

Immigration

Utah Citizens' Counsel Dignity and Respect for Human Beings Committee

Article 1: All Utahns, regardless of race, color, ethnicity, religion, gender and gender identity, language, disability, political preference, age, birth status, military status, or other status, are entitled equally to dignity and respect as human beings and to equitable treatment under the law.

Introduction

Although Article 1 encompasses many topics, how to deal with undocumented immigrants in the United States has become an inflammatory issue in the looming presidential campaign. Focusing on the status and treatment of immigrants, therefore, seems particularly timely. Undocumented immigrants are at a heightened risk of mistreatment. Their vulnerability is a human rights issue for all Utahns. Thus, part of this report also focuses on recent state legislation.

Federal immigration laws have not been significantly updated in more than twenty years. Family members left behind have long waits to reunite, necessary workers find few channels for legal immigration, and millions of the undocumented live in the shadows, subject to fear and exploitation. Individuals committing abuses against immigrants know that they are unlikely to be held accountable because the undocumented are often reluctant to turn to authorities, fearing the possibility of arrest or deportation.

The number of unauthorized¹ immigrants in the United States has stabilized in recent years after decades of rapid growth. The number peaked in 2007 at 12.2 million when this group was 4% of the U.S. population. Mexicans made up about half of all unauthorized immigrants (52%), though their numbers have been declining.² There were 11.3 million unauthorized immigrants in the U.S. in 2014, a number that has essentially remained stable for five years and currently makes up 3.5% of the nation's population. Utah's unauthorized immigrant population numbers are estimated to be 110,000 with unauthorized workers comprising 5.4% of Utah's workforce.³

Background

Utah's booming economy was a magnet for undocumented workers during the heavy highway and housing construction in the years leading to the 2002 Olympics. The undocumented population rose as family members joined established workers. Between 2008 and 2012, anti-immigrant bills proliferated in the Utah Legislature, and the subject became divisive. Those calling for deportations cited the cost of education and health care, although undocumented workers paid \$102 million in Utah state and local taxes in 2010; they also paid \$76 million in sales taxes from purchases at stores and businesses in Utah.⁴

The Utah Compact (see Appendix 1) laid a foundation for a different conversation about immigrants. With that foundation, policy discussion became somewhat easier. Signed in 2010 by

church, business, foundation, law enforcement, and community leaders, the Compact sought to cool debates that had grown increasingly heated. It also has become a model for other states.

Utah Citizens' Counsel members supported and signed the Utah Compact. UCC also wrote a letter to Governor Gary Herbert on July 22, 2010, requesting an appropriate response to the breach of security regarding a list of purportedly undocumented persons by two employees of the Department of Workforce Services.

Utah Legislative Actions

Acknowledging that unauthorized immigrants were driving without licenses and thus were not able to carry automobile insurance, Utah established a Driving Privilege Card (DPC) in 2005. The DPC is issued to applicants who are (1) unable to establish legal presence in the U.S. and (2) ineligible for a social security number. Modifications were made in 2010 to comply with the federal passage of the Real ID Act. Presently, DPCs have the following conditions in addition to all the steps for citizen drivers:

- The applicant must prove Utah residency.
- A valid DPC will allow driving legally in Utah, but it cannot be used as a proof of identification by a government entity.
- A DPC expires on the holder's birthday in the first year following the issue date.
- A fingerprint card and photograph from a local agency (\$25) are also required.⁵

Utah issued 35,332 DPCs in 2014. The numbers reached 43,000 in 2008 before the recession hit and immigration slowed.⁶ Twelve states and the District of Columbia have now enacted laws to allow the undocumented to obtain a type of driver's license.⁷

The Utah Legislature passed HB144, Non-Resident Tuition Waiver, in 2002. Dubbed the Utah Dream Act, this bill allows qualifying students to attend Utah public universities and colleges by paying in-state tuition. Although these students do not have Utah resident status, they can qualify for the tuition waiver. They must provide an affidavit that they attended a Utah high school for three years, graduated or have a GED, and promise to file an application to legalize their immigration status as soon as they are eligible.⁸

Eighteen states allow unauthorized immigrants to attend a public college at the same in-state tuition rate that legal residents and American citizens pay. Only a few, like California, allow these students to apply for financial aid.⁹ Even privately funded tuition scholarships for undocumented students could not be processed through Utah public colleges and universities until 2015 legislative action.¹⁰

Detention and Deportation: Recent Federal Executive Branch Action

Entering or remaining in the U.S. without authorization is a civil violation, not a crime. The Department of Homeland Security (DHS) has broad discretion to apprehend individuals it

suspects of immigration violations. On average, 33,400 individuals are detained on any given day.¹¹ U.S. Immigration and Customs Enforcement (ICE) operates a detention center at the Utah County Jail in Spanish Fork, Utah, but there is no public information about the number of inmates. In a telephone call to the jail on October 14, 2015, the number of detained persons was reported as 156.¹²

DHS asserts that Congress has directed ICE to fill every detention bed each day for which Congress has appropriated funds. Certain committee report language is interpreted as setting up this daily quota (34,000 for fiscal year 2013). About 50% of ICE detention beds are currently private, creating an incentive for private prison corporations to lobby for the laws and policies that lead to more immigrants being incarcerated.¹³ Private prisons are not subject to the same Freedom of Information laws as public prisons. Carefully documented evidence by the National Immigration Law Center reveals a bleak picture of the conditions detained immigrants face.¹⁴

Deportations are another way of dealing with unauthorized immigrants. President Barack Obama has overseen the removal of more than 2.4 million immigrants since taking office. These expulsions have removed some people who had committed violent crimes, but they also have expelled economic migrants, some of whom have been working in the U.S. for decades. Many families have been split apart. In the two years prior to September 2012, 205,000 parents were deported.¹⁵

After a decade of rising deportations, fewer have taken place during the past 12 months (fiscal year 2015) than at any time since 2006. The overall total of 236,000 deportations generally does not include Mexicans who were caught at the border and quickly turned away by the U.S. Border Patrol. The figure does include roughly 136,700 convicted criminals who were deported.¹⁶

On November 20, 2014, President Obama issued an Executive Action on Immigration. It would allow almost half of the unauthorized immigrants in the U.S. to apply for relief from deportation and for work authorization. It would not grant citizenship. The President's action was the most significant protection from deportation since 1986, when Congress passed a law allowing 3.7 million unauthorized immigrants to obtain green cards.¹⁷

The Executive Action is on hold because of a Texas lawsuit joined by 25 other states, including Utah, to stop the move. Utah Attorney General Sean Reyes asserts that President Obama's unilateral action bypassed Congress, exceeding his executive authority and failing to comply with statutory requirements. "We did not join this lawsuit to address immigration policy. Whether you agree or disagree with some, all or none of the President's proposal is not the point. The process of how President Obama overstepped his legal authority is what is being challenged," said Attorney General Reyes.¹⁸

Advocates and advocacy organizations across the country filed an amicus or "friend of the court" brief to make sure the court takes other important factors into account. Under the President's Executive Order, "[u]p to 4.7 million could qualify for either the Deferred Action for Parents of Americans (DAPA) or the Deferred Action for Childhood Arrivals (DACA) programs, which economists agree would improve our nation's economy. When the nation's workers have good

work authorization, they can earn higher wages and therefore have more money to spend in local economies.”¹⁹

Tax rolls should also grow. "Estimates vary, but experts agree that even modestly successful enrollment in the DAPA or DACA programs would add more than \$2 billion in taxes over the next two years.”²⁰ Allowing immigrant workers to apply for work authorization helps level the playing field for everyone. Employers who play by the rules will no longer be undercut by bad-apple employers who exploit immigrant workers.

On November 9, the U.S. Court of Appeals for the Fifth Circuit decided to keep the injunction in place that has prevented the program from taking effect. The Obama administration announced the following day that it plans to appeal to the Supreme Court with the hope that the Court will accept the case and will rule in favor of the Executive Action before the end of the President's term.²¹ “Civil rights groups are confident that the sound legal, economic, and societal reasons for protecting the President’s announced Executive Action will allow these important programs to begin to fix part of our deeply dysfunctional immigration system.”²²

Commendations

- Utah’s **pioneer legislation to allow unauthorized immigrants to drive legally.**
- The so-called “**Utah Dream Act,**” which permitted qualified, undocumented students to pay in-state tuition at public universities and colleges, potentially benefitting Utah with more highly educated residents and future increased tax revenue.
- The Utah Legislature’s **2015 passage of Senate Bill 253--Exceptions for Privately Funded Scholarships.** The bill allows an individual who is a graduate of a Utah high school to receive a privately funded scholarship without verifying lawful presence.
- The **absence of any anti-immigrant laws** in the last three legislative sessions, perhaps an acknowledgement that immigration is essentially a federal issue.

Recommendations

- The **Utah Attorney General should withdraw from the DAPA lawsuit,** which has prevented implementation of the President’s Executive Action on Immigration. UCC believes that the argument against the President’s action is largely political.
- **Utah’s congressional delegation should support federal action on comprehensive immigration reform.**
- UCC urges continuing **dissemination of the Utah Compact** to broaden its support and help reduce human rights abuses in Utah.

Appendix 1

THE UTAH COMPACT

A declaration of five principles to guide Utah's immigration discussion

FEDERAL SOLUTIONS Immigration is a federal policy issue between the U.S. government and other countries--not Utah and other countries. We urge Utah's congressional delegation, and others, to lead efforts to strengthen federal laws and protect our national borders. We urge state leaders to adopt reasonable policies addressing immigrants in Utah.

LAW ENFORCEMENT We respect the rule of law and support law enforcement's professional judgment and discretion. Local law enforcement resources should focus on criminal activities, not civil violations of federal code.

FAMILIES Strong families are the foundation of successful communities. We oppose policies that unnecessarily separate families. We champion policies that support families and improve the health, education and well-being of all Utah children.

ECONOMY Utah is best served by a free-market philosophy that maximizes individual freedom and opportunity. We acknowledge the economic role immigrants play as workers and taxpayers. Utah's immigration policies must reaffirm our global reputation as a welcoming and business-friendly state.

A FREE SOCIETY Immigrants are integrated into communities across Utah. We must adopt a humane approach to this reality, reflecting our unique culture, history and spirit of inclusion. The way we treat immigrants will say more about us as a free society and less about our immigrant neighbors. Utah should always be a place that welcomes people of goodwill.

Notes

¹ "Unauthorized" is the term preferred and used by the U.S. Census Bureau. It is essentially synonymous with the better known term "undocumented" but avoids any confusion resulting from the fact that some immigrants who are not authorized to be in this country have documents but they are false documents. Personal conversation with Doris Meissner, former director of the Immigration and Naturalization Service, October 23, 2015.

² "Five Facts about Illegal Immigration in the U.S.," *Pew Research Center*, accessed October 18, 2015, <http://www.pewresearch.org/fact-tank/2015/07/24/5-facts-about-illegal-immigration-in-the-u-s/>.

³ "Unauthorized Immigrant Population: National and State Trends, 2010," *Pew Research Center*, accessed October 18, 2015, www.pewresearch.org/2011/02/01/unauthorized-immigrant-population-national-and-state-trends-2010/.

⁴ "Undocumented Immigrants' State and Local Tax Contributions," *Institute on Taxation and Economic Policy*, accessed October 18, 2015, <http://www.itep.org/pdf/undocumentedtaxes.pdf>.

⁵ "Driving Privilege Card (DPC)," *Utah Department of Public Safety*, accessed October 18, 2015, <http://dld.utah.gov/licensingid-cards/driving-privilege-card-dpc>.

⁶ Lee Davidson, "Utah Hits a 6-year Low for Immigrant Driving Privilege Cards," *Salt Lake Tribune*, January 10, 2015, accessed October 19, 2015, <http://www.sltrib.com/news/2035769-155/utah-hits-6-year-low-for-immigrant>.

⁷ "States Offering Driver's Licenses to Immigrants," *National Council of State Legislatures*, accessed October 18, 2015, <http://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx>.

⁸ "HB 144-Non-Resident Tuition Waiver," *University of Utah Office of Admissions*, accessed October 18, 2015, <http://admissions.utah.edu/apply/residency/hb144.php>.

⁹ "Basic Facts about In-State Tuition for Undocumented Immigrant Students," *National Immigration Law Center*, accessed October 18, 2015, <http://www.nilc.org/basic-facts-instate.html>.

¹⁰ "Exceptions for Privately-Funded Scholarships," *Senate Bill 253, 2015 Utah State Legislature*, accessed October 18, 2015, <http://le.utah.gov/~2015/bills/static/SB0253.html>.

¹¹ "The Math of Immigration Detention," *National Immigration Forum*, accessed October 18, 2015, <http://immigrationforum.org/blog/themathofimmigrationdetention/>.

¹² Telephone conversation between Dee Rowland and anonymous employee of Utah County Jail, October 16, 2015 (notes in Rowland's possession).

¹³ "DWN's Policy Priorities," *Detention Watch Network*, accessed October 18, 2015, <http://www.detentionwatchnetwork.org/policypriorities>.

¹⁴ "The Math of Immigration Detention."

¹⁵ "The Great Expulsion," *The Economist*, February 8, 2014, accessed October 6, 2015,

www.economist.com/news/briefing/21595892-barack-obama-has-presided-over-one-largest-peace-time-outflows-people-Americas.

¹⁶ Ibid.

¹⁷ "Five Facts About Illegal Immigration."

¹⁸ "Utah Joins States Suing over Obama Action on Immigration," *KSL*, accessed October 18, 2015, <http://www.ksl.com/?nid=148&sid=32606445>.

¹⁹ "Amicus Filed in Executive Action Case," *National Immigration Law Center*, accessed October 18, 2015, <http://www.nilc.org/whywefiled.html>. The Executive Order instituted the DAPA program, which would allow undocumented immigrant parents to request deferred deportation action and obtain employment authorization if the parent has lived in the U.S. since Jan. 1, 2010, and has a U.S. citizen child or lawful permanent resident child born on or before Nov. 20, 2014. The Executive Order also extended by one year the existing two-year DACA permits that allow certain undocumented immigrant youths to stay in the U.S. and temporarily avoid deportation.

²⁰ Ibid.

²¹ "Obama to Seek Supreme Court Ruling on Immigration Action," *National Immigration Law Center*, accessed November 14, 2015, <http://www.nilc.org>. According to the National Immigration Law Center, federal courts have recognized the President's power to grant deferred action for at least 40 years, under various previous presidents. It is a grant of authority from Congress to the executive branch to administer and enforce the immigration laws. See <https://www.nilc.org/execaauthorityimm.html>

²² "Amicus Filed in Executive Action Case."