

# THE RIGHTS OF MIGRANTS

## in the United States



### Migrants Do Have Rights

#### All Migrants Have a Right to:

##### **SAFETY AND SECURITY:**

Protection under the law from unlawful attacks on home, privacy, family, or reputation.<sup>1</sup>

##### **EQUAL PROTECTION AND DUE PROCESS:**

Equality before the law, freedom from arbitrary arrest and detention, and the right to a fair trial.<sup>2</sup>

##### **NON-DISCRIMINATION:**

The right to live free from discrimination, especially on the basis of national origin.<sup>3</sup>

##### **CULTURAL CONTINUITY:**

The right to enjoy their own culture, to practice their religion of choice, and to use their own language.<sup>4</sup>

##### **JUST WORKING CONDITIONS:**

Access to fair wages, a decent living, and workplace standards of safety, leisure, and health equivalent to U.S. citizens.<sup>5</sup>

##### **EDUCATION:**

Equal access to K-12 education without regard to the citizenship status of parents or children.<sup>6</sup>

##### **HEALTH CARE:**

Medical care necessary for health and well-being, especially care that is urgently required for the preservation of life or the avoidance of an irreparable harm to health.<sup>7</sup>

##### **HOUSING:**

Access to adequate housing, without segregation or discrimination.<sup>8</sup>

##### **FAMILY UNITY:**

Legal migrants have a right to reunification with spouses and children in an expeditious manner.<sup>9</sup>

#### Every Migrant Has Internationally Recognized Rights...

*"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs..."<sup>28</sup>*

#### Universal Declaration of Human Rights (UDHR), 1948

## WHAT IS A MIGRANT?

The United Nations (UN) defines a migrant as "any person who lives temporarily or permanently in a country where he or she was not born..."<sup>10</sup> The reasons for leaving one place for another are diverse: seeking out gainful employment, getting a better education, fleeing persecution, or leaving simply to be closer to friends and family. Depending on their motivations as well as the manner in which they enter a foreign country, migrants fall under a broad range of classifications. Students, temporary workers, asylum seekers, refugees, permanent residents, and undocumented workers are all migrants. Regardless of their legal status, all migrants are entitled to basic human rights.

## WHAT ARE THE RIGHTS OF MIGRANTS?

International treaties, including the Universal Declaration of Human Rights (UDHR) and its two subsequent treaties, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), establish the basic rights of all human beings, including migrants. These basic human rights include freedom of speech, freedom from discrimination, the right to due process of law, the right to be treated with dignity and respect while in detention, and many others. Due to the special legal status of migrants in foreign countries, several treaties attempt to clarify the rights of migrants while they are abroad. The two key migrant-related treaties are the Covenant on the Protection of the Rights of All Migrant Workers and Their Families (MWC) and the Convention Relating to the Status of Refugees (CRSR), which affirm the rights of migrants to due process, family reunification, and non-discrimination, among others.

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

The United States Constitution guarantees certain rights for all people in the U.S., whether citizens or migrants, documented or undocumented. These include equal protection under the law, the right to due process, and the right to fair criminal proceedings, including the right against self-incrimination. Other U.S. laws, such as those governing immigration proceedings, also grant rights to migrants. The U.S. is also bound by international treaties such as the ICCPR, the Refugee Convention and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), all of which grant basic human rights to all peoples, including migrants. Certain domestic laws, however, discriminate between citizens and migrants, or between documented and undocumented migrants, especially in the provision of basic social services.

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

Despite the commitments made in international and domestic law, the U.S. system often fails to protect the human rights of migrants. Migrants experience discrimination and intimidation in the workplace and in society at large; unequal access to basic services such as health care, housing, and education; arbitrary infringement of their civil liberties; and the denial of their fundamental right to due process.

### **Safety and Security**

U.S. domestic law protects migrants against violence and intimidation, but in recent years, the extreme and often racist rhetoric surrounding immigration issues has increased the threats migrants face to their personal safety. The FBI reports that hate crimes against Latinos, for instance, increased 34% between 2003 and 2006.<sup>11</sup> In other areas, the U.S. also has trouble guaranteeing the safety of migrants. Migrant women are more susceptible to domestic violence and sexual assault than citizens, since they are often unable to report the abuse due to language barriers, social isolation, lack of financial resources, or fear of deportation. In one recent study, 48% of Latinas reported increased abuse from their partners after arriving in the U.S.<sup>12</sup>

### **Equal Protection and Due Process**

The 14th Amendment guarantees all people in the U.S. due process and equal protection under the law. After September 11, 2001, however, migrants suffered frequent violations of their civil liberties. Over one thousand migrants were detained for minor immigration violations, while simultaneously being questioned and investigated about terrorist activities. While undergoing a criminal investigation, these migrants were denied access to counsel, held under abusive conditions, and detained for up to 4 months without charges being brought against them.<sup>13</sup> Detaining migrants without probable cause until they are cleared by a criminal investigation denies them the presumption of innocence to which all persons are entitled under the U.S. justice system.



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

### Non-discrimination

Though both U.S. laws and international treaties protect people from discriminatory treatment on the basis of ethnicity or national origin, migrants are often denied these protections. In many cases, immigration officials and local police rely almost entirely on Hispanic ethnicity to justify stopping, questioning, searching, and detaining suspected undocumented migrants.<sup>14</sup> After September 11, 2001, Arab and Muslim Americans were also victims of discrimination. The FBI questioned thousands of men of Middle Eastern descent despite having no evidence of their involvement in terrorist activity or even immigration violations, while new immigration policies targeted migrants from Middle Eastern and Muslim countries even when there was no evidence that the migrant posed a risk.<sup>15</sup>

### Cultural Continuity

The rights of individuals to enjoy their own culture and to practice the religion of their choosing are core American principles, and are generally well protected under the Constitution. The right of migrants to their own language, however, is under threat. Currently, 26 states have passed constitutional amendments or statutes declaring English to be the official language and limiting the circumstances in which other languages can be used for government business.<sup>16</sup> At the federal level, repeated efforts have been made to ban the use of non-English languages for official purposes, in violation of U.S. obligations under the ICCPR.

### Just and Favorable Working Conditions

Migrants to the U.S. face serious barriers to economic prosperity and favorable working conditions. On average, migrants earn significantly lower wages than native-born Americans, with 11% earning less than the minimum wage.<sup>17</sup> Though in theory state and federal laws provide protections for migrant workers, even documented immigrants are susceptible to abuse and exploitation. Guest workers legally in the U.S. under the H-2 visa program are frequently forced to work in unsafe conditions for below minimum wage without health, disability, or life insurance.<sup>18</sup> In the most extreme cases, guest workers experience conditions similar to indentured servitude or slavery: they are lured to the U.S. with false promises, incur heavy debts which they must work to pay off, and then have their travel documents illegally confiscated by their employers, making it impossible for them to leave.<sup>19</sup>

### Education

Though migrant children enroll in elementary and high school at about the same rate as citizen children, undocumented migrant children are denied equal access to higher education in the U.S. Under a 1996 federal immigration law, states are discouraged from providing in-state tuition, work-study, or financial aid to undocumented migrants. As a result, only 5-10% of undocumented migrants currently receive any post-secondary schooling.<sup>20</sup> These children, who have often lived and attended school in the U.S. for most of their lives, face limited job opportunities because they lack a college degree.

### Health Care

Migrants suffer from unequal access to both health insurance and health care. Legal migrants who have been in the U.S. for less than 5 years, as well as undocumented migrants, are denied access to federally-funded health insurance programs such as Medicaid.<sup>21</sup> As a result, 60% of low-income migrants are uninsured, almost twice the rate of low-income citizens.<sup>22</sup> In addition, many states, including Minnesota,<sup>23</sup> have statutory bans on providing non-emergency health care to undocumented migrants. As a result of these restrictions, migrants are far less likely to receive health care than citizens. A recent study found that 25% of migrants had not seen a doctor in the past 2 years compared to only 10% of citizens.<sup>24</sup>

### Housing

Migrants suffer from discrimination in their access to housing. Local governments use housing regulations to prevent migrants from moving to their area, either by targeting immigrant residency patterns, such as large or extended-kin households, or by requiring verification of legal status before buying a home or renting an apartment.<sup>25</sup> Landlords and real estate agents also discriminate against migrants, discouraging them from living in particular areas or creating higher barriers for migrants who want to rent or purchase a home. Hispanic renters, for instance, were found to face adverse treatment in housing in 25% of cases studied by the Department of Housing and Urban Development.<sup>26</sup>

### Family Unity

The right to maintain the unity of a family is one of the most fundamental human rights. The U.S. recognizes this by granting special preference to family members of immigrants who wish to join them in the U.S. However, in practice, a strict quota system, combined with serious understaffing and a slow adjudication process, has led to an enormous backlog of visa applications – more than 3.5 million.<sup>27</sup> As a result, migrants have waited years – and sometime decades – before being reunited with family members.

## U.S. Government Obligations<sup>29</sup>

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

### RESPECT:

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

### PROTECT:

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

### FULLILL:

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

### MEET MINIMUM STANDARDS:

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

### NON-DISCRIMINATION:

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

### PROTECT MOST VULNERABLE:

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

### MONITOR AND REPORT:

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

For citations and further information, visit [www.discoverhumanrights.org](http://www.discoverhumanrights.org)



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