



During the oftentimes contentious debate on immigration, misconceptions, assumptions, and misunderstandings have evolved into “truths.” These so-called truths have then been disseminated at lightning speed in our 24-hour access to news outlets and social media. Immigration law is innately confusing without adding any speculation. This article seeks to help navigate the immigration maze by supplanting some of the commonly propagated “truths” with the facts.

1. If you are married to a U.S. citizen or have a U.S. citizen child, you may easily obtain lawful permanent residence. (FICTION)

Here’s the Fact: Even marriage to a U.S. citizen requires an application be filed, and the immigrant’s past affects options. A child born on U.S. soil is automatically a U.S. citizen. However, an undocumented immigrant having a child in the U.S. will unlikely help the immigrant become a U.S. citizen due to several barriers that these parents face. Immigration judges will not allow immigrant parents to remain in the U.S. just because their children are U.S. citizens. Immigration and Customs Enforcement, or ICE, issued more than 200,000 deportation orders between 2010 and 2012 for parents who reported having U.S. citizen children.¹ Further, the U.S. citizen child cannot sponsor his or her immigrant parent for a green card until the child turns 21, and if the immigrant parent entered the U.S. without permission, he or she would have to leave the U.S. and attend an interview at the U.S. consulate in his or her home country.² Depending on a person’s immigration history, once outside of the U.S., the immigrant will likely be barred from re-entering the U.S. for three or 10 years, for having previously been in the

country unlawfully. The secretary of Homeland Security may waive the bars to admission in certain circumstances but that is difficult to achieve. To be granted a waiver, the immigrant parent has to demonstrate “extreme hardship” to a U.S. citizen or lawful permanent resident, or LPR, spouse or parent. “Extreme hardship” is a high standard and hardship to the immigrant parent or the U.S. citizen child is not a factor that is considered. If the undocumented immigrant parent does not have a U.S. citizen or LPR spouse or parent, then he or she is not eligible for the waiver.

2. Undocumented immigrants who have lived in the U.S. for 10 years can apply for lawful permanent residence. (FICTION)

Here’s the Fact: An undocumented immigrant may not qualify for lawful permanent residence solely based on living in the U.S. for 10 years. However, in deportation proceedings, the immigrant may qualify for cancellation of removal and obtain lawful permanent residence if he or she has maintained continuous physical presence in the U.S. for no less than 10 years (before the notice to appear is served on the person), is a person of good moral character for 10 years (the period of time for good moral character continues until the judge’s final decision), has not been convicted of certain offenses (aggravated felony, false claim to U.S. citizenship, and an offense relating to controlled substances, among others), and demonstrates that removal would result in exceptional and extremely unusual hardship to the U.S. citizen or LPR spouse, parent, or child. The court considers factors such as age; health; special needs; length of residence; family and community ties in the U.S. and the home country; circumstances in the

home country, including standard of living, way of life, languages spoken, and work opportunities; and the unavailability of alternative methods for immigrating when deciding whether to grant a cancellation of removal.³ The qualifying relative must exist at the time of the non-LPR cancellation adjudication and the immigrant must prove he or she is deserving of a favorable exercise of discretion.⁴ Cancellation of removal relief is only available to an immigrant in removal proceedings in immigration court. Otherwise, an immigrant cannot apply for cancellation of removal even if he or she meets all other criteria as there is no affirmative application.

3. Undocumented immigrants and lawful permanent residents are subject to the same eligibility criteria and qualify for the same public benefits as U.S. citizens. (FICTION)

Here's the Fact: Undocumented immigrants are ineligible for most federal public benefits, including means-tested benefits such as the Supplemental Nutrition Assistance Program, or SNAP; regular Medicaid; Supplemental Security Income, or SSI; Temporary Assistance for Needy Families, or TANF; and health care subsidies under the Affordable Care Act, or ACA. Immigrants granted Deferred Action for Child Arrivals are also ineligible for Medicaid; the Children's Health Insurance Program, or CHIP; and ACA benefits.⁵ However, undocumented immigrants may be eligible for public health, emergency services, and programs identified by the attorney general as necessary for the protection of life and safety, including emergency hospital treatment, emergency Medicaid, and health care and nutrition programs under the Special Supplemental Nutrition Program for Women, Infants, and Children, or WIC.⁶

LPRs are eligible for some federal public benefits but only after meeting criteria not required of U.S. citizens. LPRs must meet the five-year bar, which requires them to have maintained LPR status in the U.S. for five years or, for some federal benefit programs, have worked 40 quarters under a visa. Once the criteria is met, LPRs may be eligible for public benefits including Medicaid, CHIP, TANF, SNAP, SSI, Medicare,⁷ and Public/"Section 8" Housing. However, in order to be eligible for Social Security benefits for both retirement and disability, permanent residents are required to have maintained lawful permanent status for five years and completed 40 quarters of work.⁸ Thus, the majority of public assistance programs require proof of lawful immigration status in order to qualify, and LPRs cannot receive benefits until they have been in the U.S. for more than five years with limited exceptions such as a military connection.

4. Undocumented immigrants do not pay taxes and have criminal records. (FICTION)

Here's the Fact: Federal law requires all workers to file income tax returns, including undocumented immigrants in the U.S. Many undocumented immigrants pay taxes⁹ in hopes that it will help them become LPRs should comprehensive immigration reform provide a pathway to citizenship for these individuals. Although some undocumented immigrants are not eligible for a Social Security number, they may apply for an Individual Tax Identification Number, or ITIN. The

ITIN is a tax processing number issued by the IRS to ensure that everyone, including undocumented immigrants, pays taxes even if they do not have a Social Security number and regardless of their immigration status.¹⁰

Several studies have shown that illegal immigration does not increase violent crime.¹¹ One study published in the peer-reviewed journal *Criminology* found that increased undocumented immigration did not lead to increased violent crime between 1990 and 2014.¹² In another study, by the Cato Institute, researchers found that criminal conviction and arrest rates in Texas for undocumented immigrants were lower than those of native-born Americans for murder, sexual assault, and larceny.¹³ In the United Kingdom-based journal *Migration Letters*, researchers also found that young undocumented immigrants engage in less crime than U.S.-born peers or legal immigrants.¹⁴

5. Immigrants who cross the border to seek asylum are breaking the law. (FICTION)

Here's the Fact: The Convention Relating to the Status of Refugees and its one amendment, the Protocol Relating to the Status of Refugees, provide the foundation of international refugee and asylum law.¹⁵ The U.S. ratified this international treaty in 1968, but it did not enact any specific statutory measures until 1980 when it adopted the treaty's definition of refugee in the Refugee Act of 1980 in an effort to bring the U.S. into compliance with its legal obligations under the protocol.¹⁶ The Refugee Act was codified in the Immigration and Nationality Act, or INA, the basic framework of U.S. immigration law.¹⁷ Pursuant to the Refugee Act, the INA authorized the granting of asylum to individuals who are physically present or arriving in the U.S., regardless of their immigration status, and who meet the definition of refugee.¹⁸ A refugee is defined as:

[A]ny person who is outside any country of such person's nationality ... and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.¹⁹

In essence, anyone arriving at a U.S. border or who is within the U.S. has a right under the law to apply for asylum. The asylum seeker does not have to seek asylum at a designated port of entry nor does the asylum seeker need to have any type of immigration status.

The immigration law discussion is never-ending and ever-evolving. Often, proponents for either side of the debate contribute to the dissemination of fiction masked as truth. Frequent court decisions, changes in law, policy announcements, and executive orders further make it difficult to get a thorough grasp of the current state of immigration law. Going straight to the source and consulting a qualified immigration attorney is highly advised in order to help immigrants navigate their way through the complex maze that is immigration law. **TBJ**

Notes

1. *Fact Sheet: U.S. Citizen Children Impacted by Immigration Enforcement*, American Immigration Council (May 23, 2018), available at <https://americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement>.
2. The parent is not eligible to apply for adjustment of status in the U.S. because he or she was not admitted or paroled into the U.S.
3. *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001); *Matter of Andazola-Rivas*, 23 I&N Dec. 319 (BIA 2002); and *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002).
4. Cancellation of removal for Non Permanent Residents under INA § 240A(b)(1).
5. *Chart of Immigrant Eligibility for Federal Programs*, National Conference of State Legislatures (Feb. 24, 2014), available at <http://www.ncsl.org/research/immigration/immigrant-eligibility-for-federal-programs.aspx>.
6. *Fact Sheet: Immigrants and Public Benefits*, National Immigration Forum (Aug. 21, 2018), available at <https://immigrationforum.org/article/fact-sheet-immigrants-and-public-benefits/>.
7. *Id.*
8. Alison Siskin, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*, Congressional Research Service, at 11 (Dec. 12, 2016), available at <https://fas.org/sgp/crs/misc/RL33809.pdf>.
9. Lisa Christensen Gee et al., *Undocumented Immigrants' State & Local Tax Contributions*, Institute on Taxation & Economic Policy (updated March 2017), available at <https://itep.org/wp-content/uploads/ITEP-2017-Undocumented-Immigrants-State-and-Local-Contributions.pdf>.
10. *The Facts About the Individual Tax Identification Number (ITIN)*, American Immigration Council (2018), available at <https://www.americanimmigrationcouncil.org/research/facts-about-individual-tax-identification-number-itin>.
11. John Burnett, *Illegal Immigration Does Not Increase Violent Crime, 4 Studies Show*, NPR (May 2, 2018), available at <https://www.npr.org/2018/05/02/607652253/studies-say-illegal-immigration-does-not-increase-violent-crime>.
12. Michael T. Light and Ty Miller, *Does Undocumented Immigration Increase Violent Crime?*, 56 *Criminology* 2 (2018).
13. Alex Nowrasteh, *Criminal Immigrants in Texas: Illegal Immigrant Conviction and Arrest Rates for Homicide, Sexual Assault, and Other Crimes*, Cato Institute (Feb.

26, 2018), available at <https://www.cato.org/publications/immigration-research-policy-brief/criminal-immigrants-texas-illegal-immigrant>.

14. Bianca E. Bersani et al., *Migration Letters, Investigating the Offending Histories of Undocumented Immigrants*, Migration Letters (2017), available at <https://sites01.lsu.edu/faculty/pfricklab/wp-content/uploads/sites/100/2018/04/ML-2018-Bersani-et-al-Offending-histories-of-undocumented-immigrants.pdf>. Note that this study relies on self-reported instances of committing crimes prior to and following a person's first arrest and also looks at rates of chances of rearrest.
15. Kate Jastram and Marilyn Achiron, *Refugee Protection: A Guide to International Refugee Law*, UNCHR Inter-Parliamentary Union, at 8 (2001), http://archive.ipu.org/pdf/publications/refugee_en.pdf.
16. Stephen Yale-Loehr and Ron Wada et al., *Immigration Law and Procedure* § 33.01.
17. 8 U.S.C. § 1522 (2012).
18. Immigration and Nationality Act § 208(a)(1), (b)(1)(A).
19. *Id.* at § 101(a)(42)(A).



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