



Immigrants' Rights are Human Rights: Universal Guarantees of Rights to All People

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No Human Being is Illegal

Over the past 13 years, we have witnessed a series of attacks on the basic rights and freedoms of America's immigrants. Beginning with the Clinton administration's support for two far-reaching and punitive immigration reform bills in 1996, and continuing with the Bush administration's overzealous response to the Sept. 11 attacks, immigrants in the United States have faced assaults on their liberty, dignity and equality.

Fortunately, though successive presidents have attempted to undermine immigrants' rights, there is a growing international movement that recognizes that all persons, regardless of their citizenship status, are guaranteed basic human rights protections.

In 1948, the United Nations General Assembly unanimously adopted the Universal Declaration of Human Rights (UDHR), which, for the first time, codified the basic human rights of all people. First Lady Eleanor Roosevelt chaired the U.N. Commission on Human Rights and played a leading role in drafting the Declaration. The UDHR was largely a response to the tragedy of the Holocaust, and was strongly influenced by the U.S. Bill of Rights. It contains 30 articles that detail specific rights that belong to all human beings everywhere, including civil and political rights as well as economic, social and cultural rights. More than 60-years-old, the UDHR is the foundational document of the contemporary human rights movement.

Since the adoption of the UDHR by the world community, the United States has ratified a number of human rights treaties, including the International Covenant on Civil and Political Rights, the Convention to End All Forms of Racial Discrimination, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. By ratifying these treaties, the United States has incurred binding international obligations to respect and ensure protection of the human rights recognized in these treaties. In addition, the United States has signed other human rights treaties such as the Convention on the Rights of the Child, the Convention to End All Forms of Discrimination Against Women and the International Covenant on Economic, Social and Cultural Rights, to name but a few. As a signatory to these treaties, the United States has declared it will not do anything to undermine the objectives of these treaties.

Despite the guarantees afforded by the UDHR and these treaties, it is clear that persons attempting to enter the United States and immigrants already living in our country continue to face violations of their human rights. In 2007, the United Nations sent an expert (known as a "special rapporteur") on the rights of migrants to study conditions for immigrants in the United States. After an investigation into the conditions faced by immigrants, the special rapporteur expressed "serious concerns about the situation of migrants in the country," and found that "xenophobia and racism towards migrants in the United States has worsened since 9/11." He concluded:

In light of numerous issues described in this report, the special rapporteur has come to the conclusion that the United States has failed to adhere to its international obligations to make the human rights of the 37.5 million migrants living in the country (according to government census data from 2006) a national priority, using a comprehensive and coordinated national policy based on clear international obligations. The primary task of such a national policy should be to recognize that, with the exception of certain rights relating to political participation, migrants enjoy nearly all the same human rights protections as citizens, including an emphasis on meeting the needs of the most vulnerable groups.

This guide serves as an introduction to some of the human rights protections afforded to immigrants. The guide references numerous human rights obligations imposed on the United States, and provides examples of the United States' failure to meet these obligations to ensure basic fairness and dignity to immigrants. Examples of specific human rights violations in the United States are included throughout the guide.

Understanding immigrants' rights in a human rights context provides much-needed clarity to an immigration debate that is clouded in hyperbole, racism and inaccuracy. Those who call for greater restrictions on the rights of immigrants often invoke damning language to make their case. They describe people living in the United States without proper documentation as "illegal aliens," and ask "which part of illegal do they not understand?"

In response, this guide hopes to shift the focus from "illegal vs. legal" to one that recognizes that all humans are endowed with certain inalienable rights. As Holocaust survivor Elie Wiesel famously noted, "You who are so-called illegal aliens must know that no human being is 'illegal.' That is a contradiction in terms. Human beings can be beautiful or more beautiful, they can be fat or skinny, they can be right or wrong, but illegal? How can a human being be illegal?"

We hope that this guide will serve as a vehicle for a more respectful discourse on the rights and freedoms of all immigrants living in the United States.

Equality and Dignity before the Law

Universal Declaration of Human Rights, Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Universal Declaration of Human Rights, Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

International Covenant on Civil and Political Rights, Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In the aftermath of the Sept. 11 attacks, the United States began engaging in racial profiling in the name of protecting national security. This approach to national security is not new. During World War II, Japanese Americans faced the brunt of this widely condemned and discredited practice. Now, in the post-9/11 era, Arab, Muslim and South Asian immigrants are the targets. Whether pre-9/11 or post-9/11, racial profiling violates human rights.

In the hours, days, and weeks following the tragic events of Sept. 11, the government began to engage in the arbitrary detention and interrogation of hundreds, and possibly thousands of men from Arab, Muslim and South Asian countries. Despite the lack of any credible evidence against them, they were investigated for possible involvement in terrorist activity. The men were detained often for months, many in 23-hour lockdown. In the words of the Justice Department's inspector general, many were subjected to "a pattern of physical and verbal abuse." After being found innocent, many were deported.

In 2002, the federal government instituted a "special registration" program, also known as the National Security Entry-Exit System, which required selected visitors to the U.S. to be fingerprinted, photographed and questioned. The domestic component of the program applied exclusively to men and boys older than the age of 16 and nationals of 25 countries, all but one predominantly Muslim. Failure to register with the government was made a deportable offense. Tens of thousands of immigrants registered with the government, but none were charged with terrorism. Many were detained and deported, sparking fears in Muslim communities that they were being targeted by the government.

Rounding-up Arab, Muslim and South Asian men and forcing thousands to register with the government based solely or primarily on their ethnicity or race violates human rights protections.

In 2002, immigration officials in Los Angeles detained approximately 400 men and boys from Iraq, Iran, Libya, Sudan and Syria, during the first phase of special registration. After appearing before immigration officials, many were detained on the grounds that their visas were not up to date, despite their having correctly filed applications for permanent residency that were pending due to government backlogs.

Right to Liberty and Security of Person

Universal Declaration of Human Rights, Article 12: No one shall be subjected to interference with his privacy, family home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

International Covenant on Civil and Political Rights, Article 9(1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

Most Americans cannot imagine being corralled at the workplace or woken up in the middle of the night by strangers and forced to supply proof of citizenship or face arrest or even deportation. Yet that's exactly what happens to many immigrants living in the United States despite human rights protections that guarantee freedom from arbitrary searches and arrests, regardless of citizenship status.

In recent years, Latino immigrants and citizens have faced sweeping immigration raids that have led to countless wrongful detentions, even of innocent children. Nearly 250,000 men, women and children are detained by Immigration and Customs Enforcement (ICE) each year—many times with the assistance of local law enforcement—more than three times the number of detainees held by the United States government in the late 1990s. According to the Urban Institute, ICE has dramatically increased the number of worksite raids it performed in the past few years: the number of undocumented immigrants arrested at workplaces increased more than sevenfold from 500 to 3,600 between 2002 and 2006. Lawful Permanent Residents, also known as green card holders, and even United States citizens have been swept up in many of these immigration raids.

Moreover, thousands of immigrants are subjected to mandatory arrests and detention, even before an immigration judge has the opportunity to review their guilt or innocence. In 1996, Congress passed the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act. These reforms instituted mandatory detention of immigrants, even those in the United States legally, who have been convicted of a crime, even a minor one. Due to these reforms, immigrants are held in immigration detention centers or even jails for months and years awaiting hearings, many times alongside the prison's criminal population. Judges are barred from determining whether an immigrant should be detained prior to receiving a full hearing. Family ties, and the impact that detention may have on U.S. citizen children, are not taken into consideration.

In a "targeted" 2007 raid that the federal government claimed was on "gang members," immigration officials descended on Long Island and executed predawn raids. Teams of armed ICE agents raided the homes of Latino residents, with immigration agents pounding on or breaking down doors and windows while screaming loudly at the people inside. Immigration agents represented themselves as "police" and bullied their way into people's homes without obtaining their consent to enter. Among those mistakenly targeted was American citizen Peggy De La Rosa-Delgado. According to the Nassau County police commissioner, many United States citizens and legal residents were roused from bed and were required to produce citizenship papers.

Protection of Family Unity

Universal Declaration of Human Rights, Article 16(3): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

International Covenant on Civil and Political Rights, Article 17(1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

International Covenant on Civil and Political Rights, Article 23(1): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

International Covenant on Economic, Social and Cultural Rights, Article 10(1): The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.

Human rights law recognizes that the state has an obligation to protect family unity. Yet the right to family unity continues to be ignored and violated in the United States as immigration enforcement officials, many times with the help of local police, tear families apart. Immigration raids not only send chilling fears through the families whose homes are invaded, but they often also dismantle the family unit.

According to the Urban Institute and the Pew Hispanic Center, more than 3 million children born in the United States have parents who are undocumented and subject to deportation. Yet when immigrant parents find themselves detained, even for minor non-criminal violations, they are often transferred to remote facilities far away. Some are even sent hundreds of miles away from their homes and their children. According to the United Nation's special rapporteur, the transfer of immigrants to remote detention centers "interferes substantially with access to counsel and to family members and often causes great financial and emotional hardship for family members who are not detained."

Immigration enforcement officials continue to deny the sanctity of the family unit as raids leave children, many of them United States citizens, separated from parents.

In March 2007, immigration enforcement agents raided a factory in Massachusetts where workers were stitching armored vests and backpacks for U.S. soldiers. Approximately 360 immigrants were detained. Many of the workers had U.S. citizen children in daycare or school when the raid took place. That evening, children suddenly found themselves without parents. Those detained were shipped to detention centers as far away as Texas and Florida, leaving behind distraught families. The Massachusetts Department of Social Services had to dispatch special teams to Texas to ask detainees how to care of their kids back home.

Right to Freedom of Opinion and Expression

Universal Declaration of Human Rights, Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

International Covenant on Civil and Political Rights, Article 19(2): Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

When those who enter this country longing to participate in its economic, civic and political life get silenced, not only has the foundation of American democracy fallen by the way-side, but the dignity of human beings is stripped away as well. The right to free speech, expression and opinion, as well as the right to freely assemble in public spaces, is a right that extends to all human beings, regardless of their immigration status.

Yet in recent years, federal and local policies and practices have erected barriers to prevent the full participation of immigrants in American life, stifling and silencing the voices of those who come, or try to come, to America's shores.

Once used to bar suspected Communists from entering the country, "ideological exclusion" was resurrected by the USA PATRIOT Act to deny foreign scholars, artists, politicians and others entry into the United States. Tariq Ramadan, a leading European academic whose work addresses Muslim identity and the role of Islam in democratic societies, was offered a tenured teaching position at the University of Notre Dame. However, in July 2004, the government revoked Ramadan's visa. The government said Ramadan endorsed terrorism, yet could not produce any credible evidence to support such allegations.

Those who are able to enter the country are often met with further infringements on their right to free speech. In recent years, municipalities across the country have attempted to pass anti-solicitation ordinances that target day laborers who peaceably assemble on public sidewalks in an attempt to find employment. Such ordinances have been driven by a desire to prevent day laborers, who are often Latino, from seeking work opportunities. This criminalizes day laborers for doing nothing more than speaking about their need for work and their desire to support their families. All United States residents, regardless of their immigration status, have a right to stand in public spaces for purposes of finding a job.

Adults and children who speak Spanish find themselves targeted as well. In 2007, a school district in Nevada adopted a policy prohibiting students from speaking Spanish while riding the school bus. The district rescinded the policy in 2008 following objections from the ACLU. Also in 2007, the Senate passed an amendment to an immigration reform bill that would have denied those with limited English access to basic government information -- such as information on how to pay taxes, workplace safety, natural disaster relief and vaccinations -- by mandating that such information be provided in English only.

Right to Due Process and Fair Deportation Proceedings

International Covenant on Civil and Political Rights, Article 13: An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

American Convention on Human Rights, Article 8(1): Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Immigrants in the United States live with the very real fear of being deported without appropriate court review, in violation of their human right to due process and fairness.

Since passage in 1996 of the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act, immigrants convicted of a crime, including minor crimes, are subject to mandatory deportation after they serve their sentences. They are not given a full hearing where they can explain their reasons for staying in the country. Even if they have lived in the United States legally for dozens of years, and have U.S. citizen children or run a business, they are subject to mandatory deportation. Judges are stripped of the opportunity to make determinations of who should stay, and who should be deported.

According to the U.N.'s special rapporteur, "Estimates based on the United States census find that 1.6 million adults and children, including United States citizens, have been separated from their spouse and parents because of the 1996 legislation." Approximately 500,000 of those separated have been United States citizens.

Moreover, since 1996 those seeking to enter the U.S. have been subject to "expedited removal" if they lack proper documentation. This means that people are removed from the country without even seeing a judge. The only exception is for those who express a fear of persecution, but even this decision is made by an asylum officer and not a judge. In 2004, the government expanded expedited removal to immigrants who are apprehended within 100 miles of the border and within 14 days of having entered the United States.

Human rights law recognizes that immigrants must obey the laws of their host countries. However, the right to live in a country should not be taken away without providing fundamental due process protections, which includes the right to a fair hearing.

According to the U.N.'s special rapporteur, a green card holder arrived to the United States from Haiti several decades ago and served in the United States military for four years in the 1970s. He is 52-years-old, and has four children who are United States citizens, two of whom serve in the military. He now faces mandatory deportation because he was convicted of the possession and sale of small amounts of crack cocaine in the mid-1990s, even though he served his full prison sentence of 16 months.

The New York Civil Liberties Union (NYCLU) is one of the nation's foremost defenders of civil liberties and civil rights. Founded in 1951 as the New York affiliate of the American Civil Liberties Union, we are a not-for-profit, nonpartisan organization with eight chapters and regional offices and nearly 50,000 members across the state.

Our mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality and due process of law for all New Yorkers.





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