides representation in discrimination cases through in-person negotiations, filing charges of discrimination, letter writing, and referrals to an attorney referral network on employment, public accommodation, school discrimination cases and on hate crimes and governmental religious/racial profiling.*

2021 E. Hennepin Ave. Suite 407

Minneapolis, MN 55413

Tel: 612-206-3360

Email: [info@mn.cair.com](mailto:info@mn.cair.com)

Website: <http://mn.cair.com>

Online Intake: <http://www.cairmn.com/civil-rights/online-intake-form.html>

### **NAACP in Minnesota**

*Investigates discrimination complaints and oversees litigation in which the branch is interested. The Legal Redress Committee does not give general legal advice.*

St. Paul NAACP

375 Oxford Street

North Saint Paul, MN 55104

Phone: 651-649-0520

Police Conduct Hotline: 1-612-615-9344

Email: [jafranklinlaw@gmail.com](mailto:jafranklinlaw@gmail.com)

Website: [naacp-stpaul.org](http://naacp-stpaul.org)

St. Cloud NAACP

St. Cloud Business Center

14 North 7th Avenue, Suite 119

St. Cloud, MN 56303

Phone: 320-259-4010

## **CIVIL LEGAL SERVICES**

### **The Advocates for Human Rights**

*Provides free legal services to asylum seekers in Minnesota, North Dakota, and South Dakota.*

330 2nd Avenue South, Suite 800

Minneapolis, MN 55401

Client Line: 612-341-9845

Hours: M-F 8:30am-5:00pm

**Central Minnesota Legal Services**

*Free legal services for qualified individuals in the areas of: adoption, bankruptcy, consumer, child custody, dissolution of marriage, domestic violence, elder law, employment, housing, real estate, torts, wills.*

430 First Avenue North, Suite 359  
Minneapolis, MN 55401  
Phone: 612-222-5863  
Website: <http://www.smrls.org/>

**HOME Line**

*Offers free tenant and landlord advice.*

Phone: 612-752-6677  
Hours: M-F 10am-1pm  
[www.homelinemn.org](http://www.homelinemn.org)

**Immigrant Law Center of Minnesota**

*Full legal services for qualified low-income immigrants, including family based immigration, citizenship, U Visa, T Visa, detention/deportation defense, and appeals.*

450 North Syndicate Street, Suite 200  
St. Paul, MN 55104  
Phone: 1-800-223-1368  
Hours: M-W 12:00-1:30pm, Th 6:00-7:00pm

**LawHelpMN.org**

*Website includes general information and self-help fact sheets for family law, housing, consumer and debt, wills, unemployment, discrimination, immigration, and other civil legal issues. Includes referral information for legal services agencies in Minnesota.*

[www.lawhelpmn.org](http://www.lawhelpmn.org)

**Mid-Minnesota Legal Aid**

*Provides free legal help on civil matters to Minnesotans who traditionally lack access to the American justice system and cannot afford the services of a private attorney.*

<http://mylegalaid.org/about/contact-us/>  
Minneapolis office intake line: 612-334-5970

## APPENDIX B: COMMUNITY RESOURCES

### **Volunteer Lawyers Network/Park Avenue Foundation Walk-in Legal Clinic**

*Brief advice and service is provided for immigration and employment legal matters on a first-come, first-serve basis, with priority to Hennepin County residents. No appointments.*

Park Avenue United Methodist Church  
3400 Park Avenue South  
Minneapolis, MN 55407  
Hours: Th 3:00-5:00pm

### **Southern Minnesota Regional Legal Services**

*Provides legal assistance for claims related to bankruptcy, consumer, child custody, dissolution of marriage, education, housing, individual rights, termination of parental rights, torts, and wills.*

46 Fourth Street East, Suite 300  
St. Paul, MN 55101  
Phone: 612-222-5863  
Website: [www.smrls.org](http://www.smrls.org)

## **CRISIS SERVICES**

### **Minnesota Domestic Violence Toll-free Crisis Line**

*This number will automatically connect you to the shelter nearest you.*

866-223-1111 (24 hours a day)

### **Metro Shelter Hotline**

*Provides up-to-date information on shelters and transitional housing programs for persons experiencing homelessness.*

Hotline: 1-888-234-1329

### **United Way 211**

*Connects to over 40,000 resources regarding food, housing, employment, childcare, transportation, health services, senior services, and more.*

Phone: 2-1-1  
Website: [211unitedway.org](http://211unitedway.org)  
Hours: 24 hours a day

## **MENTAL HEALTH SERVICES**

### **Acute Psychiatric Services**

*24-hour hotline and walk-in service for crisis counseling.*

701 Park Avenue  
Minneapolis, MN 55415  
612-873-3161  
Suicide hotline: 612-873-2222

### **Minnesota Department of Human Services**

Children's Mental Health Division: 651-431-2321  
Adult Mental Health Division: 651-431-2225

### **Walk-In Counseling Center**

2421 Chicago Avenue South  
Minneapolis MN 55404  
612-870-0565  
Hours: M,W,F: 1:00-3:00pm, M-Th: 6:30-8:30pm  
Website: [walkin.org/home](http://walkin.org/home)

### **Center for Victims of Torture**

*Provides healing services for torture survivors in Minnesota.*

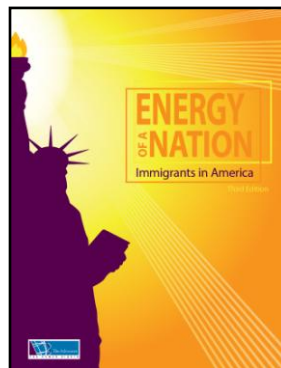
St. Paul Healing Center and International Headquarters  
649 Dayton Avenue  
St. Paul, MN 55104  
Phone: 612-436-4800 or 1-877-265-8775  
Website: [cvt.org](http://cvt.org)

# APPENDIX C:

## ENERGY OF A NATION CURRICULUM

The Advocates for Human Rights' *Energy of a Nation: Immigrants in America*, 3rd Edition is a distinctive, comprehensive guide to teaching students about immigration in the United States. Designed for 8th grade to adult audiences, with a module for upper elementary and middle level students, it provides important *fundamental concepts*, such as:

- Definitions of key terms;
- Informational background summaries;
- Admission categories and processes; and
- Statistics and trends of immigrants over time.



In addition, this teaching guide elevates students' basic understandings and expands their perspectives through *critical context*, such as:

- Root causes of undocumented immigration;
- The complex realities of removal through the immigration courts;
- Other countries' experience with, and response to, immigration;
- Nativism and public discourse around immigration;
- Push and pull factors that cause people to move;
- The special case of refugees and asylum seekers;
- The human rights of immigrants;
- Local and national U.S. policy considerations; and
- Service learning opportunities to create a welcoming school and community.

The curriculum is filled with engaging, student-centered activities that follow best practices for human rights education (HRE). Students learn by exploring their own immigrant history; role-playing a refugee's journey; deciding under what conditions they might risk being undocumented; playing games to understand the immigration system; drawing representative pictures of policies; rehearsing deliberative dialogue; constructing a gallery of nativism over the centuries; and creating a service learning project for their classroom or school.

Using the HRE framework for immigration allows students to acquire the knowledge to understand immigration topics, but also to gain the skills and values necessary to process future information or experiences. Students learn to put information in context, check it against reliable sources, consider root causes, make essential connections, and participate in democratic processes. They are

provided the opportunity to view themselves and the United States as actors in a global, fluid movement of people and to see the human beings that make up these mass flows as individuals – each with a story, a life, and the same rights that bind us all.

The entire curriculum is available to school and community educators online, free of charge. Staff also present lessons in K-12 classrooms upon request and provide trainings to teachers and other school staff on immigration and human rights through professional development workshops.