

Basic Social Rights - USA

1. Right to Shelter

- **Can an undocumented migrant receive accommodation in a public housing shelter or in a private shelter that receives public funding?**

No information provided.

- **Is it legal for a landlord to rent out an apartment to an undocumented migrant?**

No information provided.

2. Right to Health Care

- **Do undocumented migrants have access to public health care / is there a special health service only for undocumented migrants?**

Undocumented migrants are not allowed full Medicaid (public health care) coverage, but federal and state rules require that the health insurance program for the poor must cover treatment for emergency medical services.

According to a 1986 federal law called the Emergency Medical Treatment and Active Labor Act, hospitals in the United States that offer emergency care must treat all patients who walk into the emergency room, regardless of their economic or immigration status. Under the law, hospitals cannot refuse to treat patients in emergency situations, including women in labor, for economic reasons or for immigration status.

- **Do health care professionals have the duty to report an undocumented migrant to the authorities? If yes, why? If no, why not?**

No. However, a report by the Hastings Center, a health-care think tank in Washington, D.C., underlined that doctors in the public health care system have been encouraged to report undocumented migrants to the authorities to help them to be deported. Immigrants' rights organizations encourage medical professionals to assume the moral responsibility to provide treatment to those in need, regardless of their residence status.

3. Right to Fair Labour Conditions

- **Does national labour law stipulate that an employer is obliged to pay an undocumented migrant for work done, even if the worker does not have a legal residence or work permit?**

Citizens, lawful permanent residents, documented and undocumented workers generally have the same workplace rights under many labour and civil rights laws in the United States. These rights include minimum wage and overtime pay, disability pay and compensation, safe worksite conditions and guarantees that the workplace will be free of discrimination based on race, gender, religion and ethnicity. [1]

- **If an undocumented migrant has an accident at the workplace, can s/he receive coverage from Social Security (via accident insurance) to cover the costs of treatment or care?**

Yes.

- **Can an undocumented migrant bring a court case against an employer for withheld wages?**

Although undocumented workers have many of the same rights as documented immigrants and US citizens in the workplace, they face particular problems when they seek to exercise those rights. At times, employers use the threat of deportation proceedings against undocumented workers who are active in organizing and forming a union. Additionally, undocumented

workers are afraid to file claims against unscrupulous employers who pay either below the minimum wage or, sometimes, do not pay at all. The threat alone of deportation— whether carried out or not – is often sufficient to discourage workers from exercising their rights. [2]

The situation was worsened by a United States Supreme Court case. In *Hoffman Plastic Compounds v. National Labour Relations Board* [3], the United States Supreme Court held that the National Labour Relations Board (NLRB) had improperly ordered back pay to an undocumented migrant worker. Jose Castro was one of several employees fired by Hoffman Plastic for union organizing activities. In issuing the decision, an administrative law judge (ALJ) found several unfair labour practices by the company, which subsequently appealed the decision to the National Labour Relations Board. The NLRB agreed with the ALJ and ordered Hoffman Plastic to reinstate the fired employees, including undocumented migrant worker Jose Castro, and provide them with back pay. During a subsequent hearing to determine the amount of back pay, the ALJ learned that Mr. Castro was an undocumented Mexican national who had borrowed a friend's birth certificate to obtain employment and, therefore, recommended neither reinstatement nor back pay for him.

The case was subsequently appealed to the United States Supreme Court which addressed the following question: Is an undocumented alien who, without the employer's knowledge, obtained employment by presenting fraudulent immigration documents to the employer, entitled to back pay as compensation for the employer's violation of the National Labour Relations Act – retaliatory firing for union organizing - even if the migrant worker was not authorized to work in the United States during the back pay period? The Supreme Court held that such a person is not entitled to back pay and found that the National Labour Relations Board improperly awarded back pay to Mr. Castro and reversed the lower court and administrative agency decisions ordering that the employer pay the amount in question.

4. Right to Organise

- **Do undocumented migrants have the right to organise?**

All persons in the United States, regardless of immigration status, have the right to organize and join labour unions and to engage in collective bargaining.

- **Can an undocumented migrant be a member of a trade union?**

All persons in the United States, regardless of immigration status, have the right to organize and join labour unions and to engage in collective bargaining.

5. Right to Education and Training

- **Can undocumented children under the age of 18 enroll in schools?**

All children present in the United States, regardless of immigration status, have a right to attend public primary and secondary schools. [4] However, foreign students wishing to apply for and enter the United States with a non-immigrant student visa to attend public high school can only do so for a period not to exceed 12 months and must reimburse the school for the entire amount prior to issuance of the visa. [5]

- **Are schools obliged to report the presence of undocumented children/adolescents to the authorities?**

No.

- **Do schools receive any funding for these children/adolescents?**

No information provided.

- **Do undocumented adults (over the age of 18) have the right to education and training?**

There is no requirement under the law that a person already in the United States be in a legal immigrant status in order to attend a university, college or vocational program. In practice, though, it is very difficult for undocumented persons to obtain post secondary degrees. Additionally, some states openly discourage admission of undocumented migrant students. For example, the Office of the Virginia Attorney General released a memorandum on September 5, 2002 that strongly

encouraged all Virginia public colleges and universities to deny enrollment to students they believe to have an undocumented immigration status. In response to this memorandum and subsequent practices of some institutions in the state of Virginia, the Latino civil rights organization, the Mexican American Legal Defense and Educational Fund (MALDEF), filed a lawsuit against several officials from various Virginia public colleges and universities on behalf of students who have been or will be denied the right to attend the schools based on their perceived immigration status. [6]

Most states require that students seeking admission into their state university systems present a social security number in order to matriculate. Most undocumented persons, including students, do not have valid social security numbers. Universities in the United States are very expensive and most students borrow money to pay the costs. In order to be eligible for financial aid, students must also generally present a social security number. Even if an undocumented person can overcome these hurdles or pay for his or her studies without any aid, upon graduation, it is almost impossible to obtain employment in his or her professional field because of lack of employment authorization.

Currently, there is debate in many state legislatures across the United States regarding whether to permit undocumented students to attend state universities as “state residents” and, therefore, be eligible for lower in-state resident tuition rates and financial aid. There is support from both Democrats and Republicans for such measures. There is also a bill pending before the United States Congress, the DREAM Act, to permit those foreign students who successfully complete a university or college degree to obtain lawful permanent residency status. [7]

6. Right to a Minimum Subsistence

- **Do undocumented migrants have a right to welfare benefits from the government?**

Prior to 1996, all noncitizens, regardless of immigration status, were eligible to receive federal and state welfare benefits. On August 22, 1996, former President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). [8] This act provided for a comprehensive revision of the welfare laws of the United States as applied to citizens and noncitizens alike. Many provisions addressed issues relating to access by documented immigrants, refugees and undocumented immigrants to virtually all federal, state and local benefits. A major goal of PRWORA was to discourage immigrants likely to seek public benefits from entering the United States.

The law also shifted the responsibility for support of immigrants from the government to those persons who sponsor immigrants. Lawful permanent residents or citizens who apply for permanent residency on behalf of eligible family members (parents, spouses and children) are obligated to sign a complicated government form known as an Affidavit of Support, Form I-864, promising to support the sponsored family member for a requisite period of time after he or she comes to the United States. Under provisions contained in PRWORA, if the sponsored family member receives public benefits within a prescribed time period after entering the United States, the sponsoring family member who signed the Affidavit of Support is required under law to repay the amount of benefits received to the United States government.

In order to determine a person’s eligibility for public benefits, the law distinguishes between qualified and unqualified immigrants. Qualified immigrants include the following: 1) lawful permanent residents (LPR); 2) refugees, asylees, persons granted withholding of deportation or removal, conditional entry (prior to April 1, 1980) or paroled into the United States for at least one year; 3) Cuban/Haitian entrants; and, 4) battered spouses and children with a pending or approved visa application under the Violence Against Women Act. Unqualified immigrants are all other persons who do not fall under the above-described categories, including persons authorized by the government to remain in the United States, and undocumented migrants. [9]

The act barred most immigrants from receiving food stamps and social security income (cash assistance for the poor, elderly and disabled). [10] Under the law, lawful permanent residents are only eligible to receive federal public benefits after five years of legal residence in the United States as LPRs. [11] Refugees and asylees are eligible to receive federal public benefits without any restrictions. In order to determine a person’s eligibility for these benefits, the agencies that provide the benefits must verify the legal status of the applicants.

Provision of welfare benefits has shifted from the federal government to the states. In response to the significant cuts in federal benefits, nearly half of the states have implemented substitute methods of assistance for immigrants, documented and

undocumented. However, only a small number of states have been able to completely replace the lost federal benefits for unqualified immigrants and most of the state programs are limited to providing assistance to the elderly and children. Working-age undocumented adults remain unprotected. [12]

7. Right to Family Life

- **Can an undocumented migrant legally get married or legally cohabit?**

No information provided.

- **Is it legal to deport an undocumented migrant without his/her spouse or child/ren?**

No information provided.

8. Right to Moral and Physical Integrity

- **Are there rules and regulations upholding the right to integrity of undocumented migrants in this country?**

No information provided.

- **Has this country been condemned for not respecting international agreements concerning protection of the personal integrity of undocumented migrants?**

No information provided.

- **Are detention centres accessible to non-governmental organisations?**

No information provided.

9. Right to Legal Aid

- **Are undocumented migrants entitled at any time to free legal aid from a jurist or lawyer?**

No information provided.

- **Can undocumented migrants freely assert their rights in court and in the appeals court?**

No information provided.

10. Additional Information

Articles

- [Documenting the Undocumented, Chicago Tribune, 14/2/2003 \(Editorial\)](#)
- [Ignore Scare Tactics, ID Cards Are Needed, Indianapolis Star, 10/2/2003](#)
- [Mexican I.D. Card Gains Momentum, Napa May Follow in Footsteps of Recent Caslistoga Decision, 9/2/2003, Napa Valley Register \(Roseann Keegan\)](#)
- [Panel Passes Bill to Curtail Use of Foreign ID, The Denver Post, 11/2/2003 \(Ryan Morgan\)](#)
- [Measure Would Restrict Migrants' Use of Consular IDs, The Arizona Republic, 8/2/2003 \(Elvia Diaz\)](#)

[1] For more information on immigrants and labour rights, visit the website of the AFL-CIO, a federation of US unions, at <http://aflcio.org>.

[2] Information in this section as well as in the sections on the right to organize, the right to education and the right to a minimum subsistence was taken from the following article: Anna Gallagher, The Situation of Undocumented Persons in the

U.S.: A Practical Overview, In: Michele LeVoy, Nele Verbruggen, Johan Wets (eds.), *Undocumented Migrant Workers in Europe*, HIVA, Leuven, 2003.

[3] 535 U.S. 137 (2002).

[4] *Plyler v. Doe*, 457 U.S. 202 (1982) (class action law suit brought on behalf of Mexican children who had entered the United States illegally and resided in Texas).

[5] INA § 214(l)(1) [8 USC § 1184(l)(1)].

[6] *Doe, et al v. Dr. Alan G. Merton, et al*, Civ. Action No. 03-1113-A (E.D.Va. Sept. 3, 2003). A copy of the memorandum of the Office of the Attorney General is included in the complaint as an appendix. For more information on the case, visit the MALDEF website at <http://www.maldef.org>

[7] For more information on these proposed bills, visit the website of the National Council of La Raza at <http://nclr.org> and the American Immigration Lawyers Association at <http://aila.org>. Enter "Dream Act" in the search box of each website to access the information. Also, see, Jennifer Galassi, *Dare to Dream? A Review of the Development, Relief, and Education for Alien Minors (DREAM) Act*, 24 *Chicano-Latino L. Rev.* 79 (Spring 2003); Janice Alfred, *Denial of the American Dream: The Plight of Undocumented High School Students within the U.S. Educational System*, 19 *N.Y.L. Sch. J. Hum. Rts.* 615 (Spring 2003); Victor C. Romero, *Post-secondary School Education Benefits for Undocumented Immigrants: Promises and Pitfalls*, 27 *N.C. J. Int'l and Com. Reg.* 393 (Spring 2002).

[8] Pub. L. No. 104-193, 110 Stat. 2104 (Aug. 22, 1996).

[9] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 402(b)(2), 110 Stat. 2104 (Aug. 22, 1996), codified at 8 U.S.C. § 1621. Persons authorized to remain in the United States include non-immigrant visa holders such as tourists, students, diplomats, temporary workers and others.

[10] In 1997, Congress passed additional legislation reinstating benefits for documented immigrant children and elderly, disabled immigrants. The Agriculture, Research, Extension and Education Reform Act, Pub. L. No. 105-185, 112 Stat. 523 (June 23, 1998).

[11] Federal public benefits include any retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefit or any similar benefits to which payment or assistance is provided to an individual, household or family eligibility unit by an agency of the United States.

[12] For more detailed information regarding the impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, see, Fix, Michael and Passel, Jeremy, 2002, "The Scope and Impact of Welfare Reform's Immigrant Provisions," Washington, D.C.: The Urban Institute, available at <http://www.urban.org/>, last visited on June 29, 2003.