



And Noncitizen Rights by
The League of Women Voters



Introduction

- Ten years ago, LWV members nationwide studied immigration
- We need information to be advocates on behalf of our neighbors, who may live in fear of repercussions because of their citizenship
- There has been a recent rise in hate speech, hate crimes and other violence against immigrants
- Many noncitizens are refugees and here legally
 - 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

“We called for workers, but people came.”

-Max Frisch, writing about immigration after WWII

- In the past, our expanding economy needed and benefitted from immigrants' labor
- Often immigrants were not like those who were already here
 - Their presence challenged existing social structures and customs
- The path to citizenship has been simple for some but difficult for others, depending on who you were and where you came from



Immigrants

- **Africans:** imported and enslaved largely in the 17th, 18th to mid-19th centuries.
- **Chinese:** came to build railroads across the continent (19th century).
- **Irish:** escape the Potato Famine
- **Germans and Italians:** start new lives and partake of American opportunities
- **Jews:** escape pogroms in eastern Europe and Russia.
- **Mexican:** often came seasonally, crossing the border to harvest crops, and then returning home.
- **All Immigrants:** Lived in terrible conditions and were hired to do the most dangerous jobs at the lowest pay.

Laws

- Past congressional laws:
 - **Waiting periods** to become citizens (2, 5, even 20 years)
 - **Quota systems** limiting the number of people allowed.
- Mid-20th century: country beginning to reconcile itself to increasing diversity.
 - Stronger civil rights movement
 - **Civil rights** and **voting rights** for African-Americans.
 - Significant legal changes passed by the U.S. Congress and the Supreme Court.
 - Laws prohibiting segregation in schools and public places and expanding integration

Today

- Challenges have continued as immigrants and refugees from Middle Eastern, African, Asian, South American countries, and Mexico have sought to settle in the U.S.
- Immigrants are more likely to come from **Asia** than from Mexico or Latin America.
- 40 million immigrants currently living in the U.S.
- 11 million undocumented immigrants
- 18 million naturalized citizens

Employment

- Federal law (8 USC, section 1324a) prohibits employers from hiring or retaining aliens not authorized to work in the US.
- If the employer learns that the employee's visa has expired, then the employer is liable for retaining the employee.



Documents


- An employer may rely on certain documents as proof of the right to work.
 - Passport, social security account number card
 - Alien registration card
 - Driver's license or similar document
- Attorney General has broad powers to specify what is acceptable.
- Protections for employee using the documents
 - Employer required to keep copies of documentation for three years or for six months after termination of employment.
- Penalty for an employer disobeying is \$250-2,000 a day.
- Employer is entitled to a hearing at which the employer must show that there was reasonable reliance on the documentation.

Employee Rights

Once hired, ALL workers:

- Have a right to **minimum wage, overtime pay, breaks, and tips.**
- Are eligible for **Worker's Comp** and **disability.**
- Have a right to **refuse unsafe work.**
- Can participate in and organize a **union** or participate in a "concerted effort" to improve working conditions.
- 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, national origin, accent, or appearance.
- **Cannot** collect unemployment.
- *Speak English Only* rules: if employer establishes it is a business necessity.

Enforcement

- An undocumented worker with an employment complaint has a dilemma: if he complains, employer may retaliate by notifying authorities.
 - Retaliation: 2nd offense for the employer (1st is hiring an undocumented person)
 - Illegal (3rd violation) for employer to share employee information with Immigration and Customs Enforcement (ICE).
 - If ICE is informed, it may follow up to arrest and deport the worker.
 - Both employer and undocumented immigrant are in trouble.
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Income Tax and Social Security

- Everyone who earns money in the U.S. is required to file an **income tax return** (**Social Security Number** required for filing).
- Black market for Social Security Numbers and cards.
 - By using a counterfeit SSN, taxpayer exposes himself to liability from both the Social Security Administration and the Internal Revenue Service.
- Solutions:
 - Can obtain an Individual Taxpayer Identification Number (ITIN).
- However:
 - Dependents without Social Security Numbers cannot be claimed.
 - Social Security **withheld under a counterfeit number** goes into the system and is **lost** to the taxpayer.





Mobility-Transportation

- **Air travel:** government-issued photo ID is required to get through the security checkpoint.
 - Driver's licenses, passports, military ID, etc.
- **Train or bus:** easy to use except when near borders, where they could be stopped by immigration authorities.
- **Car:** always at risk for being stopped or being in an accident.

Driver's Licenses

- If you can prove temporary legal presence in the U.S., you can apply at any DMV office.
- In **Colorado** if you cannot prove temporary lawful presence, you must make an appointment at one of three special DMV offices.
- Special Steps:
 - 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).
 - Sign specific affidavits and pass the knowledge and road tests.
 - Pay \$79, compared to \$26 that everyone else pays
 - As a result, countless drivers on the road are untested, unlicensed, and unable to obtain insurance.
- Undocumented License
 - NOT valid for FEDERAL identification purposes.
 - Cannot be held against you to determine your citizenship or immigration status
 - 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.
- No federal legislation
- Supporters, including law enforcement, say that safety is the fundamental issue.
- Opponents say that it amounts to amnesty.

Leaving the Country and Returning

- Travel documents can be issued by the federal government.
- **Illegal immigrant:** you may be denied admission even if issued a travel document.
- **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: immigrants who entered the US without inspection or overstayed their visas and are present in the U.S. with or without their parents.
- 73% of children of undocumented immigrants are U.S. citizens by birth.
 - Increased from 2.7M in 2003 to 4M in 2008.
- Number of unauthorized immigrant children has stayed constant at 1.5M since 2008.
- ~17% of undocumented immigrants are under the age of 18.
- 25% from Latin America
- 12 % from Asia
- California: Asians make up a disproportionate number of undocumented students in colleges and universities.
 - 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.

K-12 Education

Children have the right to an elementary and secondary education regardless of their immigration status.

Plyler v. Doe (457 US 202 [1982])

- Prior to 1975: all Texas students were able to attend public elementary and secondary school: funding based on students enrolled.
- 1975: Texas Education Code amended: ONLY U.S. citizens or lawfully admitted noncitizens counted .
- Under Supt. **James Phylor** Tyler, Texas, began charging \$1,000 annual tuition to all undocumented students.
- 1977: Mexican American Legal Defense and Educ. Fund filed a class action.
- Court found the Texas law violated the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.
- Rejected the state's arguments regarding the cost of educating undocumented children.

To comply with **Plyler**, 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.

Higher Education

- Pew Hispanic Center: ~360,000 undocumented HS graduates ages 18-24 in the US in 2006.
- Each year 5-10% of undocumented HS students (~65,000) are eligible to attend college.
- NO federal law prohibiting admission of undocumented immigrants to U.S. colleges or universities
- NO federal law requiring students to prove citizenship to enter US institutions of higher education.
- Cost of attending college is the primary obstacle facing undocumented students.
- Undocumented students are not eligible for federal aid
- Colorado is one of 18 states where undocumented students pay tuition at the cheaper *in-state* rate.
 - 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.
 - Also eligible for a College Opportunity Fund (COF) stipend: \$75 per credit hour.

DREAM Act

- The Development, Relief and Education for Alien Minors (DREAM) Act: federal bill that would permit states to determine residency for higher education or military purposes.
- Introduced to Senate on August 1, 2001
- Provides a mechanism for undocumented students of good moral character to become legal permanent residents.
- Initially allowed beneficiaries to qualify for federal student aid: changed in 2010.
- 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.
- Age cap of 35.
- Legal status is not granted to anyone for at least two years.
- Many limitations are included,
 - Removal of access to healthcare benefits.
 - Limits to chain migration.
- **Colorado** passed Dream Act in 2013
 - Estimates that in the first three semesters, about 950 students were undocumented immigrants paying instate tuition (<1% total enrollment).

Public Benefits

Immigrants are eligible for five major *safety net* programs:

- • 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.
- Offer significant resources for those with low incomes, (<200% of federal poverty level).
- Benefits are determined by (a) applicant income, (b) household income, (c) pregnancy and having dependents, and (d) applicant's adherence to employment requirements.

Four more programs have program-specific criteria for eligibility:

- • **Social Security benefits:** 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 with incomes too high for Medicaid.
- • **National School Lunch Program** and **Head Start:** determined by household income.

Immigrant as “Public Charge”

- **Public charge:** Someone who is dependent on the government for his/her continued well-being.
- Carry a public charge penalty: Colorado Works (TANF), SSI, and Medicaid for long-term care.
- 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:

- *Citizens* are fully **eligible** as long as they meet the program criteria.
- *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.
- *Foreigners* here temporarily, including work or student visa-holders are ineligible.

Voting

- **Voting rights** throughout the world are almost always tied to **citizenship**.
 - U.S. Federal law **prohibits** voting by non-U.S. citizens in **national** elections.
 - All 50 states **prohibit** voting by non-U.S. citizens in **statewide** elections.
 - Non-U.S. citizens with **permanent resident status** vote in their home country.
 - Most other countries restrict voting to citizens
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- Do noncitizens manage to vote illegally?
 - **No, they do not.**
 - All attempts for a noncitizen to vote in national election have failed
 - Either it was done in ignorance, or the person was put up to it by tricksters.

Historical Considerations

- 1776: no states had a citizenship requirement for voting, only a five-year residency requirement (white males only).
- 1800-1900: immigrants were welcomed.
- 1876: Colorado had no citizenship requirement for voting when it became a state.
- 1902: Colorado law put an end to noncitizen voting.
- 1920s: US noncitizen voting no longer allowed.

Local Laws

A few **local** jurisdictions extend voting rights to noncitizen residents in **local elections** on **specific issues**.

- **Colorado:** No localities allow noncitizen voting.
- **Maryland:** several municipalities in Montgomery County allow residents holding visas and green-cards to vote on issues affecting residents of the town or village.
- **Chicago school system:** allows noncitizens to take part in elected parent advisory councils but not to vote in school board elections.
- **Massachusetts:** four towns have moved to allow noncitizen voting and are awaiting state approval.
- **New York City:** (noncitizens make up 21 percent of the voting-age population) city council is drafting legislation to allow more than 1.3 million legal residents to take part in municipal elections.
- **San Francisco:** city charter now permits noncitizens of 18+ years who have children residing in the San Francisco Unified School District to vote in school board elections.
 - Arguments used **in favor** of the charter amendment: (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.

Related Issues

- **Boulder County:** municipalities disagree on whether noncitizen residents should be eligible to serve on appointed boards.
- **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.
- **City of Lafayette:** Voters 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.

Conclusion

- Current immigration laws are inadequate to handle our country's needs.
- Those favoring restrictions against immigrants have prevented the U.S. Congress from creating a more sensible, compassionate, workable immigration system.
- Rights of legal immigrants are protected by federal law. For those who are undocumented, life is precarious.



LWV Actions

- We have joined in the OneArts Community and with the Boulder County Latino Task Force to learn more about their lives in Boulder County.
- 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.