

## NONCITIZEN RIGHTS

*From the Social Policy issue team, League of Women Voters of Boulder County, Colorado  
Information presented at public meetings beginning in November 2016*

### INTRODUCTION

About ten years ago, LWV members nationwide studied immigration and reached consensus. You can read our position [here](#). Boulder County members asked our Immigration Team to study the rights of noncitizens and to share the results with League members and the community. As League members, we need this information so that we can be advocates on behalf of our neighbors who may live in hiding, or may fear coming to a PTA meeting to help their children, or may abstain from claiming their rights for unpaid wages.

With the recent rise in hate speech, hate crimes and other violence against minorities, including legal and undocumented immigrants, we need to be well informed to assure that others can live safely in our country and participate, to the extent possible, in our democracy and society. Many noncitizens are refugees and as such are here legally. Further, the current screening process for all refugees involves [many layers of security checks](#).

Our remarks follow on six sections:

- **Brief history**
- **Employment**
- **Mobility/transportation**
- **Education**
- **Public Benefits**
- **Voting**

### BRIEF HISTORY

The Swiss writer Max Frisch, referring to labor migration into Northern Europe after WWII, wrote, "We asked for workers. We got people instead."

He was talking about Europe in the twentieth century, but his words also aptly frame the history of immigration in America since its earliest years. Our economy needed and benefitted from immigrants' labor. But they often were not like those who were already here, and their presence often challenged existing social structures and customs.

While the United States is a nation of immigrants, the path to citizenship has been simple for some but difficult for others, depending on who you were and where you came from.

Most of the first immigrants were from Britain and Northern Europe; their citizenship was a given as they were the majority group.

As our country expanded, there was a need for more laborers.

**Africans** were imported and enslaved largely in the 17th, 18th to mid-19th centuries.

**Chinese** workers came to build railroads across the continent in the 19th century.

**Mexican** workers came to maintain the railroad tracks to move men and equipment during World War II.

Others came to escape troubles at home: the **Irish** to escape the Potato Famine; **Germans** and **Italians** to start new lives and partake of American opportunities; **Jews** to escape pogroms in eastern Europe and Russia.

And, some, such as **Mexican** workers, often came just seasonally to harvest crops, and then returned home.

This created a dilemma for the leaders of America: As more diverse immigrants came, the power brokers feared social disruption and that America would be populated by "inferior" people ("inferior" to them). Immigrants often lived in terrible conditions in the cities, and were hired to do the most dangerous jobs at the lowest pay.

Congress passed various laws through the years such as **waiting periods** to become citizens (two, five, even 20 years), and **quota systems** limiting the number of people allowed.

The mid-20th century saw significant changes that resulted in the country beginning to reconcile itself to increasing diversity. This was mostly due to the stronger civil rights movement that led to significant legal changes passed by the U.S. Congress and the Supreme Court. These included laws prohibiting segregation in schools and public places and expanding integration, along with **civil rights** and **voting rights** for African-Americans.

Challenges have continued as immigrants and refugees from Middle Eastern, African, Asian, South American countries, and Mexico have sought to settle legally (or not) in the U.S. Contrary to popular belief, immigrants today are more likely to come from **Asia** than from Mexico or Latin America.

We often hear about the 11 million undocumented immigrants. They are a part of more than 40 million immigrants currently living in the U.S. About 18 million of those are naturalized citizens, and millions more are living here legally but are not citizens.

## EMPLOYMENT

Federal law (8 USC, section 1324a) prohibits employers from hiring or retaining aliens not authorized to work in the US.

- The employer may not recruit, directly hire, or take such a person as a referral (employment agency). There are some special provisions if the worker comes through a collective bargaining agreement.
- If the employer learns that the employee's visa has expired, making the employee ineligible for continued employment, then the employer is liable for retaining the employee.

**Documents.** An employer may rely on certain documents as proof of the right to work. Documents include a passport, resident alien card, and a social security account number card (other than such a card which specifies on its face that the issuance of the card does not authorize employment in the United States).

- Also useful is an alien registration card that contains a photograph of the individual and other personal identifying information relating to the individual if it contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.
- Another alternative is a driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual.

In the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

- The Attorney General is given very broad powers to specify what is and is not acceptable. There are protections for the employee in the use of the documents, but the employer is required to keep copies of the documentation for three years or for six months after the termination of employment, whichever is longer.
- The penalty for an employer is \$250-2,000 a day. The employer is entitled to a hearing at which the employer must show that there was reasonable reliance on the documentation.

**Employee rights.** Once they are hired, all workers, including those who are undocumented, have a right to **minimum wage, overtime pay, breaks, and tips.**

- They are eligible for **Worker's Comp**.
- They have the right to **refuse unsafe work** if they reasonably believe it would create a hazard for themselves or their co-workers.
- They can participate in and organize a **union** or participate in a "concerted effort" to improve working conditions, even if there is no Union. They are eligible for disability.
- They are **protected against discrimination** on the basis of a host of traits: ancestor's place of birth, association with persons of a different national origin group, harassment based on national origin, discrimination based on accent, or appearance.
- *Speak English Only* rules are okay only if the employer can establish that it is a business necessity.

They cannot collect unemployment.

**Enforcement.** A worker with an employment complaint has a dilemma. If he complains, the employer may retaliate by notifying authorities of his presence.

Retaliation constitutes a second offense for the employer (the first being hiring an undocumented person), and it is illegal (third violation) for the employer to share information about the employee with, say Immigration and Customs Enforcement (ICE), but once ICE is informed, it may follow up and arrest the worker and deport him.

Both employer and undocumented immigrant are in trouble.

**Income tax and Social Security.** Everyone who earns money in the U.S. is required to file an **income tax return**, and a **Social Security Number** is required for filing. There is a black market for Social Security Numbers and cards. By using a counterfeit Social Security Number, a taxpayer exposes himself to liability for that from both the Social Security Administration and the Internal Revenue Service. So alternatively, an undocumented immigrant can obtain an Individual Taxpayer Identification Number (ITIN), and that will work for filing a tax return. Dependents without Social Security Numbers cannot be claimed. It is fair to point out that Social Security **withheld under a counterfeit number** goes into the system and is **lost** to the taxpayer.

## MOBILITY - TRANSPORTATION

For **air travel**, a government-issued photo ID is required to get through the security checkpoint. This includes driver's licenses, passports (whether U.S. or foreign government), military ID, etc.

Undocumented immigrants can travel fairly easily around the U.S. by **train or bus**, except when near borders, where they could be stopped by immigration authorities. They can travel by **car**, but always risk being stopped or being in an accident.

**Driver's licenses.** Legal residents with green cards, and young people covered by DACA, can get a regular driver's license. If you have proof of temporary legal presence in the U.S., you can apply at any DMV office. .

**Colorado** is one of several states that issue drivers licenses to residents who cannot provide proof of legal presence in the U.S.

If you cannot prove temporary lawful presence, you must make an appointment at the Department of Motor Vehicles office in Denver, Colorado Springs, or Grand Junction.

To obtain the license, you need to provide proof of Colorado residency, proof of identity from home country, which includes legal name and date of birth, and an Individual Taxpayer Identification Number (ITIN). You must also sign specific affidavits and pass the knowledge and road tests. The fee for this license is \$79, compared to \$26 that everyone else pays

This driver's license is NOT valid for FEDERAL identification purposes.

Details are available [here](#).

The law establishing the **SB 13-251 Driver's License in Colorado** was passed in 2013. The LWV supported the bill in the interests of public safety.

The executive branch resisted. The Department of Motor Vehicles only offered these licenses at five Colorado locations, resulting in a long backlog. A subsequent legislature cut the funding so that now there are only the *three* locations and the appointment backlog is longer. As a result, countless drivers on the road are untested, unlicensed, and consequently unable to obtain insurance.

This driver's license cannot be held against you to determine your citizenship or immigration status, and it also affords the same driving privileges as a documented citizen, and you are held to the same laws and regulations, including requirements for Colorado car insurance.

The state-by-state battles over licenses have unfolded in the absence of federal legislation over how to handle millions of people living in the country without documentation. Supporters, including law enforcement, say that safety is the fundamental issue. Licensed drivers are better educated about the rules of the road, more likely to have insurance, and less likely to flee an accident. Opponents say that it amounts to amnesty.

**Leaving the country and then returning.** Various travel documents can be issued by the federal government.

If in the U.S. **illegally**, you may be denied admission even if issued a travel document.

If an **asylee**, your asylum status may be terminated if you return to the country from which you were seeking protection. Need to apply for a Refugee Travel Document before leaving the U.S.

## EDUCATION

**Demographics.** Undocumented students are immigrants who entered the US without inspection or overstayed their visas and are present in the U.S. with or without their parents. Most children of undocumented immigrants—73% in 2008—are U.S. citizens by birth. The number has increased rapidly in recent years, from 2.7M in 2003 to 4M in 2008. By contrast, the number of unauthorized immigrant children has stayed constant at 1.5M since 2008 and may have declined slightly since 2005.

According to some estimates, approximately 17% of undocumented immigrants are under the age of 18. A majority of undocumented students (25%) are from Latin America with Asia being the second largest region (12%). In California, Asians make up a disproportionate number of undocumented students in colleges and universities. In the California university system, since the implementation of Assembly Bill (AB) 540 + a bill that allows students who have attended and graduated from California high schools to pay tuition at in-state rates, Asian students have made up 40 + 44% of all undocumented students paying in-state tuition. This was even greater in some years. (Source: "Undocumented Students in the U.S.," Wikipedia [https://en.wikipedia.org/wiki/Undocumented\\_students\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/Undocumented_students_in_the_United_States))

**The right to a K-12 education.** In the U.S., children have the right to an elementary education and secondary education regardless of their immigration status.

In 1982, the U.S. Supreme Court in **Plyler v. Doe** (457 US 202 [1982]) struck down a Texas statute denying funding for education to undocumented immigrant children. The court simultaneously struck down a municipal school district's attempt to charge undocumented immigrants an annual \$1,000 tuition fee for each undocumented immigrant student to compensate for the lost state funding.

Prior to 1975, all Texas students were able to attend public elementary and secondary school. The state government provided funding to schools based on the number of students enrolled. In May 1975, the state legislature amended the Texas Education Code to provide that **ONLY** U.S. citizens or lawfully admitted noncitizens would be counted for financial aid purposes. Schools

were given the option to allow or reject undocumented students and to charge tuition if they chose to accept them.

Schools officials in Tyler, Texas, under the direction of Supt. **James Plyler**, began charging \$1,000 annual tuition to all undocumented students.

In 1977, the Mexican American Legal Defense and Educ. Fund, filed a class action on behalf of 16 Mexican undocumented students of the Tyler district.

The trial court found the Texas law violated the Equal Protection Clause of the 14th Amendment to the U.S. Constitution because it amounted to total deprivation of education without a rational basis. The court rejected the state's arguments regarding the cost of educating undocumented children, finding that the federal government largely subsidized the additional costs of educating the children and that "it is not sufficient justification that a law saves money."

In order to comply with **Plyler**, education policy analysts have suggested the schools **may not**:

- deny admission to a student on the basis of undocumented status;
- treat a student fundamentally different from others when determining residency;
- engage in practices that frighten undocumented students and the families away from school access;
- require students or parents to disclose or document immigrant status;
- require SS numbers from any student.

(Source: <https://www.justice.gov/crt/dear-colleague-letter-rights-all-children-enroll-public-schools>)

Plyler doesn't extend to post-secondary education, but at least guarantees undocumented students the opportunity to receive a high school degree.

**Higher Education.** The Pew Hispanic Center estimates there were 360,000 undocumented HS graduates between the ages of 18 and 24 in the US in 2006. It is estimated that each year 5-10% of undocumented HS students, approx. 65,000, are eligible to attend college. 18,000 of them were enrolled in CA community colleges in 2005-2006 as a result of financial accessibility.

There is NO federal law that prohibits the admission of undocumented immigrants to U.S. colleges, universities, public or private, nor federal law requiring students to prove citizenship in order to enter US institutions of higher education, although every institution has its own policies on admitting undocumented students. The cost of attending college is the primary obstacle facing undocumented students. Undocumented students are not eligible for federal aid: Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 denies undocumented immigrants "educational benefits." So they rely mainly on private scholarships, a few of which do not require a student to be a U.S. citizen or resident or to have a SS number in order to apply. Private colleges/universities set their own financial aid policies.

Colorado is one of [18 states in which undocumented students pay tuition at the in-state rate](#) (a fraction of the out-of-state rate). The [Colorado ASSET law](#) (Advancing Students for a Stronger Economy Tomorrow) allows eligible undocumented students to pay in-state tuition at Colorado public colleges if they have recently attended a Colorado High School for at least three years and graduated or received their GED.

With the in-state classification they may also be eligible for a [College Opportunity Fund \(COF\) stipend](#) funded by the state. The COF stipend is \$75 per credit hour In the 2016-2017 academic year..

**DREAM Act.** The Development, Relief and Education for Alien Minors (DREAM) Act is a federal bill that would permit states to determine residency for higher education or military purposes. First introduced in the Senate on August 1, 2001, the bill has been reintroduced several times, most recently in 2013. It would provide a mechanism for undocumented students of good moral character to become legal permanent residents. The DREAM Act initially allowed beneficiaries to qualify for federal student aid, but was changed in the 2010 version of the bill. In order to be eligible, individuals must have (a) come to the U.S. as children (under 16), (b) graduated from a

U.S. high school, and (c) been a resident for at least five years. An age cap of 35 was also set, and legal status is not granted to anyone for at least two years. Many limitations are included, among them the removal of access to healthcare benefits and limits to chain migration. Colorado, which passed its Dream Act in 2013, estimates that in the first three semesters with the new policy, about 950 students were undocumented immigrants paying in-state tuition—again, less than one percent of total enrollment.

## PUBLIC BENEFITS

For summary charts of Public Assistance Programs and Eligibility of Immigrants, see Appendix A and B on pp. 9–10 of this document.

Immigrants are eligible for five major *safety net* programs funded by different combinations of state and federal budget allocations:

- the Supplemental Nutrition Assistance Program (**SNAP**),
- the Special Supplemental Nutrition Program for Women, Infants and Children (**WIC**),
- Colorado Child Care Assistance Program (**CCCAP**),
- **Colorado Works** (Colorado's name for Temporary Assistance for Needy Families or **TANF**), and
- Medicaid.

These five programs offer significant resources for those with low incomes, less than 200% of federal poverty level. Eligibility for benefits and amount of those benefits are determined by such factors as (a) applicant income, (b) household income, (c) pregnancy and having dependent children with ages in specified ranges, and (d) applicant's adherence to requirements that he or she be working, searching for employment, or engaged in a training program that will improve prospects for future employment.

Five more programs have program-specific criteria for eligibility:

- **Social Security benefits** are based on the work history of the individual.
- **Supplemental Security Income or SSI** provides needs-based assistance to elderly, blind, or disabled people.
- Colorado's Child Health Plan Plus (**CHP+**) serves children & pregnant women from income-qualified households with incomes too high for Medicaid.
- Eligibility for both the National **School Lunch** Program and for
- **Head Start** is determined by household income.

**The immigrant as "public charge."** An individual who wants to become a citizen and who is eligible for, and receives, public assistance risks being considered a "public charge," that is, someone who is dependent on the government for his/her continued well-being. That person is denied admission to this country or, if already here, loses eligibility for lawful permanent residency which is a step towards eventual citizenship.

These programs carry a public charge penalty: Colorado Works (TANF), SSI, and Medicaid for long-term care.

These eight programs carry **no** public charge penalty: SNAP, WIC, CCCAP, Medicaid (unless for long-term care), CHP+, Social Security, School Lunch, and Head Start.

**Immigration status and eligibility.** Besides the participation criteria for each program, the immigration status of the applicant and applicant's family members will determine whether the individual qualifies to receive benefits. See Appendixes A & B on pp. 9 and 10..

- Citizens, including naturalized immigrants and U.S.-born children regardless of their parents' status, are fully **eligible** as long as they meet the program criteria relevant to the programs for which they apply.

- *Legal immigrants* are prohibited from receiving most benefits for five years or more after arrival.
- *Unauthorized immigrants* can get emergency medical care but cannot get most other benefits.
- *Refugees* immediately upon arrival are eligible for a limited amount of public benefits for limited periods. This recognizes that many come with minimal possessions, while discouraging long-term reliance on public benefits.
- Foreigners here temporarily, including work or student visa-holders are generally ineligible for public benefits.

## VOTING

**Voting rights** throughout the world are almost always tied to **citizenship**.

U.S. Federal law (1996) **prohibits** voting by non-U.S. citizens ("aliens") in **national** elections. Read the current law [here](#).

All 50 states currently **prohibit** voting by non-U.S. citizens in **statewide** elections.

Read the Wikipedia article on foreigners' voting rights [here](#).

Non-U.S. citizens with permanent resident status (green-card holders) can vote in their home country, the country in which they have citizenship.

Like the U.S., most (but not all) other countries in the world restrict voting to the country's own citizens—except where there are intergovernmental agreements such as among the EU nations; those are specific and restrictive. The U.S. has no such agreements with other countries.

Do noncitizens manage to vote illegally? No, they do not. Data indicate that when a noncitizen has tried to vote in a national election, the attempt failed, and either it was done in ignorance, or the person was put up to it by tricksters in an attempt to create an instance of illegal voting.

**Historical considerations.** American voting laws, like attitudes toward immigration, have shifted over the years. In 1776, none of the thirteen states had a citizenship requirement for voting, only a five-year residency requirement. Of course only white male property owners had the right to vote. Through the nineteenth century, as the U.S. expanded, immigrants were welcomed. Colorado had no citizenship requirement for voting when it became a state in 1876. By the end of the nineteenth century, however, anti-immigrant sentiment prevailed. Colorado law in 1902 put an end to noncitizen voting.

Anti-immigrant legislation again prevailed in the 1920s, after World War I. Congress drastically cut immigration quotas. Many other voting issues were also pressing, including women suffrage. By the 1920s, noncitizen voting was no longer allowed.

**Local laws.** Today, a few **local** jurisdictions, such as school districts, towns, and villages, extend voting rights to noncitizen residents of the locality, in **local elections** on **specific issues**. Everyone who lives in the district and is *affected* by the issue can vote on that issue. Turnout for noncitizens is reportedly about the same as for citizens.

No localities in Colorado allow noncitizen voting.

- In **Maryland** six municipalities in Montgomery County, including Takoma Park, allow residents holding visas and green-cards to vote on issues affecting residents of the town or village. The registrar combines the regular voter rolls with the list of noncitizen residents and no one knows which name comes from which list. In December 2016, [a seventh Maryland city, Hyattsville, joined the six](#).

- The **Chicago school system** allows noncitizens to take part in elected parent advisory councils but not to vote in school board elections.

- Four towns in **Massachusetts** have moved to allow noncitizen voting and are awaiting state approval.

- In **New York City**, where noncitizens make up 21 percent of the voting-age population, the city council is drafting legislation that would allow more than 1.3 million legal residents (green-card holders) to take part in municipal elections. The city previously allowed noncitizens to vote in school board elections, but that ended in 2002 (during Mayor Giuliani's tenure) when New York's school boards were dissolved.

- In **San Francisco** in the November 8th, 2016, election, voters approved Proposition N, the Immigrant Parent Right to Vote, by 52.65% to 47.35%. A city charter amendment, it was referred to voters by the SF Board of Supervisors. (Similar proposals failed in 2004 and 2010.) The city charter now permits noncitizens 18 years of age or older who have children residing in the San Francisco Unified School District to vote in school board elections. Noncitizens include permanent residents, visa holders, and unauthorized immigrants. The amendment sunsets on December 31, 2022, but could be extended by ordinance. **One third** of SF school kids have an **immigrant parent**.

Arguments used **in favor** of the charter amendment were these: (1) that the measure would increase parental involvement, and students with actively involved parents do better in school; (2) that Immigrant voting has long history in the U.S.; and (3) that greater resident involvement improves democracy. Further, while the California Constitution protects the right of citizens to vote, it does not exclude immigrants from voting; and it explicitly authorizes Charter cities such as SF to provide for the manner of electing school board members.

A 2008 paper on voting issues by the Center for Immigration Studies may be read [here](#).

**Related issues.** Boulder County municipalities disagree on whether noncitizen residents should be eligible to serve on appointed boards. The city of Boulder allows all electors, regardless of citizenship, to be appointed to city boards and commissions. One noncitizen, an unauthorized immigrant, serves on the Human Relations Commission. Voters in the city of Lafayette have turned down a similar proposal twice, in 2015 and 2016.

In a few U.S. locations noncitizens, even unauthorized immigrants, can serve on juries, monitor elections, and practice law—according to a [New York Times report in 2013](#).

## CONCLUSION

Current immigration laws are inadequate to handle our country's need for both skilled and unskilled workers and for people seeking better and safer lives for themselves and their families. Those favoring restrictions against immigrants have prevented the U.S. Congress from creating a more sensible, compassionate, workable immigration system.

Rights of immigrants, especially if they are here on work or student visas, have green cards, or are naturalized citizens, are protected by federal law. For those who are undocumented and threatened with deportation, life is precarious. Families can be torn apart when one or both parents are deported.

Our goal has been to describe what rights our immigrants have. We know, though, that enforcement of the federal laws varies by state and locality. For example, the difference between those living in Maricopa County, Arizona, compared to here in Boulder County is striking. The Boulder County Sheriff does not enforce immigration holds from Immigration and Customs Enforcement (known as ICE). The Boulder County D.A. prosecutes crimes committed AGAINST undocumented immigrants, encouraging victims to report scams and fraud. In fact, the D.A. as begun (in late 2016) holding community meetings to address concerns following the recent election season and to stress his commitment to fairness and protecting everyone in our communities.

We have been happy to share our research with you and educate one another about rights of undocumented immigrants. We also want you to know about and share in our recent work with the Latino community and other groups over the past couple of years.



We are more actively involved in the diverse communities of people who live in Boulder County. We have joined in the OneArts Community and with the Boulder County Latino Task Force, among others, to learn more about their lives in Boulder County. In turn, we have been asked to assist their members with voter education and registration. We have held candidate forums from the Latino perspective, and have provided education on the ballot issues.

We hope you will work with us on protecting the safety and advocating for the rights of our undocumented neighbors in Boulder County. To stay informed, please keep visiting our website, follow us on Facebook, and read our emails and our monthly newsletter.

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## APPENDIX A: General Provisions Based on Status

Citizens	Are fully eligible as long as they meet criteria relevant to the programs for which they apply. Category includes naturalized immigrants and US-born children regardless of their parents' status
Legal Immigrants	Prohibited from receiving most benefits for 5 years or more after arrival.
Undocumented immigrants	Can get emergency medical care. Can't get most other benefits
Refugees	Immediately on arrival are eligible for a limited amount of public benefits for limited periods. This recognizes that many come with minimal possessions while discouraging long-term reliance on the dole.
Foreigners Here Temporarily	Are generally ineligible for public benefits. Category includes work or student visa holders.

**APPENDIX B: Selected Programs and Factors Affecting Participation**

<u>Program</u>	<u>Basis for Determination</u>	<u>Eligibility Criteria</u>	<u>Public charge penalty?</u>
SNAP (food stamps)	Household	Countable income	no
WIC	Household	For low-income pregnant, breastfeeding, and non-breastfeeding postpartum women, and infants and children up to age five at nutritional risk	no
CCCAP	Household	For families that are homeless, working, searching for work or in school and/or on TANF	no
CO Works (TANF)	Household	Means-tested	yes
Medicaid	Individual	For low income families, qualified pregnant women and children, and individuals receiving SSI. States may expand options to cover others, such as children in foster care.	no, unless for long-term care
CHP+	Individual	For children & pregnant women from income- qualified households making too much for Medicaid	no
Social Security	Individual or Spouse, for selves and minor survivors	Work History and past earnings	no
SSI (Supplemental Security Income)	Individual	Need-based, time limited for refugees	yes
School Lunch	Household	No immigrant-related restrictions	no
Head Start	Household	No immigrant-related restrictions	no