



Why Undocumented Members of American Families Can't "Get Legal" Under Current Immigration Policy

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[Most Americans support](#) immigration reform that includes a path to citizenship for undocumented immigrants. In fact, many don't know that current law makes it next to impossible for many immigrants—even those married to U.S. citizens—to “fix their papers.” Following are just [some of the restrictions](#) that prevent immigrants from “getting legal” today.

The Legal Barriers

Limits on Who Qualifies for a Green Card

In theory, people can obtain green cards and start down a path to U.S. citizenship if they have an American employer or close relative willing to sponsor them. In practice...

- **Family categories are limited.** To obtain a green card through a relative, one must be a spouse, child, or sibling of a U.S. citizen, or a spouse or unmarried child of a legal permanent resident. The citizen or legal resident “sponsor” must be at least 21 years old and earn at least 125% of the federal poverty level. Grandparents and other members of the extended family do not qualify.
- **Delays to reunion can be eternal.** Even with a close relative sponsor, there are caps on the number of green cards for a particular “category” and country. If you are an adult sibling of a U.S. citizen and live in the Philippines, you would have to wait [24 years](#) to join him in the U.S. If you are an adult child of a U.S. citizen, live in Mexico, and are not married, you would have to wait over 20 years to reunite with your parent in the U.S.
- **There are too few visas for “essential workers.”** While current law dedicates 140,000 green cards annually to immigrants coming to work, the vast majority are reserved for highly educated individuals, investors, and others with “extraordinary ability.” [Only 5,000](#) green cards are given to immigrants working in service sector, manufacturing, and other jobs that do not require a college degree. Not coincidentally, the most common occupations among current undocumented immigrants are construction, factory, restaurant, house cleaning, agriculture, and childcare.

Being Undocumented Triggers Additional Roadblocks

Even if an immigrant has a family relationship that could lead to a green card—or a willing employer and an available work visa—she faces additional penalties for being undocumented.

- **The “three and ten year bars” divide families.** With limited exceptions a noncitizen who departs the U.S. after more than 180 days of unlawful presence is barred from returning for 3 years. If he or she departs after more than a year the bar jumps to 10 years. The 3 and 10 year bars apply even if the noncitizen is married to a U.S. citizen or lawful resident and even if the noncitizen has U.S. citizen or lawfully resident children. In effect the 3 and 10 year bars are an immigration Catch-22 for many undocumented immigrants who are eligible for green cards. They cannot apply for a green card inside the U.S. because of their undocumented status, yet once they depart the U.S. to apply at a U.S. embassy—as the law requires—they become ineligible to return to the U.S. for up to 10 years. Is it any wonder that millions of undocumented immigrants have chosen to live in the shadows rather than risk a decade of separation from their loved ones?
- **The “permanent bar” imposes draconian consequences for immigration violations.** A permanent bar exists for anyone who 1) was deported from the U.S. and then returned or tried to enter unlawfully; or 2) lived in the U.S. without papers for more than a year, left on his own, and then returned or tried to enter unlawfully.
- **Family unity waivers are narrow.** Individuals who are barred from the U.S. because of the 3 or 10 year bars can apply for permission to immigrate to the U.S. if they show that refusal of their admission will cause “extreme hardship” to a U.S. citizen or legal resident spouse or parent. Their pain must be above and beyond the trauma of a “typical” family separation, and the impact on children is not a factor. Individuals subject to the “permanent bar” [may not apply for a waiver](#), even if they were once present legally and have numerous citizen relatives and other close ties to the country. After 10 years they may request permission to return to the U.S. from the Secretary of Homeland Security, but there is no guarantee it will be granted.

Immigrants, including even lawful permanent residents, can face deportation, refusal of admission or denial of immigration benefits due to minor offenses. The offense definitions in the immigration law are so broad that in some cases misdemeanors are treated as "aggravated felonies" leading to near automatic deportation of lawful residents regardless of family ties, work history and payment of taxes.

The Real-Life Consequences

Separating families should be a last resort, not the default position of the law, and the impact on children should always be considered. According to [Colorlines](#), nearly one-quarter of immigrants deported have U.S. citizen children. [Human Impact Partners](#) estimates that over 150,000 U.S. citizen children lost a parent to deportation in one year. Both [S. 744](#) (the comprehensive immigration reform bill in the Senate) and [H.R. 3431](#) (the Pearce-O'Rourke American Families United Act) address some of these issues in different ways.

A March 2013 Latino Decisions [poll](#) of the undocumented provides further illustration:

- **62% of undocumented Latinos have children born in the U.S.** After their children turn 21, these parents could theoretically be sponsored for green cards. But at that point, the unlawful presence bars (see above) would kick in and force them to wait years or even a lifetime abroad, making this option non-viable.
- **29% of those who are married have U.S. citizen or legal permanent resident spouses.** They too could obtain a green card but are thwarted by the unlawful presence bars.
- **68% of undocumented Latinos have lived in the U.S. for at least ten years, and 85% have at least one relative who is a United States citizen.** Clearly, this country is their home, and they're just waiting on Congress to recognize that.

The conservative National Foundation for American Policy analyzed how many undocumented immigrants might obtain green cards under existing laws if certain barriers are removed. With very limited fixes, NFAP [estimates](#) that between 4.4 and 6.5 million individuals currently in the U.S. without papers could qualify for green cards over a twenty-year period if Congress makes some key changes to the law. But Congress needs to act.

For More Information

- **Immigration Policy Center:** "Why Don't They Come Legally" ([chart](#)) and "Breaking Down the Problems: What's Wrong with Our Immigration System" ([special report](#))
- **National Foundation for American Policy:** "A Path to an Agreement? Analyzing House and Senate Plans for Legalizing the Unauthorized Immigrant Population" ([report](#))
- **Latino Decisions/NALEO/AVEF:** Survey of undocumented Latinos ([toplines](#)) and gender-based analysis ([report](#))