

IMMIGRANT AND MIGRANT WORKERS RIGHTS

IMMIGRANT RIGHTS

The guarantees of the Bill of Rights apply to all persons, non-citizens as well as citizens and include:

- Freedom of religion, speech, press, and the right of assembly;
- Bars against unreasonable searches and seizures;
- Bars against charges for infamous crimes without an indictment;
- Prohibition of double jeopardy, and self-incrimination;
- The assurance of due process of law in preserving life, liberty, and property;
- The requirement of equal protection of laws;
- The right in criminal cases to a speedy and public trial, an impartial jury, with notice of charges, confrontation of adverse witnesses, the compulsory attendance of supporting witnesses, and the assistance of counsel, and to a trial by jury in civil cases;
- The prohibition against excessive bails and fines;
- Prohibition against cruel and unusual punishments, bills of attainder and ex post facto laws
- The prohibition against slavery and involuntary servitude;
- The guarantee of habeas corpus.

Translation Services and English Only

Federal law requires the government to provide services including health, education, social welfare, job training and translation to crime victims and witnesses in court and administrative proceedings, voting assistance and ballots,

drivers' license exams, and AIDS prevention education in languages other than English. Also, courts must provide non-English speaking criminal defendants with translator services.

A number of states have enacted "English Only" laws that could threaten many of these federal protections. In Tennessee, English has been established by statute as the official and legal language of the state (*T.C.A. § 4-1-404*). However, the law **does not** forbid doing business in any other language.

IMMIGRATION REFORM AND CONTROL ACT (IRCA)

IRCA (1986) created amnesty provisions for undocumented immigrants (illegal aliens) who can prove they have resided continuously in the United States since January 1, 1982.

IRCA created employer sanctions for the hiring and employment of undocumented immigrants.

- Employers have been required to screen newly hired employees for employment verification.
- The **I-9 process** allows an employee to bring in a combination of documents, which the employer reviews.

IMMIGRANT WORKER RIGHTS

General:

Many laws in the workplace protect immigrant workers.

Who is qualified to work?

- **US citizens**
- **Non-citizens** who can work include:

Legal permanent residents, temporary residents under IRCA Amnesty programs, workers with temporary protective status (TPS), temporary agricultural workers, students with part- or full-time work permission, and applicants for legalization or political asylum among



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others. *An immigrant does not need a green card to be authorized to work.*

Wage and Hour Protections:

Federal and state laws (regulating the payment of a minimum wage and overtime compensation) have been broadly interpreted to protect all workers, regardless of whether or not they have proper work authorization. Child labor laws have similarly been applied to all workers.

Workers Compensation:

Undocumented workers can access the Tennessee system of workers' compensation, which covers all persons, including minors, both lawfully and unlawfully employed.

Unemployment Insurance:

UI is generally limited to workers with proper work authorization. A Social Security number is required for the application.

**For more information on the above programs or assistance, check out the Tennessee Department of Labor's website at <http://www.state.tn.us/labor-wfd>
The National Labor Relations Act:**

The Supreme Court recently ruled in Hoffman Plastics Compound v. NLRB (2002) that undocumented workers who are unlawfully retaliated against in violation of the National Labor Relations Act are not eligible to receive back pay. The labor relations law, however, still generally protects workers; at issue in this case were the remedies available to them upon bringing their case to government authorities.

- The National Labor Relations Board intake line (provides assistance in English and Spanish) can be reached at (973) 645-2100.

Health and Safety:

All workers are covered under the federal and state health and safety laws, including the Occupational Safety and Health programs (OSHA).

Discrimination

IRCA prohibits discrimination based on citizenship or immigration status. (Enforced by the Office of Special Counsel for Immigration-Related Unfair Employment Practices, an office within the Department of Justice).

The law prohibits:

- Document abuse discrimination
- Citizenship status discrimination
- Retaliation against a person involved in an IRCA discrimination lawsuit
- National origin discrimination

What is document abuse discrimination?

- IRCA's anti-discrimination provisions limit the actions of an employer in verifying the immigration status of an employee. For example, the employee chooses which documents to bring in for I-9 review (the federal government publishes a list, including Social Security card and drivers' license) so that the employer cannot just demand a "green card."
- Employment verification happens *after* a worker is hired. Workers are not required to demonstrate proof of work authorization in order to apply for a job. Job applicants should not be asked during the job interview about their immigration or citizenship status and employers CANNOT consider national origin or citizenship status when making employment decisions. The above factors cannot be considered in hiring, firing or referrals. Aside from being illegal under the IRCA, it may also be illegal under Title VII (*see Discrimination*).
- After an employee begins working, his/her I-9 (Employment Eligibility Verification) forms must be kept separate from personnel records so that the information cannot influence subsequent employment decisions, like transfers or promotions.
- A discrimination victim does *not* need an attorney to file an IRCA charge, but it may be helpful to



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talk to an attorney or non-profit agency. A friend or relative can file on another's behalf. The charge should be filed within 180 days of the discriminatory act. Use of the government's form is preferred, but not required. The forms are in both Spanish and English. For free information and assistance with the form, write or call (the worker hotline provides services in languages other than English):

- **U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-
Related Unfair Employment Practices**
950 Pennsylvania Avenue, NW
Washington DC, 20530
Phone: (202) 616-5594
Fax: (202) 616-5509
Info Number and Worker Hotline: (800) 255-7688
TDD: (800) 237-2515

The Office of Special Counsel can only represent the interests of employees who are work-authorized (or "documented"), even if the workplace involves a mixed group of undocumented and documented workers who have faced the same discrimination.

MIGRANT WORKERS RIGHTS

Migrant agricultural workers are generally excluded from most social legislation.

- Migrant workers are NOT entitled to the protection of the national labor act, maximum hour, child labor and fair standards laws.
- Migrant workers are NOT eligible for unemployment benefits and are discriminated against under social security laws.
- The Social Security Act is one piece of major legislation that does *not* explicitly exclude migrant farm workers; however, farm work by foreign workers lawfully admitted to this country on a temporary basis are not covered by Social Security.

Some agricultural workers are denied benefits due to eligibility requirements despite the fact that Social Security was deducted from their pay, often because their employers have not credited their work to them. Most migrant

workers are also denied collective bargaining protections of the National Labor Relations Act and worker's compensation laws. Nevertheless, migrant agricultural workers have some rights:

- Migrant workers have a constitutional right to access the outside world, and crew chiefs cannot refuse to permit those who want to help or visit migrant workers from coming to the migrant labor camp. The Supreme Court has established a right of access to privately owned migrant camps for the purpose of visiting migrant workers to inform them of their rights.
- Migrant workers on large farms (those employing at least 500 man-days in the previous year) have some wage protection under the Fair Labor Standards Act. Report any suspected violations to a local office of the U.S. Department of Labor. Some states have also enacted state agricultural minimum wages that apply to migrant workers.

Many migrants are recruited through federal systems and have a work order that sets out the terms and conditions of employment. Deviations from or violations of the work order may give the migrant worker a right to bring a federal suit for damages.

Any farmer who falls under coverage of the Fair Labor Standards Act must keep detailed payroll information, and migrant workers are entitled to written statements of wages and deductions. It is **improper** for crew chiefs to make additional deductions for food, rent and other debits before distributing the net wages to workers. Workers should not have social security deducted if they do not have social security numbers.

Migrant workers are entitled to decent housing while in a migrant camp, including draining and sewage disposal, adequate water supply, flooring, screened windows, electricity, and heat. Complaints about inadequate housing should be directed to the local health department, with a demand for investigation and written report of findings. Migrant workers then may have standing to file suit in federal court for violations of federal standards.

To the extent that migrant camp operators are licensed, and as such, instruments of government, migrant workers may have a cause of action under 42 U.S.C. sec. 1983 of the



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Civil Rights Act for acts of retaliation incurred for attempting to exercise their rights.

remains part of the Department of Justice, *not* the DHS).

DEPARTMENT OF HOMELAND SECURITY (DHS)

On November 25, 2002, President George W. Bush signed the Homeland Security Act of 2002 (HSA), which, among other things, created a cabinet level **Department of Homeland Security (DHS)** with nearly 170,000 employees. The HSA became effective 60 days after enactment, that is, on January 24, 2003. It is headed by former Governor Tom Ridge of Pennsylvania.

The stated mission of the new DHS is to “prevent terrorist attacks within the U.S., reduce America’s vulnerability to terrorism, and minimize damage from potential attacks and natural disasters.” Under the HSA, over twenty federal agencies were transferred to the new DHS, among them, the Immigration and Naturalization Service (INS). *Therefore, effective March 1, 2003, the INS ceased to exist and all its functions were taken over by the DHS.*

Within the DHS, 3 separate bureaus deal with immigration functions:

- **Bureau of Citizenship and Immigration Services (BCIS):**
 - Handles adjudications of various petitions, oversees the various “service centers,” and asylum processing. Also provides info on immigration law, immigration statistics, and immigration forms.
- **Bureau of Immigration and Customs Enforcement (BICE):**
 - Focuses on homeland security, inspection and investigation functions. It’s the “enforcement” arm of the former INS and it has also taken over litigation duties. Therefore, the former INS Office of General Counsel and the former INS Offices of District Counsel (“Trial Attorneys”) are now part of BICE and now represent the DHS in removal proceedings before the Executive Office for Immigration Review (which itself still

- **Bureau of Customs and Border Protection (BCBP):**

- Focuses on movement of goods and people through U.S. borders. It takes over the functions of Border Patrol and Customs Service.

DETENTION AND REMOVAL PROCEEDINGS

The Immigration and Nationality Act allows immigration officials to question any person they believe to be undocumented. It also allows INS agency to search, arrest and initiate removal proceedings (formerly called deportation) against such a person.

At US borders, traditional Fourth Amendment protections are more limited: for instance, agents can search vehicles without a warrant or fact-based suspicion that the occupants are undocumented aliens.

The 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) changed the process by which “removal” proceedings occur and are reviewed. Judicial review is very limited.

Expedited Removal of Immigrants at Points of Entry

IIRAIRA created a new expedited removal process at all U.S. points of entry, including airports. Under this expedited process, persons attempting to enter the U.S. with fraudulent documents, no documents, or suspected “misrepresentation” can be summarily removed from the U.S. by immigration officials at the port of entry. The decision of the inspector is only reviewed by his or her supervisor.

This policy has led to the denial of fleeing refugees as they arrive in the United States; refugees are not even allowed to apply for asylum unless they persuade a low-level immigration officer in an on-the-spot proceeding of the validity of their claim for refugee protection.



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Limited Judicial Review

Under IIRAIRA, nearly all discretionary decisions affording relief to eligible individuals are no longer reviewable by a court.

Bars to Admissibility/Re-entry

- A person subjected to expedited removal can be barred by the INS officer from reentering the U.S. for a minimum of five years, and possibly permanently. This decision is non-reviewable.
- Anyone who tries to “enter” the U.S. who has been unlawfully present in the U.S. for more than 180 days (that is, six months beyond the period of stay authorized on his or her I-94 card) but less than one year will be barred from reentering the U.S. for three years.
- Anyone who has been unlawfully present in the United States for a year or longer (that is, a year past the period of authorized stay that is stamped on his or her I-94 card) will be barred from reentering the United States for ten years.

“Aggravated Felonies” and Criminal Alien Deportation

Immigrants convicted of a crime broadly defined by immigration law as an “aggravated felony” are deportable without being able to apply for discretionary relief.

- “Aggravated felonies” include but are not limited to: murder, drug trafficking and firearms trafficking.
- Under IIRAIRA, the category of crimes considered to be “aggravated felonies” was drastically expanded to include many non-violent offenses, including, but not limited to theft or burglary, fraud, and most controlled substance offenses.
- The Supreme Court held in Calcano-Martinez v. INS and INS v. St. Cyr (2001) that the application of this expanded power of deportation is not retroactive. Detainees who may qualify for relief under this ruling can access information sheets through the ACLU Immigrants’ Rights Project.

Mandatory and Indefinite Detention

IIRAIRA also mandates that all immigrants facing removal for minor criminal offenses are to be detained *without bail* while waiting for the determination of the final order of deportation.

- Several district courts and the United States Court of Appeals for the Third Circuit, in Patel v. Zemski (2001) held that mandatory detention provisions are unconstitutional under the Fifth Amendment and ordered that detainees be granted bond hearings. However, those decisions were overruled in May of 2003 by the U.S. Supreme Court in Demore v. Kim, and consequently, mandatory detention continues to be in effect.

The passage of the 1996 laws led to the jailing of thousands of people whom the government was unable to return to their countries of nationality, including Vietnamese, Cubans, and persons from other countries with which the United States has no diplomatic relations or which refuse to accept the return of their nationals. Consequently, immigrants from these countries have languished in immigration detention for years, with no hope of release.

- The Supreme Court, in Zadvydas v. Davis (2001), limited the post-removal-period confinement of a deportable alien to a period reasonably necessary to effectuate that alien’s removal from the United States. The application of this limitation was also found to be fully reviewable by federal courts. Procedures for reviewing these detention cases and advocacy information are available through the ACLU Immigrants Rights Project.

Cancellation of Removal or “Suspension of Deportation”

Under IIRAIRA an immigrant can apply for “suspension of deportation”, but must show that he/she has been in the U.S. for at least ten years and that his/her removal would result in “exceptional and extremely unusual hardship” to a U.S. citizen or lawful permanent resident family member - hardship to the applicant is no longer sufficient.



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In general, most immigrants facing deportation are entitled to:

- A hearing before an immigration judge and review by federal court;
- Representation by a lawyer (but not at government expense);
- Reasonable notice of charges, and the time and place of a hearing;
- Reasonable opportunity to examine the evidence against him/her and the government's witnesses;
- Competent interpretation for non-English speaking immigrants;
- Clear and convincing proof that the government's grounds for deportation are valid.

USA-PATRIOT ACT AND EXPANDED POWERS OF DETENTION

Indefinite detention and Charges

On October 26, 2001, President George W. Bush signed into law Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act).

The USA-PATRIOT Act permits indefinite detention of immigrants and other non-citizens, despite the Supreme Court's recent holding against such a law.

Section 412 of the Act provides for the certification of aliens suspected of terrorist involvement and for their mandatory detention until removal from the U.S. Under this section, the Attorney General may certify an alien if he has "reasonable grounds to believe" that the alien falls under any of the security-based grounds for deportation in the Immigration and Nationality Act, or that the alien otherwise endangers U.S. national security.

The Attorney General *must* take into custody any certified alien—the detention it triggers is mandatory. Within seven days of detaining an immigrant, the Attorney General must place the alien in removal proceedings or charge him or her with a criminal offense. If no immigration or criminal charges are filed, the alien must be released. For

individuals whose removal has not occurred within the 90 day period allotted and whose removal is "unlikely in the reasonably foreseeable future," continued detention is authorized for additional six-month increments if the Attorney General believes that "the release of the alien will threaten the national security of the United States, or the safety of the community or any person."

"Terrorist Organization" Designation

The USA-PATRIOT Act also permits the detention of persons assisting organizations found to be or initially designated as terrorist organizations. One needs to prove that he/she did not know, and should not have known, that his/her assistance would further "terrorist activity." Since 2001, the law includes foreign and domestic organizations as well as a broad definition of terrorist activity.

Finally, many procedural issues that have either arisen since or become more commonplace since September 11, 2001 include: the use of "secret evidence" in immigration hearings, the continued detention of immigrants pending "FBI clearance," and profiling of immigrant groups for detention and questioning.

RESOURCES – NATIONAL AND STATE

ACLU-TN provides the following list of resources for informational purposes only. ACLU-TN does not endorse any of the organizations listed.

National Organizations

ACLU Immigrants Rights Project

*125 Broad Street, 18th Floor
New York, New York 10004-2400*

The Immigrants' Rights Project is a national project of the American Civil Liberties Union Foundation that carries on the ACLU's historic commitment to protect the rights and liberties of non-citizens through strategic litigation, advocacy and public education. The Project conducts the largest litigation program in the country dedicated to defending and expanding the constitutional and civil rights of non-citizens.



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**American Friends Service Committee
Immigrant Rights Program**

National Office:

1501 Cherry Street
Philadelphia, PA 19102
Phone: 215-241-7124
Fax: 215-241-7119

Southeast Regional Office:

92 Piedmont Avenue, N.E.
Atlanta, GA 30303
Phone: (404) 586-0460
Fax: 404-525-4728

The program advocates for workers who have experienced abuse or discrimination. It provides legal counseling and representation to low-income immigrants, and monitors instances of denial of rights or benefits by state and federal agencies. It conducts educational meetings on immigration law and immigrant's right issues (deportation laws, labor laws, visas/green cards), promotes conciliation between newcomers and established residents in communities and promotes community organizing and leadership development.

Asian American Legal Defense and Education Fund

99 Hudson Street, 12th floor
New York, New York 10013
Phone: 212-966-5932
Fax: 212-966-4303
info@aaldef.org
https://www.aaldef.org

National organization serving to protect the civil rights of Asian Americans through litigation and advocacy and education programs.

Catholic Legal Immigration Network, Inc.

415 Michigan Avenue, Suite 150
Washington DC, 20017
Phone: (202) 635-2556
Fax: (202) 635-2649
www.cliniclegal.org

Provides a wide range of services for immigrants. These services include help for citizenship, family reunification, asylum, and for refugees.

National Immigration Law Center:

3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010
Phone: (213) 639-3900
Fax: (213) 639-3911
Email: info@nilc.org
http://www.nilc.org

Dedicated to protecting the rights of low-income immigrants. Provides legal advice and assistance in the field of immigration law. Services are provided for family petitions (to obtain permanent residency for a relative), labor certification (to obtain permanent residency based on employment), political asylum, deportation, and immigration court representation.

**Puerto Rican Legal Defense and Education Fund
(PRLDEF)**

99 Hudson Street
14th Floor
New York, NY 10013-2815
Phone: 212.219.3360 or 800.328.2322
Fax number: 212.431.4276
E-Mail: info@latinojustice.org

United Nations High Commission for Refugees

(based in Geneva, Switzerland)
Case Postale 2500
CH-1211 Genève 2 Dépôt
Suisse
Phone: 41-22- 739- 8111
http://www.unhcr.org/cgi-bin/texis/vtx/home
Protects and works for well-being of refugees. Helps them to either return home or resettle in another country.

State Organizations

Catholic Dioceses of Nashville (Serving Middle TN)

2400 Twenty-first Avenue, South
Nashville, Tennessee 37212-5387
Phone: 615-383-6393
Fax: 615-292-8411



P.O. Box 120160, Nashville, TN 37212
Tel: 615.320.7142

Catholic Dioceses of Knoxville (Serving Eastern TN)

PO Box 11127
Knoxville, TN 37939
Phone: 865-584-3307
Fax: 865-584-7538
office fax: 865-584-8124
Office Hours: 9 a.m. – 5 p.m.
Monday through Friday

Catholic Dioceses of Memphis (Serving Western TN)

The Catholic Center
5825 Shelby Oaks Drive
Memphis, Tennessee 38134-7316
(901) 373-1200
Fax: (901) 373-1269

Conexión Américas

800 18th Avenue South, Suite A
Nashville, TN 37203
Tel: (615) 320-5152
Fax: (615) 320-9845
Promotes the social, economic, and civic advancement of Latino families in Middle Tennessee.

Kurdish Human Rights Watch

2805 Foster Avenue, Suite 207
Nashville, TN 37210
Phone: 615-331-1956
Fax: 615-331-1946
<http://www.khrw.com/nashville>
Assists refugees in transitioning to life in the U.S.
Provides employment services, interpretation and social services, Vocational English as a Second Language classes, immigration counseling, housing assistance, and youth programs.

Latino Memphis

2838 Hickory Hill Rd #B25
Memphis TN 38115
Phone: 901-366-5882
Provides support for the Latino/Hispanic community in Memphis, Shelby County, and the Mid-South. Provides info, resources, assistance in applying for social services, and advocacy.

MALDEF (Mexican American Legion Defense & Education Fund) Southeast Regional Office

34 Peachtree St. NW Suite #2500
Atlanta, GA 30303
Phone: (678) 559-1071

Southern Migrant Legal Services

311 Plus Park Blvd, Suite 135
Nashville, TN 37217
Phone: (615) 750-1200 or (866) 721-7828
Fax: (615) 399-3349
<http://www.trla.org/office/?of=60>
Provides free legal services to migrant and seasonal farm workers including help with immigration, housing, and employment issues.

Southern Poverty Law Center

400 Washington Ave.
Montgomery, AL 36104
Phone: (334) 956-8200
<http://www.splcenter.org>
Works to fight discrimination and provides legal services for immigrants and migrants.

Sudanese Community and Women's Service Center

3221 Nolensville Pike, Suite 103
Nashville, TN 37211
Phone: (615) 315-9681
<http://sudanesecenter.org>
Provides assistance and services to help with the transition to living in the U.S. Programs include English and ESL classes, translation services, domestic violence education, computer training, transportation services, parenting education, cultural activities, and focus group meetings for women.

Tennessee Immigrant and Refugee Rights Coalition

442 Metroplex Drive, Building D, Suite 118
Nashville, TN 37211
Phone: (615) 833-0384
Fax: (615) 833-0387
mail@tnimmigrant.org
<http://www.tnimmigrant.org/index.php>
Dedicated to advocating for the rights of immigrants and refugees. Informs immigrant and refugee communities of their rights through advocacy, education and legislative lobbying.



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Tennessee Justice for Our Neighbors

Phone: 615-823-1945

Email: tnjfon@comcast.net

Provides immigration legal services to low-income individuals free of charge and also engages in advocacy in support of immigrant rights. For an appointment, please call or send an e-mail message.

Tennessee Migrant Head Start Program

6424 Baum Drive

Knoxville 37919

Phone: 865-212-4011 ext. 16

Fax: 865-212-3631

Provides early childhood education, parenting education, social services, and health services for migrant families.

UT Pro Bono Immigrant Assistance Project

1505 W. Cumberland Ave.

Knoxville, Tennessee 37996-1810

Phone: 865-974-9799

Fax: 865-974-9428

Provides assistance for those who can't obtain legal services due to immigration status and/or the language barrier.



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